

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 15, NUMBER 3
THURSDAY, SEPTEMBER 1, 1988



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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 tentatively scheduled on September 6-7, 1988. See tentative agenda on pages 773-776 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 1988 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 2, Kentucky Register, page 318 (short form: 2 Ky.R. 318).

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY

(ISSN 0096-1493)

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The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$48 per volume of 12 issues, beginning in July and ending with the June issue of the subsequent year.

Second class postage paid at Frankfort, Kentucky.

POSTMASTER: Send address changes to Administrative Register of Kentucky, Room 64, State Capitol, Frankfort, Kentucky 40601.

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA
September 6, 1988
(Rm. 107, Capitol Annex @ 2 p.m.)

PERSONNEL BOARD

Personnel Rules

- 101 KAR 1:320. Probationary period.
- 101 KAR 1:325 & E. Initial probationary periods in excess of six months.
- 101 KAR 1:360. Appeal procedures.

REVENUE CABINET

Department of Professional and Support Services

Income Tax; Corporations

- 103 KAR 16:100. Apportionment and allocation; telephone and telegraph companies.
- 103 KAR 16:110. Apportionment and allocation; pipeline companies.
- 103 KAR 16:130. Apportionment and allocation; railroad companies.
- 103 KAR 16:145. Apportionment and allocation; barge line companies.

Selective Excise Tax; Motor Fuels

- 103 KAR 43:260. Export of special fuels used in commercial ships and vessels.
(Amended After Hearing)

GENERAL GOVERNMENT CABINET

Board of Dentistry

- 201 KAR 8:400. Complaint procedure. (Deferred from the August Meeting)
- 201 KAR 8:410. Procedures for disciplinary hearings. (Deferred from the August Meeting)

Board of Examiners and Registration of Landscape Architects

- 201 KAR 10:050 & E. Fees.

COMMERCE CABINET

Department of Agriculture

Livestock Sanitation

- 302 KAR 20:056 & E. Qualifications and eligibility requirements on state brucellosis indemnity payments for negative exposed cattle.

ECONOMIC DEVELOPMENT CABINET

Department of Business Development

Bond Project

- 306 KAR 2:010. Economic development bond project reporting requirements.
Development Finance Authority

Kentucky Development

- 307 KAR 1:010. Bond financed loan program.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection

Division of Water

Water Resources

- 401 KAR 4:100. Wild rivers boundaries.
- 401 KAR 4:110. Definitions for 401 KAR 4:120 to 4:140.
- 401 KAR 4:120. Wild rivers administration and management.
- 401 KAR 4:130. Wild rivers change of use permit procedures.
- 401 KAR 4:140. Wild rivers change of use permit standards.

Water Quality

- 401 KAR 5:005. Permits to discharge sewage; industrial and other wastes; definitions.
- 401 KAR 5:010. Certification of wastewater system operators.
- 401 KAR 5:085. KPDES discharge permit and variance fees.

Sanitary Engineering

- 401 KAR 6:015. Public and semipublic water supplies.
- 401 KAR 6:040. Water treatment plants; water distribution systems; certification of operators.
- 401 KAR 6:300. Water well drillers certification; examination; fees.

Division of Waste Management

General Administrative Procedures

- 401 KAR 30:010 & E. Definitions.
- 401 KAR 31:010. General provisions for hazardous wastes.
- 401 KAR 31:020 & E. Criteria for identifying the characteristics of hazardous waste and criteria for listing.

Standards Applicable to Generators of Hazardous Waste

- 401 KAR 32:010. General provisions for generators.
- 401 KAR 32:040 & E. Recordkeeping and reporting.

Standards for Owners and Operators of Hazardous Waste Storage, Treatment and Disposal Facilities

- 401 KAR 34:090 & E. Closure financial requirements.

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

- 401 KAR 35:070 & E. Closure and postclosure (IS).
- 401 KAR 35:090 & E. Closure financial requirements (IS).

Hazardous Waste Fees

- 401 KAR 39:010. Generator registration fees.
- 401 KAR 39:020. Delisting and exemption fees.
- 401 KAR 39:030. Part B treatment, storage, or disposal facility fees. (Repeals 401 KAR 39:040 and 401 KAR 39:050)
- 401 KAR 39:060. Short term fees.
- 401 KAR 39:070. Modification fees.
- 401 KAR 39:080. Recycling fees.
- 401 KAR 39:090. Post closure fees.
- 401 KAR 39:110. Marketer and burner registration fees.
- 401 KAR 39:120. Part A application fee.

Solid Waste Facilities

- 401 KAR 47:060. Permit fees.

Division for Air Quality

General Administrative Procedures

- 401 KAR 50:015. Documents incorporated by reference.
- 401 KAR 50:036. Permit and exemption fees.

Department for Surface Mining Reclamation and Enforcement

General Provisions

- 405 KAR 7:015. Documents incorporated by reference.
- 405 KAR 7:020. Definitions and abbreviations.
- 405 KAR 7:030. Applicability.
- 405 KAR 7:090. Hearings.

Permits

- 405 KAR 8:010. General provisions for permits.
- 405 KAR 8:020. Coal exploration.
- 405 KAR 8:050. Permits for special categories of mining.

Bond and Insurance Requirements

- 405 KAR 10:010. General requirements for performance bond and liability.
- 405 KAR 10:020. Amount and duration of performance bond.
- 405 KAR 10:030. Types, terms and conditions of performance bonds and liability insurance.
- 405 KAR 10:040. Procedures, criteria and schedule for release of performance bond.
- 405 KAR 10:050. Bond forfeiture.

Performance Standards for Surface Mining Activities

- 405 KAR 16:010. General provisions.
- 405 KAR 16:070. Water quality standards and effluent limitations
- 405 KAR 16:080. Diversions.
- 405 KAR 16:100. Permanent and temporary impoundments.
- 405 KAR 16:110. Surface and groundwater monitoring.
- 405 KAR 16:120. Use of explosives.
- 405 KAR 16:150. Disposal of noncoal mine waste.
- 405 KAR 16:190. Backfilling and grading.

Performance Standards for Underground Mining Activities

- 405 KAR 18:010. General provisions.
- 405 KAR 18:070. Water quality standards and effluent limitations.
- 405 KAR 18:080. Diversions.
- 405 KAR 18:100. Permanent and temporary impoundments.
- 405 KAR 18:110. Surface and groundwater monitoring.
- 405 KAR 18:120. Use of explosives.
- 405 KAR 18:150. Disposal of noncoal mine waste.
- 405 KAR 18:190. Backfilling and grading.

Special Performance Standards

- 405 KAR 20:010. Coal exploration.
- 405 KAR 20:060. Steep slopes.

Areas Unsuitable for Mining

- 405 KAR 24:020. Petition requirements.
- 405 KAR 24:030. Process and criteria for designating lands unsuitable for surface mining operations.
- 405 KAR 24:040. Areas unsuitable for mining.

CORRECTIONS CABINET

Office of the Secretary

- 501 KAR 6:030. Kentucky State Reformatory.
- 501 KAR 6:050. Luther Lockett Correctional Complex.
- 501 KAR 6:060. Northpoint Training Center.
- 501 KAR 6:070. Kentucky Correctional Institute for Women.
- 501 KAR 6:110 & E. Roederer Farm Center.
- 501 KAR 6:120. Blackburn Correctional Complex.
- 501 KAR 6:130. Western Kentucky Farm Center.
- 501 KAR 6:140 & E. Bell County Forestry Camp.

Department for Local Facilities

Juvenile Holding Facilities

- 501 KAR 9:010 & E. Definitions.
- 501 KAR 9:020 & E. Administration; management.

501 KAR 9:030 & E. Fiscal management.
501 KAR 9:040 & E. Personnel.
501 KAR 9:050 & E. Physical plant.
501 KAR 9:060 & E. Security; control.
501 KAR 9:070 & E. Safety; emergency procedures.
501 KAR 9:080 & E. Sanitation; hygiene.
501 KAR 9:090 & E. Medical services.
501 KAR 9:100 & E. Food services.
501 KAR 9:110 & E. Classification.
501 KAR 9:120 & E. Admission; release.
501 KAR 9:130 & E. Juvenile programs; services.
501 KAR 9:140 & E. Juvenile rights.
501 KAR 9:150 & E. Hearings, procedures, disposition.

TRANSPORTATION CABINET
Department of Highways
Division of Toll Facilities
(Located in the Department of Fiscal Management)

Toll Facilities

600 KAR 2:020 & E. Emergency vehicles and vehicles in processions on the toll roads.

Office of Minority Affairs

600 KAR 4:010. Certification of disadvantaged, minority and women business enterprises.

Department of Vehicle Regulation

Division of Motor Carriers

601 KAR 1:005 & E. Safety regulations. (Amended After Hearing)

601 KAR 1:025. Transporting hazardous materials; permit.

Motor Vehicle Tax

601 KAR 9:090. Procedures for inspecting vehicles.

601 KAR 9:140. Temporary registration tags issued by county clerks.

Driver Improvement

601 KAR 13:020 & E. Point system.

Motorcycle Safety

601 KAR 14:010. Headgear and eye-protective devices.

Department of Highways

Maintenance

603 KAR 3:051. Recyclers.

Traffic

603 KAR 5:070. Truck dimension limits.

603 KAR 5:115. Coal haul highway system; reporting requirements.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

Teacher Education

704 KAR 15:010. Accreditation of institutions.

Teacher Certification

704 KAR 20:005. Kentucky standards for preparation-certification of professional school personnel program approval.

704 KAR 20:015. Rank I classification.

704 KAR 20:020. Fifth-year program for renewal of provisional teaching certification and for Rank II equivalency.

704 KAR 20:025. Ranking of vocational trade instructors.

704 KAR 20:120. Emergency certification.

704 KAR 20:145. School media librarians, provisional certificate.

704 KAR 20:146. School media librarians, endorsement.

704 KAR 20:150. School media librarians, standard certificate.

704 KAR 20:240. Speech and communication disorders; teacher's provisional certificate.

704 KAR 20:460. Examination prerequisites for principal certification.

704 KAR 20:490. Recruitment plan for position of school media librarian.

704 KAR 20:500. Standard certificate for teachers of exceptional children and youth--communication disorders.

704 KAR 20:510. Recruitment plan for teachers of exceptional children.

Office of Vocational Education

Instructional Programs

705 KAR 4:010. General standards.

705 KAR 5:140 & E. Student medical and accident insurance.

Office of Education for Exceptional Children

Exceptional and Handicapped Programs

707 KAR 1:051. Exceptional children's programs.

707 KAR 1:060. Identification, evaluation and placement policy and procedures.

707 KAR 1:080. Appeals board.

707 KAR 1:110 & E. Kentucky School for the Blind; admission policies.

LABOR CABINET
Department of Workers' Claims

Workers' Compensation Board

803 KAR 25:080 & E. Workers' compensation rehabilitation procedures.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

Authorization of Insurers and General Requirements

806 KAR 3:130. Liability insurance closed claims reporting.

806 KAR 3:140. Liability and health insurance statistical reports.

Fees and Taxes

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

Rates and Rating Organizations

806 KAR 13:110 & E. Rate standards for property and casualty insurance "flex rating".

Department of Housing, Buildings and Construction

Kentucky Building Code

815 KAR 7:020. Building code.

Standards of Safety

815 KAR 10:020. Fire safety standards.

Plumbing

815 KAR 20:060. Quality and weight of materials.

815 KAR 20:100. Joints and connections.

815 KAR 20:120. Water supply and distribution.

815 KAR 20:191. Minimum fixture requirements.

CABINET FOR HUMAN RESOURCES
Office of Administrative Services

Vital Statistics

901 KAR 5:110 & E. Blood and body fluid precautions.

Department for Health Services

Communicable Diseases

902 KAR 2:110 & E. Reportable communicable diseases and sexually transmitted diseases which are transmissible through blood.

902 KAR 2:120 & E. Standardized risk factor history form and blood donor consent form.

Sanitation

902 KAR 10:081 & E. Construction standards for components of onsite sewage disposal systems.

902 KAR 10:085 & E. Kentucky onsite sewage disposal systems regulation.

State Health Plan

902 KAR 17:010 & E. State health plan. (Amended After Hearing)

Milk and Milk Products

902 KAR 50:120 & E. Unpasteurized goat milk.

Department for Employment Services

Unemployment Insurance

903 KAR 5:100. Claimant's reporting requirements.

Department for Social Insurance

Public Assistance

904 KAR 2:016 & E. Standards for need and amount; AFDC.

904 KAR 2:020. Child support.

904 KAR 2:116 & E. Low income home energy assistance program.

904 KAR 2:170. Incorporation by reference of materials relating to the child support program.

Office of Inspector General

Office of Inspector General

906 KAR 1:040 & E. Blood establishment licensure.

Department for Medicaid Services

Medicaid Services

907 KAR 1:004 & E. Resource and income standard of medically needy.

907 KAR 1:008 & E. Outpatient surgical clinics.

907 KAR 1:013 & E. Payments for hospital inpatient services.

907 KAR 1:015 & E. Payments for hospital outpatient services.

907 KAR 1:020 & E. Payment for drugs.

907 KAR 1:028 & E. Other laboratory and x-ray services.

907 KAR 1:029 & E. Payments for laboratory services.

907 KAR 1:031 & E. Payments for home health services.

907 KAR 1:036 & E. Amounts payable for skilled nursing and intermediate care facility services.

907 KAR 1:042 & E. Amounts payable for hospital furnished skilled nursing and intermediate care facility services.

907 KAR 1:170 & E. Payments for home and community based services.

907 KAR 1:360 & E. Preventive and remedial health care services provided through interagency agreement.

REGULATION REVIEW PROCEDURE

Filing and Publication

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

Public Hearing

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

Any person interested in attending the scheduled hearing must submit written notification of such to the administrative body at least five (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 of the cancellation. If the hearing is held, the administrative body shall submit within fifteen (15) days following the hearing a statement of consideration summarizing the comments received at the hearing and the administrative body's responses to the comments.

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

Review Procedure

If a proposed administrative regulation is amended as a result of the public hearing, the amended version shall be published in the next Administrative Register; and following publication shall be reviewed by the Administrative Regulation Review Subcommittee 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 reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or thirty (30) days after being referred by LRC, whichever occurs first.

EMERGENCY REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
201 KAR 9:175E

GENERAL GOVERNMENT CABINET
Board of Medical Licensure

The Kentucky Board of Medical Licensure is charged with the responsibility of regulating physician assistants pursuant to legislative enactment. Physician assistants are adjuncts to supervising physicians and have received special training and education. Physician assistants have been trained by the University of Kentucky for a number of years but only recently has the legislature enacted a statute to allow their regulation. Because of the nature of physician assistant practice, regulation of this activity is much needed. Without a regulation, the clinical practices of physician assistants are unregulated and this is not in the best interest of the Commonwealth. Further, without a regulation physician assistants are not able to satisfy Medicare guidelines. It is the opinion of the Board of Medical Licensure that this regulation should become effective as soon as possible. This emergency regulation will be replaced by an ordinary regulation which has been filed with the Regulation Compiler.

WALLACE G. WILKINSON, Governor
C. WILLIAM SCHMIDT, Executive Director

201 KAR 9:175E. Physician assistants; certification and supervision.

RELATES TO: KRS 311.530 to 311.620, 311.990
STATUTORY AUTHORITY: KRS Chapter 13A
EFFECTIVE: July 27, 1988

NECESSITY AND FUNCTION: It is the purpose of this regulation to promote the efficient and effective utilization of the skills of physicians by allowing them to delegate health care tasks to qualified physician assistants and in so doing, promote, sustain and enhance the health and welfare of the people of the Commonwealth.

Section 1. Definitions. As used in this regulation:

(1) "Physician assistant" means a person who has successfully completed an approved program and an approved examination, and who is certified by the board to assist a registered physician in the provision of medical care under the physician's supervision; the physician assistant is not an independent practitioner of the healing arts but only an adjunct to his or her supervising physician;

(2) "Anesthesia (or anesthesiology) assistant" means a physician assistant who assists in the

provision of general or regional anesthesia;

(3) "Board" means the Kentucky Board of Medical Licensure;

(4) "Supervising physician" means a physician currently licensed to practice medicine in the Commonwealth who has been approved by the board to supervise physician assistants for whom the supervising physician takes responsibility;

(5) "Advisory committee" means the committee appointed by the board to advise the board on all matters related to physician assistants;

(6) "Approved program" means a program for the education and training of physician assistants which meets standards acceptable to the board;

(7) "Supervision" means control and direction of the services of physician assistants by their supervising physicians;

(8) "Approved examination" means an examination to test the knowledge and skills of physician assistants which meets standards acceptable to the board;

(9) "Certificate" means the board's official documentary authorization allowing a physician assistant to practice in the Commonwealth for the time specified; and

(10) "Trainee" means a person who is currently enrolled in an approved program for the training of physician assistants.

Section 2. Certification of Physician Assistants. (1) To be certified by the board as a physician assistant, a person must:

(a) Submit a completed application with the required fee;

(b) Be of good character and reputation;

(c) Be a graduate of an approved program;

(d) Have passed an examination approved by the board within three (3) attempts.

(2) If grounds for denial of certification do not exist, a temporary certificate may be issued to a physician assistant after graduation from an approved program. The holder of a temporary certificate shall take the first available approved examination after graduation. If the holder receives a passing score on this examination, the temporary certificate shall be effective until the board approves the holder for permanent certification. If the holder receives a failing score, the temporary certificate shall automatically expire.

(3) Physician assistants duly authorized to practice in other states and in good standing may apply for certification by endorsement from the state of their original certification if the endorsing state has standards substantially equivalent to those of the Commonwealth.

(4) Certification shall be renewed on or before July 1, 1989, and thereafter biennially according to the procedure established by the executive director. In conjunction with the renewal of his/her certification, the physician assistant shall provide evidence of having completed in the previous two (2) years a minimum of 100 hours of continuing education accepted by the National Commission on Certification of Physician Assistants or the American Medical Association.

Section 3. Approved Examination. The following examinations are approved by the board:

(1) The examination of the National Commission on Certification of Physician Assistants.

(2) The official certification examination of any state if the board determines the examination to be an adequate measure of

physician assistant competency.

(3) Any other formally administered examination if the board determines, upon review of proof provided by the applicant, that the examination is substantially equivalent to the examination of the National Commission on Certification of Physician Assistants.

Section 4. Approved Programs. (1) The following programs are approved by the board:

(a) Programs that are accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association (CAHEA) and that provide interdisciplinary training in at least the following areas: family medicine, internal medicine, surgery, pediatrics, psychiatry, and obstetrics/gynecology; and

(b) Any other training program if the board determines, upon review of proof submitted by the applicant, that the training received was substantially equivalent to that received in a program as described in paragraph (a) of this subsection.

(2) Programs specifically designed to train the individual to assist in the provision of general or regional anesthesia must be accredited by CAHEA.

(3) Trainees enrolled in approved programs shall be under the supervision of the program which shall be responsible for their services. Trainees shall be bound by the same practice limitations imposed upon physician assistants generally, but will not be considered to be practicing without authorization while enrolled in the program.

Section 5. Physician Assistant Scope of Practice. (1) A physician assistant may perform any and all medical services that are within the scope of training received in an approved program and which are also within the scope of the supervising physician's practice as designated by the specialty code in the most current revision of the Kentucky Medical Directory. The physician assistant shall not make a definitive diagnosis or prescribe or employ any treatment modality independent of the supervising physician. However, a physician assistant may, without specific approval, initiate evaluation and treatment in emergency situations.

(2) A physician assistant shall not administer or monitor general or regional anesthesia unless such individual satisfies the applicable requirements of Section 6 of this regulation.

(3) A physician assistant may render services in the offices or clinics of the supervising physician, or in hospitals and other licensed health care facilities. However, physician assistants shall not render services in these facilities without the express written permission of the respective facility's governing body. The facility may restrict the physician assistant's scope of practice within the facility as the facility deems appropriate.

(4) Neither the physician assistant nor the supervising physician shall require any individual or entity to perform any act relative to the provision of services by the physician assistant that the individual or entity is specifically forbidden to perform pursuant to duly promulgated law.

Section 6. Physician Assistants Practicing as

Anesthesia (or Anesthesiology) Assistants. (1) Any physician assistant practicing as an anesthesia (or anesthesiology) assistant in Kentucky prior to July 15, 1986 may continue to so practice provided:

(a) That such individual has complied with all the practice requirements and conditions of Sections 2, 3, 4(2), and 5 of this regulation;

(b) That such individual is a graduate of a program specifically designed to train the individual to administer general or regional anesthesia which is accredited by CAHEA;

(c) That such individual is only employed by a supervising physician who has postgraduate training in anesthesiology from an anesthesiology program accredited by the Accreditation Council for Graduate Medical Education (ACGME); and

(d) Notwithstanding Section 9 of this regulation, such individual shall not administer or monitor general or regional anesthesia unless his or her supervising physician is physically present in the operating room during induction, and thereafter physically present in the operating suite and not concurrently performing any other anesthesia procedure which would prevent the supervising physician's immediate physical presence in the operating room where the anesthesia procedure is being performed.

(2) Any physician assistant not already practicing as an anesthesia (or anesthesiology) assistant in Kentucky prior to July 15, 1986 must meet the following requirements:

(a) Such individual shall be a graduate of an approved program as defined in Section 4(1)(a) of this regulation which is of four (4) years duration, and, in addition to such training, be a graduate of a two (2) year program specifically designed to train the individual to assist in the provision of general and regional anesthesia, which consists of specialized academic and clinical training in anesthesia, and which is accredited by CAHEA;

(b) Such individual shall have complied with all of the practice requirements and conditions of Sections 2, 3, 4, and 5 of this regulation;

(c) Such individual shall only be employed by a supervising physician who is a board certified anesthesiologist; and

(d) Notwithstanding Section 9 of this regulation, such individual shall not administer or monitor general or regional anesthesia unless his or her supervising physician, who must be a board certified anesthesiologist, is physically present in the operating room during induction and emergence, and thereafter physically present in the operating suite and not concurrently performing any other clinical procedure.

Section 7. Approval of Supervising Physicians.

(1) To seek approval by the board as a supervising physician, a physician must:

(a) Be currently licensed in good standing and primarily practicing in the Commonwealth;

(b) Submit a completed application with the required fee.

(2) In addition to other information the board's executive director may deem appropriate, the supervising physician shall, briefly, on the face of the application:

(a) Describe the nature of his/her practice;

(b) Describe the responsibilities the physician wishes the physician assistant to assume;

(c) Describe the means by which the physician

will maintain a line of communication with the physician assistant when the two (2) are not in the same location; and

(d) Denote the name, address and area of practice of one (1) or more alternate physicians who agree in writing to accept the responsibility of supervising the physician assistant in the supervising physician's absence.

(3) A physician shall not supervise a physician assistant without being approved by the board. The board may impose restrictions on the scope of practice of a particular physician assistant or on the methods of supervision employed by the supervising physician as it deems appropriate. Physicians must obtain specific approval for each physician assistant they wish to supervise and the board will not approve any physician to supervise more than two (2) physician assistants at any one (1) time.

Section 8. Duties of Supervising Physicians. A supervising physician shall:

(1) Restrict the services provided by the physician assistant the physician supervises to those services within the limitations of the physician assistant's scope of practice as set forth in Section 5 of this regulation and, as applicable, Section 6 of this regulation, and as may be specifically limited by the board;

(2) Prohibit physician assistants from prescribing or dispensing controlled substances or other drugs;

(3) Inform all patients with whom the physician assistant comes in contact of the status of the physician assistant;

(4) Post a notice in all offices or clinics where the physician assistant may practice stating that a physician assistant practices on the premises;

(5) Require physician assistants to wear a name tag or other identification clearly stating that the person is a "physician assistant - certified";

(6) Prohibit the physician assistant from independently billing any patient or other payor for services rendered by the physician assistant;

(7) Negotiate with the medical staff and/or governing body of any hospital, long-term care facility or institution to establish and limit the scope of practice of the physician assistant;

(8) Not require a physician assistant to perform services or other acts that the physician assistant feels incapable of carrying out safely and properly;

(9) Survey critically and biennially the performance of the physician assistant under the physician's supervision as to reliability, accountability, fund of medical knowledge and recommend to the committee, approval or disapproval of other physician assistant's certification, including evidence of continuing certification by the National Commission on Certification of Physician Assistants. This critical survey process shall be performed by the supervising physician biennially on the date of the physician assistant's original certification in the Commonwealth of Kentucky;

(10) Submit in conjunction with the physician assistant's renewal of certification a statement evidencing the physician assistant's completion of a minimum of 100 hours of continuing education as set forth in Section 2(4) of this regulation;

(11) Maintain adequate, active and continuous supervision of the physician assistant's

activities to assure the physician assistant is performing as directed and in compliance with these regulations. The supervising physician shall timely sign all records of services rendered by the physician assistant as certification that the physician assistant carried out the services as delegated;

(12) Notify the board within three (3) business days if the physician assistant ceases to be under the control or in the employ of the supervising physician; and

(13) Notify the board within twenty (20) days if the supervising physician believes in good faith that the physician assistant has violated any disciplinary rule set forth in this regulation.

Section 9. Supervision and Satellite Clinics.

(1) The supervising physician need not be physically present at all times when the physician assistant is providing services in the physician's office or clinic so long as the physician assistant has a reliable means of having direct communication with the supervising physician at all times. Except as may be provided by this regulation or the board, the supervising physician need not be present in a hospital or other licensed health care facility while the physician assistant is providing services so long as the physician assistant has a reliable means of having direct communication with the supervising physician at all times, and the facility has given specific approval for the provision of the given services by the physician assistant without the presence of the supervising physician.

(2) Any supervising physician utilizing the services of a physician assistant in an office or clinic separate and apart from the physician's primary office shall submit a specific written request to the board delineating the services to be provided by the physician assistant, the distance between the primary office and the setting in which the physician assistant is to practice and the mechanism by which the physician assistant shall have access to direct communication with the supervising physician at all times. The board may approve or disapprove such requests as it deems appropriate and may approve a request with specified limitations. Under no circumstances shall a physician assistant practice in such a setting without first having two (2) continuous years of experience in a nonsatellite setting.

Section 10. Discipline of Physician Assistants. The board may revoke, suspend, deny, decline to renew, limit or restrict the certificate of a physician assistant, or may reprimand or place a physician assistant on probation for no more than five (5) years under conditions the board deems appropriate, upon proof that the physician assistant has:

(1) Knowingly made or presented, or caused to be made or presented, any false, fraudulent or forged statement, writing, certificate, diploma or other document in connection with an application for certification;

(2) Practiced, or aided or abetted in the practice, of fraud, forgery, deception, collusion or conspiracy in connection with an examination for certification;

(3) Been convicted, by any court within or without the Commonwealth of Kentucky, of committing an act which is, or would be, a

felony under the laws of the Commonwealth of Kentucky, or of the United States, or of any crime involving moral turpitude which is a misdemeanor under such laws;

(4) Become addicted to or an abuser of alcohol, drugs or any illegal substance;

(5) Developed such physical or mental disability or other condition that continued practice presents a danger to patients, the public or other health care personnel;

(6) Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in connection with the practice of his/her profession;

(7) Practiced as a physician assistant outside the practice of the designated supervising physician;

(8) Aided, assisted, or abetted the unlawful practice of medicine or osteopathy or any other healing art, including the practice of physician assistants;

(9) Willfully violated a confidential communication;

(10) Had a physician assistant certificate of any other state, territory, or foreign nation revoked, suspended, restricted, limited or subject to other disciplinary action;

(11) Performed the services of a physician assistant in an unprofessional, incompetent, grossly negligent or chronically negligent manner;

(12) Exceeded the authority delegated by the supervising physician;

(13) Exceeded the scope of practice duly established by the governing authority of any hospital or other licensed health care facility;

(14) Been removed, suspended, expelled or placed on probation by any health care facility or professional society for what was found to be unprofessional conduct, incompetence, negligence or violation of any provision of this regulation;

(15) Violated any applicable provision of regulations regarding physician assistant practice;

(16) Violated any term of probation or other discipline imposed by the board;

(17) Failed to complete the required number of hours of approved continuing education; or

(18) Performed any act as a physician assistant without having a designated supervising physician.

Section 11. Discipline of Supervising Physicians. Failure of a physician to obtain approval as a supervising physician, or failure of a supervising physician to observe applicable responsibilities established by regulations promulgated by the board regarding physician assistants, shall be considered unprofessional conduct and the physician may be proceeded against pursuant to the board's rules regarding physician discipline. In addition to other discipline, the board may revoke, suspend, restrict, or place on probation the supervising physician's right to supervise a physician assistant.

Section 12. Physician Assistant Advisory Committee. (1) The board shall establish a physician assistant advisory committee consisting of nine (9) members, four (4) of whom shall be physician assistants from (as practicable) different regions of the Commonwealth, two (2) supervising physicians, one (1) resident of the Commonwealth who is not

associated with or financially interested in the health care business, one (1) advanced registered nurse practitioner who shall be selected from a list of three (3) nominees submitted by the Kentucky Board of Nursing and who shall be licensed in good standing in the Commonwealth, and one (1) member of the board. The members of the committee shall hold office for terms of three (3) years and until their successors are appointed and qualified, except that the terms of office of the members first appointed shall be as follows: two (2) members shall be appointed for one (1) year, four (4) members shall be appointed for two (2) years and three (3) members shall be appointed for three (3) years. The terms of all members of the committee shall expire on August 31st of the last year of their respective terms.

(2) The committee shall hold meetings at least semiannually and more often as necessary, to review and make recommendations to the board regarding:

- (a) Applications of physician assistants and supervising physicians;
- (b) Statutes and regulations; and
- (c) Any other matter relating to the practice of physician assistants.

(3) The committee shall review all grievances relating to physician assistants. The board's investigational powers relating to physicians shall apply equally to physician assistants. Upon review of any grievance, the committee shall make a recommendation to the appropriate inquiry panel. Disciplinary proceedings against physician assistants shall be conducted in the same manner as proceedings against physicians and physician assistants shall have the same right to judicial review enjoyed by physicians. The board may temporarily suspend or restrict a physician assistant's certification during the pendency of a proceeding and may order a physician assistant to undergo physical or mental examination in accordance with the procedures set forth in KRS 311.592 and KRS 311.599, respectively.

Section 13. Repealer. 201 KAR 9:083 is repealed.

C. WILLIAM SCHMIDT, Executive Director

APPROVED BY AGENCY: June 16, 1988

FILED WITH LRC: July 27, 1988 at 10 a.m.

STATEMENT OF EMERGENCY 501 KAR 6:110E

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 policies must be implemented to allow the Roederer Farm Center to submit a series of new and revised policies to prepare the institution for an upcoming national accreditation audit. These policies are needed to bring the Roederer Farm Center into compliance with standards set by the American Correctional Association. This emergency regulation will be replaced by the ordinary administrative regulation filed with LRC on July 14, 1988 in accordance with KRS Chapter 13A.

WALLACE G. WILKINSON, Governor
JOHN T. WIGGINTON, Secretary

CORRECTIONS CABINET

501 KAR 6:110E. Roederer Farm Center.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
EFFECTIVE: July 19, 1988
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 July 14 [March 15], 1988 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 01-04-02 Extraordinary Occurrence Procedure (Amended 7/14/88)
- RFC 01-06-01 Inmate Access to and Communication with RFC Staff (Amended 7/14/88)
- RFC 01-07-01 Institutional Legal Assistance
- RFC 01-08-01 Public Information and News Media Access
- RFC 01-09-01 Staff Participation in Professional Organization and Conferences; Provisions for Leave and Reimbursement for Expenses
- RFC 01-10-01 RFC Cooperation with Outside Bodies Including Courts, Governmental Legislative, Executive, and Community Agencies (Amended 7/14/88)
- RFC 01-12-01 Institutional Duty Officer - Responsibilities (Amended 7/14/88)
- RFC 02-01-01 Fiscal Management: Organization
- RFC 02-01-02 Fiscal Management: Accounting Procedures (Amended 7/14/88)
- RFC 02-01-03 Fiscal Management: Agency Funds (Amended 7/14/88)
- RFC 02-01-04 Fiscal Management: Insurance
- RFC 02-02-01 Fiscal Management: Budget (Amended 7/14/88)
- RFC 02-02-02 Inmate Control of Personal Funds
- RFC 02-02-03 Storage and Disposition of Monies received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays (Amended 7/14/88)
- RFC 02-02-04 Inmate Accounts (Amended 7/14/88)
- RFC 02-03-01 Fiscal Management: Audits
- RFC 02-04-01 Purchase Orders
- RFC 02-04-02 Processing of Invoices
- RFC 02-06-01 Property Inventory
- RFC 03-01-01 General Guidelines for RFC Employees
- RFC 03-01-02 Service Regulations, Attendance Accumulation and Use of Leave
- RFC 03-03-01 Employee Grievance Procedures
- RFC 03-04-01 Personnel Records
- RFC 03-05-01 Personnel Vacancies: Promotion Board
- RFC 03-06-01 Work Planning: Employee Evaluations and Evaluation Control

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RFC 03-07-01	Affirmative Action - E.E.O.	RFC 13-01-01	Organization of Health Services (Amended 7/14/88)
RFC 03-08-01	Confidentiality of Information, Roles and Services of Consultants, Contract Personnel, and Volunteers	RFC 13-02-01	Health Maintenance Services: Sick Call and Pill Call (Amended 7/14/88)
RFC 03-09-01	Personnel Manning Review	RFC 13-03-01	Dental Policy/Sick Call (Amended 7/14/88)
RFC 03-10-01	Employee's Handbook	RFC 13-04-01	Inmate Medical Screenings and Health Evaluations (Amended 7/14/88)
RFC 03-11-01	Replacement of Damaged or Destroyed Personal Property	RFC 13-05-02	Licensure and Training Standards (Amended 7/14/88)
RFC 03-12-01	Corrections Cabinet Staff Members Entering the Roederer Farm Center While Being Under the Influence	RFC 13-06-01	Suicide Prevention and Intervention Program (Added 7/14/88)
RFC 03-13-01	Staff/Visitor Meals	RFC 13-06-02	First Aid and CPR Training Program (Added 7/14/88)
RFC 04-01-01	Employee Training and Development (Amended 7/14/88)	RFC 13-06-03	Emergency Medical and [/] Dental Care Services (Amended 7/14/88)
RFC 05-01-01	Information System (Amended 7/14/88)	RFC 13-06-04	First Aid/CPR Training Program
RFC 06-01-01	Offender Records (Amended 7/14/88)	RFC 13-07-01	Health Records (Amended 7/14/88)
RFC 06-02-01	Use of Inmate Records/Security of Inmate Records (Amended 7/14/88)	RFC 13-07-03	Use of Pharmaceutical Products (Added 7/14/88)
RFC 06-03-01	Records Release of Information (Amended 7/14/88)	RFC 13-08-01	Special Diets (Added 7/14/88)
RFC 06-03-02	Storage of Expunged Records (Amended 7/14/88)	RFC 13-09-01	Notification of Inmate Family in the Event of Serious Illness, Surgery, or Inmate Death (Added 7/14/88)
RFC 06-04-01	Court Trips (Amended 7/14/88)	RFC 13-10-01	Health Education/Special Health Programs (Amended 7/14/88)
RFC 06-04-02	Receipt of Order of Appearance (Amended 7/14/88)	RFC 13-11-01	Informed Consent (Amended 7/14/88)
RFC 08-01-01	Fire Prevention (Amended 7/14/88)	RFC 13-12-01	Mental Health/Provision of Psychiatric Services by KCPC
RFC 08-02-01	Fire Procedures (Amended 7/14/88)	RFC 13-12-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center (Amended 7/14/88)
RFC 08-02-02	Fire Extinguishers and Their Use	RFC 13-13-01	Identification of Special Needs Inmates (Added 7/14/88)
RFC 08-08-01	Hazardous Communication Program [Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances] (Amended 7/14/88)	RFC 13-15-01	Medical Restraints (Amended 7/14/88)
RFC 09-04-03	Duties and Responsibilities of the Fire Safety Officer (Amended 7/14/88)	RFC 13-16-01	Specialized Health Services (Added 7/14/88)
RFC 09-06-01	Search Policy/Disposition of Contraband (Amended 7/14/88)	RFC 13-17-01	Vision Care and [/] Optometry Services (Amended 7/14/88)
RFC 09-09-02	Drug Abuse Testing (Amended 7/14/88)	RFC 13-18-01	Serious and Infectious Diseases (Added 7/14/88)
RFC 09-09-03	Breathalyzer (Amended 7/14/88)	RFC 14-01-01	Inmate Rights and Responsibilities (Amended 7/14/88)
RFC 09-14-01	Restricted Areas (Amended 7/14/88)	RFC 14-02-01	Legal Services Program (Amended 7/14/88)
RFC 09-22-01	Use of Force (Amended 7/14/88)	RFC 14-03-01	Inmate Grievance Procedure (Amended 7/14/88)
RFC 09-24-01	Informants (Amended 7/14/88)	RFC 14-04-01	Inmate Participation in Authorized Research (Amended 7/14/88)
RFC 10-01-01	Special Management Inmates	RFC 15-01-01	Due Process and [/] Disciplinary Procedures (Amended 7/14/88)
RFC 11-01-01	Food Services: General Guidelines	RFC 15-02-01	Prehearing [Hearing] Detention and Protective Custody (Amended 7/14/88)
RFC 11-02-01	Food Service: Security	RFC 16-01-01	Inmate Visiting
RFC 11-03-01	Dining Room Guidelines	RFC 16-02-01	Telephone Communications
RFC 11-04-01	Food Service: Meals	RFC 16-03-01	Mail Regulations (Amended 7/14/88)
RFC 11-04-02	Food Service: Menu, Nutrition and Special Diets	RFC 16-03-02	Christmas Packages (Amended 7/14/88)
RFC 11-05-01	Food Service: Kitchen and Dining Room Inmate Work Responsibilities	RFC 17-01-01	Assessment/Orientation Procedure (Amended 7/14/88)
RFC 11-05-02	Medical Screening of Food Handlers	RFC 17-02-01	Inmate Reception Process (Amended 7/14/88)
RFC 11-06-01	Food Service: Inspections and Sanitation	RFC 17-03-01	Inmate Personal Property and Property Control (Amended 7/14/88)
RFC 11-07-01	Food Service: Purchasing, Storage and Farm Products	RFC 17-04-01	Unauthorized Items (Amended 7/14/88)
RFC 11-08-01	Staff/Visitor Meals	RFC 17-05-01	Inmate Canteen (Amended 7/14/88)
RFC 12-01-01	Sanitation, Living Conditions Standards, Clothing Issues	RFC 18-01-01	Institutional Classification Committee (Amended 7/14/88)
RFC 12-01-02	Bed Areas - Assignment/Condition Standards [(Amended 3/15/88)]		
RFC 12-02-01	Issuance of Clean Laundry and Receiving of Dirty Laundry		
RFC 12-03-01	Personal Hygiene Items: Issuance and Placement Schedule		
RFC 12-03-02	Barber Shop Services and Equipment Control		
RFC 12-04-01	Institutional Inspections		
RFC 12-05-01	Fire Safety		
RFC 12-05-02	Use of Noncombustible Receptacle		
RFC 12-06-01	Insect and Vermin Control		

RFC 18-02-01 Classification/Security Levels
(Amended 7/14/88)

RFC 18-03-01 Classification Process (Amended 7/14/88)

RFC 18-03-02 Classification Program Planning
(Amended 7/14/88)

RFC 18-03-03 Honor's Program (Amended 7/14/88)

RFC 18-04-01 Instruction for Six Month Review
(Amended 7/14/88)

RFC 18-05-01 Transfers to Other Minimum
Security Institutions (Amended 7/14/88)

RFC 18-06-01 Classification Document (Amended 7/14/88)

RFC 19-01-01 Job Assignments (Amended 7/14/88)

RFC 19-02-01 Government Service Details (Added 7/14/88)

RFC 20-01-01 Academic Education Program
(Amended 7/14/88)

RFC 20-01-02 Testing and Verification Procedure

RFC 20-02-01 Correctional Educator Senior

RFC 21-01-01 Library Services (Amended 7/14/88)

RFC 22-01-01 Recreation and Inmate Activities
(Added 7/14/88)

RFC 22-01-02 Recreational Equipment
Check-in/Check-out Procedure
(Amended 7/14/88)

RFC 22-02-01 Outside Recreation (Amended 7/14/88)

RFC 22-02-02 Entry/Exit Procedure for Inmate
Outside Recreation (Amended 7/14/88)

RFC 22-03-01 Inmate Clubs and Organizations
(Amended 7/14/88)

RFC 22-03-02 Privilege Trips (Amended 7/14/88)

RFC 22-04-01 Conducting Inmate Organizational
Meetings and Programs (Amended 7/14/88)

[RFC 22-05-01 Woodworking Shop (Deleted 6/27/88)]

RFC 22-06-01 Playing Cards (Amended 7/14/88)

RFC 23-01-01 Religious Services (Amended 7/14/88)

RFC 23-02-01 Security Procedures for the Chapel
(Amended 7/14/88)

RFC 23-03-01 Visitors for Religious Programs
(Amended 7/14/88)

RFC 23-04-01 Marriage of Inmates (Amended 7/14/88)

RFC 24-01-01 Social Services and Counseling
Program (Amended 7/14/88)

RFC 25-01-01 Expedient and Prerelease [Release]
Preparation Program Description
(Amended 7/14/88)

RFC 25-02-01 Temporary Release or [] Community
Center Release (Amended 7/14/88)

RFC 25-03-01 Furloughs (Amended 7/14/88)

RFC 25-04-01 Parole Progress Report (Amended 7/14/88)

RFC 25-04-02 Parole Eligibility Dates (Amended 7/14/88)

RFC 25-05-01 Inmate Discharge Procedure
(Amended 7/14/88)

RFC 26-01-01 Citizen Involvement and Volunteer
Services Program (Amended 7/14/88)

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: July 14, 1988
FILED WITH LRC: July 19, 1988 at 10 a.m.

STATEMENT OF EMERGENCY
501 KAR 6:140E

In order to continue to operate the Bell
County Forestry Camp 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 added immediately to allow the Bell County Forestry Camp to comply with Kentucky OSHA Regulation 29 CFR 1910.1200. This emergency regulation will be replaced by the ordinary administrative regulation filed with LRC on July 14, 1988 in accordance with KRS Chapter 13A.

WALLACE G. WILKINSON, Governor
JOHN T. WIGGINTON, Secretary

CORRECTIONS CABINET

501 KAR 6:140E. Bell County Forestry Camp.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020,
439.470, 439.590, 439.640
EFFECTIVE: July 19, 1988
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. This regulation is 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 14 [June 10], 1988 and hereinafter should
be referred to as Bell County Forestry Camp
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.

BCFC 01-02-01 Organization and Assignment of
Responsibility

BCFC 01-04-02 Extraordinary Occurrence Procedure

BCFC 01-05-01 Procedures Office: Duties and
Responsibilities

BCFC 01-08-01 Public Information and Inmate
Access to News Media

BCFC 01-09-01 Staff Participation in
Professional Organization and
Conferences; Provision for Leave
and Reimbursement for Expenses

BCFC 01-11-01 Institutional Duty Officer's
Responsibilities

BCFC 02-01-02 Fiscal Management: Accounting
Procedures

BCFC 02-01-03 Fiscal Management: Agency Funds

BCFC 02-01-04 Fiscal Management: Insurance

BCFC 02-01-05 Fiscal Management: Budget

BCFC 02-01-06 Fiscal Management: Audit

BCFC 02-02-01 Inmate Accounts

BCFC 02-02-02 Inmate Control of Personal Funds

BCFC 02-02-03 Storage and Disposition of Inmate
Monies Received on Weekends,
Holidays, and Between 4 p.m. and
8 a.m. Weekdays

BCFC 02-03-01 Purchase Orders

BCFC 02-04-01 Processing of Invoices

BCFC 02-05-01 BCFC Materials Receiving Procedure

BCFC 02-06-01 Property Inventory

BCFC 04-01-01 Employee Training and Development

BCFC 05-01-01 Information System

BCFC 06-01-01 Offender Records

BCFC 06-02-01 Storage of Expunged Records

BCFC 06-03-01 Court Trips

BCFC 06-03-02 Receipt of Order of Appearance

BCFC 08-02-01	Fire Prevention	BCFC 14-04-01	Inmate Participation in
BCFC 08-03-01	Fire Procedures		Authorized Research
BCFC 08-03-02	Fire Extinguishers and Their Use	BCFC 15-01-01	Due Process/Disciplinary
BCFC 08-09-01	Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances		Procedures
BCFC 08-09-02	<u>OSHA Hazard Communication Program (Added 7/14/88)</u>	BCFC 16-01-01	Inmate Visiting
BCFC 09-06-01	Search Policy/Disposition of Contraband	BCFC 16-02-01	Telephone Communications
BCFC 09-14-01	Bell County Forestry Camp - Restricted Area	BCFC 16-03-01	Mail Regulations
BCFC 10-01-01	Special Management Inmates	BCFC 16-03-02	Inmate Packages
BCFC 11-01-01	Food Services: General Guidelines	BCFC 17-01-01	Assessment/Orientation Procedure
BCFC 11-02-01	Food Service: Security	BCFC 17-02-01	Inmate Reception Process
BCFC 11-03-01	Dining Room Guidelines	BCFC 17-03-01	Inmate Personal Property and Property Control
BCFC 11-04-01	Food Service: Meals		Unauthorized Items
BCFC 11-04-02	Food Service: Menu, Nutrition and Special Diets	BCFC 17-04-01	Inmate Canteen
BCFC 11-05-02	Health Requirements of Food Handlers	BCFC 18-01-01	Institutional Classification Committee
BCFC 11-06-01	Food Service: Inspection and Sanitation	BCFC 18-02-01	Classification Document
BCFC 11-07-01	Food Service: Purchasing, Storage and Farm Products	BCFC 18-03-01	Classification Process
BCFC 11-08-01	Staff/Visitor Meals	BCFC 18-03-02	Classification Program Planning
BCFC 12-01-01	Sanitation, Living Conditions Standards, and Clothing Issues	BCFC 18-03-03	Population Category Status
BCFC 12-01-02	Bed Areas, Assignments/Conditions Standards [(Amended 6/10/88)]	BCFC 18-04-01	Instructions for Six Month Review
BCFC 12-02-01	Issuance of Clean Laundry and Receiving of Dirty Laundry	BCFC 18-05-01	Transfers to Other Minimum Security Institutions
BCFC 12-03-01	Personal Hygiene Items: Issuance and Placement Schedule	BCFC 19-01-01	Job and Vocational Program Assignments
BCFC 12-03-02	Barbership Services and Equipment Control	BCFC 19-02-01	Government Service Details
BCFC 12-04-01	Institutional Inspections	BCFC 20-01-01	Academic/Vocational School
BCFC 12-05-01	Fire Safety and Use of Noncombustible Receptacles	BCFC 20-01-02	Testing and Verification Procedure
BCFC 12-06-01	Pest Control	BCFC 20-02-01	Educational Program Planning
BCFC 13-01-01	Organization of Health Services	BCFC 20-03-01	Academic and Vocational Curriculum
BCFC 13-02-01	Health Maintenance Services: Sick Call and Pill Call	BCFC 20-04-01	Educational Personnel Practices
BCFC 13-03-01	Dental Policy/Sick Call	BCFC 21-01-01	Library Services
BCFC 13-04-01	Inmate Medical Screenings and Health Evaluations	BCFC 22-01-01	Recreation and Inmate Activities
BCFC 13-05-01	Licensure and Training Standards	BCFC 22-02-01	Inmate Clubs and Organizations
BCFC 13-06-01	Suicide Prevention and Intervention Program	BCFC 22-02-02	Conducting Inmate Organizational Meetings and Programs
BCFC 13-06-02	First Aid/CPR Training Program	BCFC 22-03-01	Privilege Trips
BCFC 13-06-03	Emergency Medical/Dental Care Services	BCFC 23-01-01	Religious Service
BCFC 13-07-01	Health Records	BCFC 23-02-01	Visitors for Religious Programs
BCFC 13-08-01	Special Diets	BCFC 23-03-01	Marriage of Inmates
BCFC 13-09-01	Notification of Inmate, Family in the Event of Serious Illness, Surgery, or Inmate Death	BCFC 24-01-01	Social Services and Counseling Program
BCFC 13-10-01	Health Education/Special Health Programs	BCFC 24-01-02	Casework Services
BCFC 13-11-01	Informed Consent	BCFC 25-01-01	Release Preparation Program Description
BCFC 13-12-01	Mental Health/Provision of Psychiatric Services by KCPC	BCFC 25-02-01	Temporary Release/Community Center Release
BCFC 13-12-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center (KCPC)	BCFC 25-02-02	Furloughs
BCFC 13-13-01	Identification of Special Needs Inmates	BCFC 25-03-01	Parole Progress Report
BCFC 13-14-01	Use of Pharmaceutical Products	BCFC 25-03-02	Parole Eligibility Dates
BCFC 13-15-01	Medical Restraints	BCFC 25-04-01	Inmate Discharge Procedure
BCFC 13-16-01	Specialized Health Services	BCFC 26-01-01	Citizen Involvement and Volunteer Services Program
BCFC 13-17-01	Vision Care/Optomety Services		
BCFC 14-01-01	Inmate Rights and Responsibilities		
BCFC 14-02-01	Legal Services Program		
BCFC 14-03-01	Inmate Grievance Procedure		

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: July 14, 1988
FILED WITH LRC: July 19, 1988 at 10 a.m.

STATEMENT OF EMERGENCY
601 KAR 1:005E

House Bill 665 passed by the 1988 General Assembly reenacted the weight distance tax. As part of an enhancement program to increase the collection of motor carrier taxes, a system has been established to identify individual vehicles operating in Kentucky. Each vehicle is required to have a unique identifier painted or placarded on the exterior of the vehicle. This regulation differs from the first emergency regulation published in that Section 7 was deleted and replaced with four subsections which set out the specific applicability of the requirement for a motor carrier identification number; define the

motor carrier identification number; allow the display of the unit identification number on the front of the cab; and allow KYU and unit identification numbers which were permanently affixed prior to August 1, 1988, on the exterior of both cab doors, or the panel directly adjacent thereto, to be considered in compliance with this regulation. It is necessary to be enacted on an emergency basis because the weight distance tax was effective April 1, 1988. The emergency regulation will be replaced by an administrative regulation as soon as possible.

WALLACE G. WILKINSON, Governor
MILO D. BRYANT, Secretary
JEROME L. LENTZ, Acting Commissioner

TRANSPORTATION CABINET
Department of Vehicle Regulation

601 KAR 1:005E. Safety regulations.

RELATES TO: KRS Chapter 138, 281
STATUTORY AUTHORITY: KRS 138.665, 281.600,
281.726, 281.730, 281.750

EFFECTIVE: August 15, 1988

NECESSITY AND FUNCTION: This regulation sets out safety procedures to be followed by motor carriers operating in the Commonwealth of Kentucky. It further sets forth the requirement for a unique identifier on the sides of each vehicle subject to the taxes of KRS 138.660.

Section 1. (1) Motor Carrier Safety Regulations adopted and issued by the United States Department of Transportation relating to the following subjects: Title 49, Code of Federal Regulations, Part 391, dated October 1, 1983 as amended through June 12, 1986, Qualifications of Drivers; Title 49, Code of Federal Regulations, Part 392, dated October 1, 1983 as amended through August 19, 1987, Driving of Motor Vehicles; Title 49 Code of Federal Regulations, Part 393, dated October 1, 1983 as amended through February 26, 1987, Parts and Accessories Necessary for Safe Operation; Title 49, Code of Federal Regulations, Part 394, dated October 1, 1983 as amended through March 10, 1987, Notification, Recording and Reporting of Accidents; Title 49, Code of Federal Regulations, Part 395, dated October 1, 1983 as amended through November 23, 1984, Hours of Service of Drivers; Title 49, Code of Federal Regulations, Part 396, dated October 1, 1983 as amended through September 28, 1984, Inspection, Repair and Maintenance; Title 49, Code of Federal Regulations, Part 397, dated October 1, 1983 as amended through September 28, 1984, Transportation of Hazardous Materials; Driving and Parking Rules; are hereby adopted and incorporated herein by reference, and all commercial motor vehicles operated for-hire or in private carriage, intrastate and interstate, shall comply therewith. These regulations are not applicable to motor vehicles primarily designed for carrying passengers and having provisions for not more than eight (8) passengers and the driver, motorcycles, side car attachments and motor vehicles owned by the federal government, a state, a county, a city, or a board of education.

(2) Subject to the following exemptions and exceptions:

(a) City buses, suburban buses, taxicabs, and motor vehicles (except those motor vehicles

transporting hazardous materials, Part 397) operated exclusively in a residential or business district of a city are not required to comply with the aforesaid safety regulations.

(b) Private carriers engaged exclusively in farm-to-market agricultural operation when operated during daylight hours are not required to comply with the above safety regulations relative to light fixture requirements. They are, however, required to have two (2) brake lights and mechanical turn signals as set forth in 49 CFR 393. The term "farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private carrier is using the vehicle to transport agricultural products from his farm or to transport farm machinery, farm supplies, or both to his farm. However, the term "farm-to-market agricultural transportation" does not include the operation of a motor vehicle transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 49 CFR 177. The term "daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.

(c) Motor vehicles which are used exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility which is located at a point not more than fifty (50) air miles from the harvest area are not required to comply with the above safety requirements relative to light fixtures when operated during daylight hours. They are, however, required to have two (2) brake lights and mechanical turn signals as set forth in 49 CFR 393.

Section 2. Title 49, Code of Federal Regulations, Part 390 dated October 1, 1983 as amended through April 14, 1986, General, is hereby adopted for the purposes of application to 49 Code Federal Regulations Section 391-397.

Section 3. A summary of the content of each federal regulation herein incorporated by reference follows:

(1) Part 390 - applicable definitions and general policy.

(2) Part 391 - qualification and disqualification criteria for drivers; background and character of drivers; required examination and tests of drivers; required physical qualification and medical examinations of drivers; driver qualification recordkeeping; and limited driver exemptions.

(3) Part 392 - vehicle operation standards including the use of alcohol and drugs by the driver; the safe operation of the vehicle; the use of lighted lamps and reflectors on the vehicle; the duties of the driver in case of an accident; fueling precautions; and prohibited practices.

(4) Part 393 - parts and accessories necessary for the safe operation of a motor vehicle including lighting devices, brakes, window construction, fuel systems, coupling devices, emergency equipment, miscellaneous parts and accessories; and protection against shifting or falling cargo.

(5) Part 394 - establishes the duties of motor carriers to make reports and keep records of accidents which occur during their operations.

(6) Part 395 - outline of the allowed hours of

service of drivers.

(7) Part 396 - specifics of the inspection of a motor vehicle by the driver and federally authorized personnel and the records required to be maintained on vehicle maintenance and inspection.

(8) Part 397 - standards for the transportation of hazardous materials including driving, placarding and parking procedures.

Section 4. Buses. Buses must be maintained in a clean and sanitary condition so that the health of passengers will not be impaired. Seats must be comfortable in order that passengers will not be subjected to unreasonable discomfort which might be detrimental to their health and welfare. Employees in charge of buses shall be courteous and helpful to passengers, properly caring for baggage so that it will not be damaged, and should be acquainted with the routes traveled and schedules maintained, so that the passengers will not be subjected to unnecessary delays. All operators must take into consideration the health and welfare of their passengers and control their operations in the public interest. Express and freight, mail bags, newspapers and baggage must be so placed as not to interfere with the driver or with the safety and comfort of passengers. Such items must be protected from the weather but shall not be carried in the aisles or in such position as to block exits or doorways on the bus. No aisle seat shall be permitted in any bus and the driver's seat must be separated from every other seat.

Section 5. Overcrowding of Passenger Vehicles. No bus operated by an authorized carrier, except city or suburban buses, shall transport passengers in excess of the load limit hereinafter set forth. The load limit shall be the rated seating capacity for which the vehicle is licensed plus twenty-five (25) percent of said rated seating capacity. This load limit is subject to the provision that in no event shall any authorized carrier, including city or suburban bus operators, permit standees to occupy that space forward of a plane drawn through the rear of the driver's seat perpendicular to the longitudinal axis of the bus. This forward space shall be plainly marked with a line, or otherwise equipped with identification, so as to indicate to standees that they are prohibited from occupying it. No passenger shall be permitted to occupy the rear door-well of any bus vehicle that is equipped with such a rear door-well. Taxicabs shall not carry a number of passengers greater than the rated seating capacity of the vehicle, and in no event more than fifteen (15) passengers exclusive of the driver.

Section 6. Identification. All [authorized] carriers must at all times display on each side of every vehicle employed by them in their operations the name of the person conducting the said operation as it appears upon the certificate or permit authorizing the operation. An assumed or trade name may be used providing the appropriate statutes and regulations are complied with and the assumed or trade name also appears upon the certificate or permit. The letters shall be of sufficient size so as to be readily legible. The vehicle identification [company number of the vehicle must be

prominently displayed on each side of the vehicle and the cab] card issued for the vehicle must at all times be prominently displayed on the inside thereof. The name of the driver operating a vehicle engaged in transportation of persons for hire shall be prominently displayed in the vehicle.

Section 7. Tax Identification Number. (1) Every commercial motor vehicle having a declared gross weight above 26,000 pounds with three (3) or more axles, which is subject to those taxes in KRS 138.660, shall when operating upon the public highways of the Commonwealth of Kentucky, display on the vehicle the control number of the motor carrier under whose authority the vehicle is being operated and a unique vehicle identification number for the vehicle. The motor carrier control number required by this regulation shall only be accepted by the Department of Vehicle Regulation for the purpose of exterior display on the vehicle, and shall not be accepted for any other purpose. These numbers may be permanently affixed to the vehicle or displayed by use of a removable device. The term commercial motor vehicle as used in this section of the administrative regulation shall not include farm vehicles properly registered under KRS 186.050(4).

(2) The control number of a motor carrier for the purposes of this regulation shall mean either an Interstate Commerce Commission motor carrier (ICC MC) number as required by 49 CFR 1058.2; a U.S. Department of Transportation (DOT) number as required by 49 CFR 290.21; or a Kentucky highway motor fuel use license number (KYU) as required by KRS 138.665. All ICC MC or DOT numbers shall be validated with the Department of Vehicle Regulation prior to their being accepted as a control number. This number shall be placed on both sides of the main body of the cab directly under the name or name and address, of the motor carrier. The numbers shall be immediately preceded by an alpha prefix indicating that the number is an ICC, MC, DOT, or KYU number. The figures shall be in sharp color contrast to the background of the vehicle and of such size, shape and color as to be readily legible during daylight hours from a distance of fifty (50) feet when the vehicle is not in motion. These numbers shall be placed on the vehicle no higher than the top of the side window, and no lower than the bottom of the cab door.

(3) The unique vehicle identification number, for the purpose of this regulation, shall mean a company unit number assigned to the vehicle. This number shall be displayed on the front of the vehicle readily visible in daylight hours from a distance of 100 feet when the vehicle is not in motion. The number shall be in sharp color contrast to the background of the vehicle, and be placed no higher than the windshield and no lower than the front bumper.

(4) If a KYU number and the unique vehicle identification number was permanently affixed on the exterior of both cab doors or affixed to a panel directly adjacent to the cab doors of the vehicle prior to August 1, 1988, it shall be considered in compliance with this section of the administrative regulation provided the number complies with all visibility, height, and prefix requirements.

Section 8. [7.] Out of Service Sticker. In the

event a commercial vehicle is determined to be operating either improperly registered or without registration or in violation of any safety regulation or requirement, officers of the Division of Motor Vehicle Enforcement are authorized to affix thereto a notice indicating the nature of the violation, requiring its correction before the motor vehicle is further operated. Refusal of the vehicle operator to grant permission for an officer of the Division of Motor Vehicle Enforcement to conduct a safety inspection of either the vehicle or its operator shall be cause for the officer to place the vehicle out of service until such permission is granted. Operation of such a vehicle in violation of the notice affixed thereto shall constitute a separate violation of these regulations.

Section 9. [8.] Copies of all incorporated material may be viewed in the Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Vehicle Enforcement, State Office Building, Frankfort, Kentucky 40601, or obtained by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

MILO D. BRYANT, Secretary
JEROME L. LENTZ, Acting Commissioner
APPROVED BY AGENCY: August 11, 1988
FILED WITH LRC: August 15, 1988 at 11 a.m.

STATEMENT OF EMERGENCY 707 KAR 1:110E

KRS 167.150 requires the State Board of Education to adopt admission policies for the Kentucky School for the Blind (KSB), and 20 U.S.C. §1415 mandates administrative procedural safeguards with respect to complaints in regard to the provision of a free appropriate public education. Recent litigation has challenged at least one admission decision by KSB and the lack of any formal administrative review process. This emergency administrative regulation is necessary in order to put in place an appropriate administrative review mechanism to fulfill any legal requirement which may exist for such, with respect to previous denials of admission requests for the upcoming 1988-89 school year.

The purportedly adopted version of this emergency regulation, filed on July 15, 1988, was legally void and has been withdrawn, since this is the version which was actually adopted by the State Board of Education on July 13, 1988. The now correct version being filed herewith contains an additional Section 9, which relates to the emergency need to render expedited access to a new administrative appeal process to a limited number of students who have already been turned down for admission to the Kentucky School for the Blind for the 1988-89 school year. Without the shortened emergency timelines, a decision could not be made on such children by the State Board at its September meeting.

This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 14, 1988.

WALLACE G. WILKINSON, Governor
CLAY C. PARKS, Chairman, State Board of Education

EDUCATION AND HUMANITIES CABINET

Department of Education

Office of Education for Exceptional Children

707 KAR 1:110E. Kentucky School for the Blind; admission policies.

RELATES TO: KRS 167.150, 20 U.S.C. §1415
STATUTORY AUTHORITY: KRS 156.070, 167.150
EFFECTIVE: July 25, 1988

NECESSITY AND FUNCTION: KRS 167.150 authorizes the State Board of Education, upon recommendation of the Superintendent of Public Instruction, to prescribe admission policies for pupils to attend the Kentucky School for the Blind; and 20 U.S.C. §1415 mandates administrative procedural safeguards with respect to complaints in regard to the provision of a free appropriate public education. This regulation implements that function of prescribing admission criteria and providing for any legally required administrative review of admission decisions by KSB.

Section 1. Statement of Purpose. The educational programs at the Kentucky School for the Blind (KSB) are designed to meet the educational needs of blind and visually impaired [severely visually handicapped and blind] students. Special emphasis is placed on meeting the needs of students in relation to their visual impairments. Specialized materials, techniques, and aids are used to teach academic subjects, as well as courses needed for well-rounded development, including career-vocational education, music, physical education, orientation and mobility, and daily living and recreation and leisure skills. The overall program is planned to develop each child's ability [potential] for living independently. [(Counseling, off-campus programs, athletic programs, and student organizations[, etc.,] give experiences which help develop the confidence and skills needed to deal with a variety of social situations.[]]

Section 2. Referral Procedures. Inquiries concerning services of KSB for prospective students may come to the school from parents, legal guardians, agency personnel and other interested people; referrals are made through local school districts. Subsequent to the initial referral, determinations regarding placement of the child shall be made in accordance with procedures outlined in 707 KAR 1:003 and 707 KAR 1:051. Available written reports on prospective students are requested for review by KSB's multidisciplinary [Educational] evaluation team prior to scheduling of the initial evaluation of the child. These reports are a part of the intake procedure and may include but are not limited to the following areas:

- (1) Educational history to include reports from programs attended previously.
- (2) Family history to include medical, developmental, social and behavioral history of the child.
- (3) Ophthalmological or optometric evaluation.
- (4) Psychological evaluation.
- (5) Audiological, speech, language evaluation.
- (6) Complete physical examination to include:

- (a) Physical development;
- (b) Digestive and/or intestinal difficulties, as indicated;
- (c) Neurological information;
- (d) Seizure history and prognosis;
- (e) Medications;
- (f) Bowel and bladder difficulties;
- (g) Cardiac history and prognosis;
- (h) Hereditary problems; and
- (i) Orthopedic evaluation as indicated.

Section 3. Eligibility and Criteria for Admission. Admission is determined by the following eligibility criteria:

(1) The primary sensory handicap of the student shall be visual impairment. Attendance at KSB is provided tuition-free to Kentucky residents, and Kentucky residents will be given first consideration for any available openings at the school. Out-of-state students shall be eligible for admission, and tuition fees for those students shall be determined by the State Board of Education, pursuant to KRS 167.150.

(2) The student shall be between five (5) and twenty (20) years of age inclusive.

(3) The prospective student shall possess a visual impairment, after correction, which is so severe that the child's educational performance is adversely affected, resulting in the need for the specialized instructional materials, aids, and techniques which are offered by KSB in order to succeed in an educational program. A concomitant handicapping condition shall not exclude the individual, however, visual impairment must be the primary handicapping condition.

(4) The prospective student shall meet the following criteria as related to intellectual functioning and adaptive behavior:

(a) Be able to adjust socially and psychologically to the school environment, presenting no deficits in social competence which, even with modifications and adaptations, would continue to significantly interfere with either the student's or other students' educational endeavors.

(b) Demonstrate ability for academic and vocational learning from programs available at KSB, as ascertained from a variety of sources, including but not limited to individual intellectual assessment, individual educational assessment of basic skills, behavior observations, assessment of adaptive behaviors, developmental and social history, vocational and prevocational assessments, and medical information. If a prospective student does not demonstrate ability for academic and vocational learning, self-care, and independent functioning as an adult, or if extensive medical care will be required into adulthood, the student will not be deemed eligible for acceptance into KSB.

(c) Exhibit the following basic prerequisite skills: schedule trained in toileting; acceptance of solid foods; ability to spoon feed and drink from a cup; need for minimal assistance in bathing, dressing, and grooming; and expression of his or her needs through speech or other vocalizations or acceptable modes of communication.

(5) Children with significant medical problems which are beyond the capability of the school's health center cannot be considered for admission to KSB.

(6) Children with orthopedic involvement must require no more than minimum assistance in

moving about using orthopedic aids, including wheelchairs, braces, and walkers. These children will be evaluated individually to determine their ability to function adequately within KSB. [Initial Evaluation Procedures. The procedures are as follows:]

[(1) Upon receipt of the completed intake information which includes signed parental permission to evaluate the child and to release information to KSB, KSB personnel will review the existing information and begin scheduling for the necessary assessments. Each child who comes to KSB for evaluation must be accompanied by a parent or guardian or by a social worker or local school district representative. Depending upon the extent of the available assessment information, the initial assessment period at the school may range from one (1) to three (3) days.]

[(2) The initial evaluation may include but not be limited to the following assessments, all to be administered in the child's native language or other nondiscriminatory mode:]

[(a) Educational assessments which may include achievement tests, diagnostic tests, and developmental scales;]

[(b) Orientation and mobility skills;]

[(c) Speech, hearing and language development;]

[(d) Daily living skills;]

[(e) Visual functioning;]

[(f) Gross and fine motor skills;]

[(g) Psychological assessment; and]

[(h) Informal and formal observations in various areas, such as leisure time activities, meals, classroom activities, and dormitory activities.]

[(3) A summary conference will be held at the conclusion of the evaluation at which time the preliminary results will be explained to the appropriate individual who accompanies the child for evaluation. A written report will follow within fifteen (15) working days of the evaluation.]

[(4) Following the completion of a written report, a meeting of KSB's Evaluation Team will be held to review the assessment information.]

[(5) The findings of the Evaluation Team will be sent to the parent(s) and local school district for use in the admissions and release committee process.]

Section 4. Initial Evaluation Procedures. The procedures are as follows:

(1) Upon receipt of the completed intake information which includes signed parental permission to evaluate the child and to release information to KSB, KSB personnel will review the existing information and begin scheduling for the necessary assessments. Each child who comes to KSB for evaluation must be accompanied by a parent or guardian or by a social worker or local school district representative. Depending upon the extent of the available assessment information, the initial assessment period at the school may range from one (1) to three (3) days.

(2) The individual assessment shall be conducted by a multidisciplinary evaluation team; shall be administered in the child's native language or other nondiscriminatory mode; and shall include, but not necessarily be limited to the following, which may include evaluations provided to KSB by the parents, local school district, or other agency which were conducted within one (1) year prior to the

current assessment:

(a) Individual standardized norm-referenced or informal criterion-referenced educational assessment of basic skills:

(b) Orientation and mobility skills assessment:

(c) Speech, hearing and language development assessment:

(d) Daily living skills assessment;

(e) Visual functioning assessment;

(f) Gross and fine motor skills assessment;

(g) Informal and formal observations in various areas, such as leisure time activities, meals, classroom activities, and dormitory activities; and

(3) At the conclusion of the evaluation period, the KSB multidisciplinary evaluation team shall review all assessment information to determine eligibility for placement at KSB according to Section 3 of this regulation.

(4) Once a determination of eligibility has been made by KSB's multidisciplinary evaluation team, written notification of eligibility status shall be sent to the parents, local education agency and referral source within fifteen (15) days. The notification shall include a description of the eligibility criteria, an item by item determination of whether or not the child has met each of the criteria, a description of the basis in the evaluation information for making the determination, and a description of other factors involved in the eligibility determination. If the child is found to be ineligible for services, the notification shall contain:

(a) A statement of the skills needed by the child in order to be considered for eligibility in the future.

(b) A description of the outreach services that will be recommended for the child while being maintained in a local school district program; and

(c) Notice of the parent's right to request a review of the eligibility determination. [Eligibility and Criteria for Admissions. Admission is determined by the following eligibility criteria:]

[(1) The primary handicap of the student will be visual impairment. Attendance at KSB is provided tuition-free to Kentucky residents, and Kentucky residents will be given first consideration for any available openings at the school. Out-of-state students shall be eligible for admission, and tuition fees for those students shall be determined by the State Board of Education, pursuant to KRS 167.150.]

[(2) The student must be between five (5) and twenty (20) years of age inclusive.]

[(3) A child's visual impairment after correction must be such that he or she needs specialized instructional materials, aids, and techniques which are offered by KSB in order to succeed in an educational program.]

[(4) The prospective student must meet the following criteria as related to intellectual functioning and adaptive behavior:]

[(a) Be able to adjust socially and psychologically to the school environment, presenting no deficits in adaptive behavior which would interfere with either the student's or other students' educational endeavors.]

[(b) On a standardized instrument for the evaluation of intellectual functioning, achieve at least at the trainable mentally handicapped level as defined in 707 KAR 1:057, and benefit from the educational offerings of this school.

When it is not possible to determine a child's level of intellectual functioning and level of adaptive behavior during the initial evaluation, the student may be accepted for an extended evaluation time upon the recommendation of KSB Evaluation Team if he or she appears to have the potential to function at an acceptable level or demonstrates the ability to develop basic skills.]

[(c) Exhibit the following basic prerequisite skills or demonstrate the ability to develop these skills: Be schedule trained in toileting, accept solid foods, be able to spoon feed and drink from a cup, need minimal assistance in bathing, dressing, and grooming, express his or her needs through speech or other vocalizations, natural gestures or signs.]

[(5) Children with significant medical problems which are beyond the capability of the school's health center cannot be considered for admission to the residential program. Prospective students also must not require skilled nursing care.]

[(6) Children with orthopedic involvement must require no more than minimum assistance in moving about using orthopedic aids, including wheelchairs and walkers. These children will be evaluated individually to determine their ability to function adequately within the residential program. A request for extended trial placement may be made if it is not possible to determine a child's ability to function based on existing information.]

Section 5. Placement. If a student is determined to be eligible for placement at [admission to] KSB, and Administrative Admissions and Release Committee (AARC), consisting of parents and representatives of the local school district and KSB, shall convene. Pursuant to 707 KAR 1:051, the AARC shall be responsible for the development, implementation and monitoring and evaluation of the student's individual education program (IEP). [educational placement within the school will be determined by each child's Individualized Education Program as developed by KSB, local school districts, and parents or guardians pursuant to 707 KAR 1:051.]

Section 6. Early Termination. (1) A review for early termination may be initiated by the parents, local school district or the KSB multidisciplinary evaluation team to determine a student's eligibility for continued placement at KSB. Situations which may lead to review of initial eligibility determination may include, but not limited to the following: [Change of Placement. A placement review may be initiated at any time by KSB, local school districts, and parents or guardians to determine if continued placement at KSB is appropriate. Review procedures shall be in accordance with the admission and release committee process as set forth in 707 KAR 1:051. Situations which lead to a review of placement may include but are not limited to the following:]

(a) [(1)] A change of circumstances, e.g., student progress, which makes local school district placement appropriate.

(b) The student fails to meet criteria related to intellectual functioning an adaptive behavior; such as, any of the following:

1. The student's behavior pattern is dangerous to self or others, e.g., continuing destructive, physically or sexually aggressive behavior, and

documented evidence indicates efforts to control the behavior through specific behavioral programming or medication have failed.

2. Inability, after systematic implementation and evaluation of the prescribed IEP, to make minimum progress toward behavioral or educational objectives.

[(2) Destructive, physically aggressive, sexually aggressive, or other unacceptable behavior that threatens the safety or well being of the child or others and that cannot be brought under control through the use of behavior modification, personal counseling, or medication.]

[(3) Failure after a reasonable period to make minimum progress towards behavioral or educational objectives (i.e., self-help, language, gross and fine motor, cognitive, social/emotional) that have been established for the child in his or her Individualized Education Program.]

(c) [(4)] Development of significant medical problems as described in Section 3(5) [4] of this regulation.

(2) Once a review for early termination has been completed by the KSB multidisciplinary evaluation team, written notification of eligibility status will be sent to the parents and local school districts according to procedures outlined in Section 4(4) of this regulation.

Section 7. Change of Placement Within the Agency. (1) All changes of placement within the agency's programs shall meet criteria set forth in 707 KAR 1:051, Section 6.

(2) Any changes in placement within the agency's programs shall follow due process procedures to insure that exceptional children and youth and their parents are guaranteed procedural safeguards in decisions regarding identification, evaluation, and placement including written prior notice requirements as specified in 707 KAR 1:060.

(3) Any change in placement within the agency's programs shall be subject to established admissions and release committee procedures in 707 KAR 1:051, Section 3 and consideration of the least restrictive environment concept.

Section 8. Review of Eligibility Determinations. (1) If a parent of a current or prospective student or a student over the age of eighteen (18) disagrees with the decision of the KSB multidisciplinary evaluation team regarding initial eligibility or early termination, the parent or student may request a review of the eligibility determination.

(2) During the pendency of a review, the student must remain in his or her present educational placement, unless all parties agree otherwise. If the review involves a student seeking initial admission to KSB, the student, with the consent of the parents, shall be provided a program by the LEA until the completion of all the proceedings.

(3) A written request shall be submitted to the Superintendent of Public Instruction within thirty (30) days of receipt of the notification of eligibility status. The request shall include:

(a) The notice of eligibility status;

(b) A letter specifying the areas of disagreement;

(c) The rationale for such; and

(d) Any documentation which the parent or student wishes to be considered.

(4) Upon receipt of the request, the Superintendent of Public Instruction shall:

(a) Notify the superintendent of KSB of the request and direct the superintendent of KSB to submit the following:

1. All evaluation information;

2. All documentation utilized in the eligibility determination;

3. Any pertinent explanation of or justification for the eligibility determination; and

4. Any document or other information which the school wishes to have considered.

(b) Appoint an impartial eligibility review panel. The panel shall consist of a due process hearing officer normally assigned by the Department of Education to hearings under 707 KAR 1:060, a parent of a visually impaired child, and a professional educator with expertise in the category of blind or visually impaired. The panel members shall not be employees of the Department of Education or the involved local school district and shall have no vested interests that conflict with the student's educational interests. It is the responsibility of the Department of Education to select, train and maintain a registry of panel members to serve on the eligibility review panel. The Department of Education shall be responsible for the provision of appropriate training to those persons to be selected as panel members.

(5) The eligibility review panel shall have the responsibility of conducting a hearing and recommending in writing to the State Board of Education within sixty (60) days of receipt of the initial request for review, one of the following:

(a) Upholding the decision of KSB's multidisciplinary evaluation team;

(b) Reversing the decision; or

(c) Finding that insufficient evidence was presented upon which to base a determination of eligibility. If the panel finds that insufficient evaluative evidence was presented upon which to base a determination of eligibility, the panel may recommend that the State Board of Education order completed evaluation information to be submitted to it.

(6) Any party to the hearing shall be accorded the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children; the right to present evidence and confront, cross-examine, and compel the attendance of witnesses; the right to a written or electronic verbatim record of such hearing; and the right to written recommended findings of fact and decisions.

(7) The panel shall render a written decision, based solely on the evidence presented to it, with recommended findings of fact and conclusions regarding the eligibility of the involved student, such to be submitted to the State Board of Education for consideration at its next regular meeting or at a special meeting for such purpose.

(8) The State Board of Education shall consider and render a final written decision on the matter, with said decision to include written findings of fact if the recommendation of the eligibility review panel is not adopted.

(9) The decision of the state board is binding

on the parties involved for one (1) calendar year.

Section 9. Any student who, prior to the effective date of this regulation, has already been denied admission by KSB for the 1988-89 school year may, himself or through an appropriate representative, submit to the superintendent of KSB a request for a new determination of eligibility under the eligibility criteria of this regulation, such determination to be issued by KSB within seven (7) days of receipt of request for such and to be otherwise in compliance with Section 4(4) of this regulation. Any review of any new eligibility determination made pursuant to this section, said review to be conducted otherwise pursuant to Section 8 of this regulation, shall be completed by the eligibility review panel within thirty (30) days of receipt of the initial request for review.

DR. JOHN BROCK, Superintendent
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 25, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
803 KAR 25:025E

KRS 342.350(4) provides that the Workers' Compensation Board, under rules and regulations as it shall prescribe, may permit two or more employers to enter into agreements to pool their liabilities under KRS Chapter 342 for the purpose of qualifying as self-insurers. Previous regulation, 803 KAR 25:025, defines group members of such self-insured groups but does not define the self-insured group. It further appears that the legislature, in fixing method of calculation of assessments due the funding commission, have adopted different methods with respect to an individual self-insurer and group self-insurers. It further appears that self-insurers under the present regulations claim the right to become self-insured groups by dividing their operations into separate entities having more than fifty (50) percent common ownership. As a result thereof, assessments due to the funding commission potentially will be greatly impaired and reduced. The proposed amendment to 803 KAR 25:025 is for the purpose of providing that all group member employers having more than fifty (50) percent common ownership shall constitute one group member employer. The proposed amendment also requires more security for potential claims against group self-insured employers by enlarging requirements for aggregate excess insurance and by requiring each trustee of a group to have a fidelity bond in the amount of \$100,000. The amendment also increases surety bond requirements to conform to the aggregate reinsurance retention level. For these reasons, it is necessary that 803 KAR 25:025, Section 1, be amended and said amendment be in force as an emergency regulation. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

WALLACE G. WILKINSON, Governor
JUDGE ARMAND ANGELUCCI, Chairman

WORKERS' COMPENSATION BOARD
Department of Workers' Claims

803 KAR 25:025E. Joint self-insurers.

RELATES TO: KRS 342.350
STATUTORY AUTHORITY: KRS 342.350
EFFECTIVE: July 25, 1988

NECESSITY AND FUNCTION: This regulation establishes the procedure and minimum requirements through which groups of employers may join together to self-insure their workers' compensation liability.

Section 1. Definitions. (1) "Group members" means employers who form a self-insurance group and who have common ownership, common interests or both.

(2) "Common ownership" means two (2) or more entities with more than fifty (50) percent common ownership. For the purpose of creating a group of self-insured employers and certification thereof as such under this regulation, all group member employers having more than fifty (50) percent common ownership shall constitute one (1) group member employer.

(3) "Common interests" means two (2) or more entities that are members of a bona fide trade association or are engaging in similar activities and with similar worker's compensation risks.

(4) "Manual premium" means the premium produced by using applicable manual rates, manual classifications and payrolls without regard to premium discounts and experience modifications.

(5) "Normal premium" means the premium produced by the application of a percentage to the manual premium. This percentage shall be agreed upon by the trustees and the excess insurers, and shall be based upon the actual past and anticipated future premiums and losses of the group members.

(6) "Aggregate excess insurance" means an insurance policy which covers statutory claims in excess of a certain percentage of the normal premium subject to a maximum dollar amount. "Statutory claims" means all occurrences taking place within the liability period of the aggregate excess insurance policy for which liability is or may be imposed on an employer under KRS Chapter 342.

(7) "Specific excess insurance" means an insurance policy which covers the amount of any claim from any one (1) occurrence involving one (1) or more employees in the same accident or occurrence in excess of a specified dollar amount subject to a maximum dollar amount.

(8) "Loss fund" means the amount of the total retained liability for claims by the group members as set forth in the aggregate excess insurance policy.

(9) "Self-insurance fund" means the loss fund together with all other expenses of the group related to the self-insurance program, including aggregate and specific excess insurance, servicing organization fees, bonds, related taxes and other reasonable and necessary expenses.

(10) "Assessments" means charges to group members to sustain the self-insurance fund.

(11) "Surplus funds" means monies in the self-insurance fund resulting from investment income and resulting from earned premiums in excess of all losses and other costs for the

period in which premiums were earned, including all reserves for outstanding liabilities.

(12) "Dividends" means periodic payments to group members from surplus funds.

(13) "Trustees" means persons to be elected by the group members and/or selected by the board of directors of the association for stated terms to direct the administration of the self-insurance fund.

(14) "Fiscal agent" means a person, partnership or corporation, other than a servicing organization or employees or agents of a servicing organization, with whom the trustees enter into a contract for the receipt, investment and disbursement of the self-insurance fund.

(15) "Servicing organization" means a person, partnership or corporation with whom the trustees enter into a contract to perform one (1) or more of the following services:

- (a) Adjustment of claims;
- (b) Safety engineering;
- (c) Purchase of excess insurance;
- (d) Accumulation of statistics and the preparation of needed premium and loss reports and tax reports;
- (e) Development of members, assessments and dividends;
- (f) Administration of a revolving fund; and
- (g) Preparation of self-insurance reports as may be required by the trustees or law.

(16) "Manual" means the manual on worker's compensation insurance as filed by the National Council on Worker's Compensation and approved by the Kentucky Department of Insurance.

(17) "Board" means the Workers' Compensation Board, Department of Workers' Claims [Labor], Commonwealth of Kentucky.

Section 2. Requirements for Group Self-insurance. (1) A group of employers must file an application and an indemnity agreement in the form prescribed by the board to become group self-insurers. Such application must be filed not later than thirty (30) days prior to the proposed inception date of the self-insurance program. The indemnity agreement shall jointly and severally bind the group and each member thereof to comply with the provisions of the Kentucky Workers' Compensation Act, the rules and regulations of the board, and the decision of the trustees for operation of the group fund.

(2) Applicants must either meet the requirements of common ownership or common interests, or both.

(3) Group members must have a total estimated annual normal premium of not less than \$100,000. The total group must have a combined net worth of not less than \$500,000 as shown by sworn statements by the owners or officers of each group member. Statements need not be certified, but must have been prepared by a certified public accountant.

Section 3. New Members. New members of a group must meet all the requirements of an original member.

Section 4. Withdrawals. (1) Members of a group. In order to withdraw from a self-insurance group a member must give sixty (60) days notice to the trustees and the board, must receive written acknowledgment from the trustees, and is not entitled to receive any

dividends for at least two (2) years after the effective date of its withdrawal.

(2) Entire group. Should a group determine to withdraw from its self-insurance program, the trustees must give thirty (30) days notice to the board and to each of the group members by certified mail and may pay no dividends without the specific written approval of the board for at least three (3) years following the close of each self-insurance year during which it operated. It must also show the board that it has made satisfactory arrangements for the continued payment and servicing of all outstanding claims.

Section 5. Trustees; Duties. (1) Trustees shall consist of not less than three (3) nor more than seven (7) persons, none of whom are to be officers, employees or agents of a servicing organization. The trustees shall have the authority to administer the operations of the self-insurance fund.

(2) The trustees on behalf of the group members shall be responsible for the assessment and collection of all funds from the group members for the self-insurance fund, and for the disbursements of all funds in accordance with written agreements between the trustees and all group members. Such disbursements shall include the payment of claims, or payments into a revolving fund from which such claim payments shall be made, payments of insurance and bond premiums, payment of fees under agreements with servicing organizations and fiscal agents, payment of dividends to members, payment of self-insurance taxes and payment of all other expenses which may be reasonable and necessary.

(a) The trustees may contract with a fiscal agent and/or servicing organization to perform these functions.

(b) A revolving fund of not more than twenty (20) percent of estimated annual normal premiums may be established for the use by a servicing organization for the payment of claims.

(3) The trustees may perform, if qualified, any or all of the functions of a servicing organization or may contract with a servicing organization to perform these functions.

(a) A servicing organization must be qualified to perform the functions that it contracts to perform. Its employees and/or agents must be duly licensed to perform those functions for which a license is required under Kentucky law.

(b) Any contract with a servicing organization that includes the adjustment and settlement of claims must include a requirement that the servicing organization will adjust to final conclusion any and all claims that result from an occurrence during the period for which the contract is effective.

(c) If there is to be a revolving fund, the servicing organization must maintain a fidelity bond as required herein.

(4) Excess insurance.

(a) The trustees must purchase aggregate excess insurance for losses in excess of a percentage of the normal premium which shall be the retained liability of the group members. That retained liability and other fixed costs of the fund must not exceed 100 percent of the assessment of the group members, unless such amount over 100 percent is secured by unencumbered surplus monies of the group fund. The limit of liability of the aggregate excess insurance shall not be less than \$1,000,000 or

fifty (50) percent of the normal premium, whichever is higher.

(b) The trustees shall purchase specific excess insurance with a limit of at least \$1,000,000 per occurrence.

(c) Contracts for excess insurance. Any casualty insurance company, to be eligible to write excess liability coverage for self-insurers in the State of Kentucky, shall at all times, in its financial statement on file with the Insurance Commissioner, show assets, including surplus to policy holders, at least equal to the latest Insurance Department requirements for admission of a new company to do business in the state. The financial and policyholder's ratings, as shown in the most current issue of "Best's Insurance Reports, Property-Liability," shall not be less than "IX" and "A," or "XII" and "B+" respectively. (The ratings are to be read separately, i.e., a rating of "X" and "B+" is not acceptable.) If, upon the publishing of "Best's" the company does not have a minimum rating of "A" policyholder's and "IX" financial or "B+" policyholders and "XII" financial, then the authorization for the company to write excess coverages shall be withdrawn immediately. In the event a company is not rated by "Best's", that company may be approved at the discretion of the board.

(5) Fund balances.

(a) Not less than thirty (30) days prior to inception of each self-insurance year, the trustees must collect from its group members an amount equal to not less than twenty-five percent of the anticipated self-insurance fund for the ensuing year and must collect not less than one-third (1/3) of the remaining balance each thirty (30) days thereafter. The amount to be collected shall be based upon estimated annual assessments and shall be adjusted each year accordingly. The assessment to each member shall bear a relationship to the normal premium chargeable to that member.

(b) Disbursements from the fund shall be only for those purposes related to the self-insurance program. Dividends may not be paid for at least twenty-four (24) months after the expiration of the self-insurance term and may be paid only from surplus funds. The distribution of dividends between members shall be based upon a formula which may or may not reflect any individual member's claim experience. Additional dividends may be paid periodically thereafter from surplus funds.

(c) The formula to be used for assessments and for the distribution of dividends shall be in accordance with a written agreement between all members of the group.

(d) The trustees or its fiscal agent shall not utilize any of the monies collected as premiums for any purpose unrelated to worker's compensation. Further, it shall be prohibited from borrowing any monies from the fund. The trustees may, at their discretion, invest any surplus monies not needed for current obligations, but such investments shall be limited to U.S. Government bonds, U.S. Treasury notes, investment share accounts in any savings and loan association whose deposits are insured by a federal agency, and certificates of deposit if issued by a duly chartered commercial bank. Such deposits in savings and loan associations and commercial banks shall be limited to institutions in the state of Kentucky and the safety of any investments which exceed the

federally insured amounts shall be the responsibility of the trustees.

(e) Any variation from the requirements set forth in this subsection must be specifically authorized by a written order of the board.

(6) Group members.

(a) The trustees shall not accept as a member of the group, any employer that does not have a net worth of at least two (2) times its estimated annual assessment, unless such employer pays its full annual assessment in advance. The trustees shall not accept as a member of the group any employer that does not meet all other qualifications for being a member of the group as set forth in the bylaws of the group.

(b) At the discretion of the trustees, the self-insurance program may include the Kentucky employees of foreign (out-of-state) employers.

(c) The trustees may suspend or expel any member from the group due to adverse claims experience and/or lack of cooperation with safety and loss prevention policies by giving the member and the board thirty (30) days notice.

(d) The trustees shall secure from each member of the group within forty-five (45) days of the close of the self-insurance year a report of actual payrolls for the year and shall produce from such report a premium adjustment. The trustees shall secure from each member an agreement to report such payrolls in accordance with the rules and classifications of the manual. Willful failure to properly report in accordance with such rules may result in immediate expulsion from the group. Such expulsion shall be reported to the board.

(e) At least thirty (30) days prior to due date, the trustees shall notify each group member of all assessments due, including annual adjustments, and failure by any member to pay such assessments within thirty (30) days if such notice may, at the discretion of the trustees, result in immediate suspension or expulsion from the group.

(7) Reports.

(a) The trustees shall utilize the services of a certified public accountant and shall file a certified audit each year with the board within 180 days of the end of the self-insured term.

(b) Within 120 days of the end of each self-insurance term, the trustees shall furnish group members a statement setting forth all premiums, losses and expenses and the allocation of assessments and the distribution of dividends among its members.

(c) The trustees shall file such additional reports as may be required by appropriate agencies of the Commonwealth.

(8) Bonds.

(a) The trustees shall provide a fidelity bond to the board in the amount of not less than \$100,000 for each trustee.

(b) The fiscal agent shall provide a fidelity bond to the trustees for not less than fifty (50) percent or \$1,000,000, whichever is the lower, of the funds to be handled by the fiscal agent. This requirement shall be waived if the fiscal agent is a national bank.

(c) The servicing organization shall provide a fidelity bond to the trustees of not less than two (2) times the amount of the revolving fund.

(d) In lieu of the bonds required under paragraphs (a), (b) and (c) of this subsection, the trustees may secure a fidelity blanket bond in an amount not less than fifty (50) percent of

the self-insurance fund or \$1,000,000, whichever is the lower; said bonds to include the trustees, personnel of the servicing organization and the fiscal agent, unless the fiscal agent is a national bank.

(e) The fund must provide a self-insurance surety bond to the board on a form prescribed by the board in an amount not less than seventy-five (75) percent of the aggregate reinsurance retention level [annual normal premium, but not exceeding \$250,000].

(f) Any corporate surety, to be eligible for writing self-insurers' bonds in the state of Kentucky, shall be authorized by the insurance commissioner of the state of Kentucky to transact such a business in the state, and its latest financial statement on file with the insurance commissioner shall at all times show assets, including surplus to policyholders, at least equal to the latest Insurance Department requirements for admission of a new company to do business in the state. The policyholders' and financial ratings, as shown in the most current issue of "Best's Insurance Reports, Property-Liability," shall not be less than "B+" and "XII," or "A" and "IX," respectively. (The ratings are to be read separately, i.e., a rating of "X" and "B+" is not acceptable.) In the event a company is not rated by "Best's," a corporate surety may be approved at the discretion of the board. No surety shall expose itself to any loss on any one (1) risk in an amount exceeding its current U.S. Treasury limit.

(9) The group shall be considered as an individual employer for all purposes of taxation and the individual members of said groups shall not be exposed to tax liability other than liability existing as a result of the interindemnity agreement with the other group members and the self-insurance fund.

ARMAND ANGELUCCI, Chairman

APPROVED BY AGENCY: July 21, 1988

FILED WITH LRC: July 25, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
902 KAR 2:110E

This emergency regulation is promulgated to comply with the provisions of House Bill 50 of the 1988 General Assembly codified as KRS 214.450-214.466. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 15, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 2:110E. Reportable communicable diseases and sexually transmitted diseases which are transmissible through blood.

RELATES TO: KRS 211.180, 214.010, 214.020, 333.130

STATUTORY AUTHORITY: KRS 214.460

EFFECTIVE: July 15, 1988

NECESSITY AND FUNCTION: KRS 214.460 mandates the Cabinet for Human Resources to set forth in administrative regulation those reportable

communicable diseases or sexually transmitted diseases which may be transmitted through blood.

Section 1. Definitions. Terms that are used in this regulation are as defined in KRS 214.450.

Section 2. The following reportable communicable diseases or sexually transmitted diseases are transmissible through blood and therefore subject to the provisions of KRS 214.452 concerning testing of donated blood by blood establishments as defined in KRS 214.450(2).

- (1) Acquired immunodeficiency syndrome (AIDS);
- (2) Acute viral hepatitis A;
- (3) Acute or chronic viral hepatitis B, delta hepatitis, non-A non-B hepatitis;
- (4) Leptospirosis;
- (5) Malaria;
- (6) Syphilis;
- (7) Yellow fever.

C. HERNANDEZ, MD, MPH, Commissioner

HARRY J. COWHERD, MD, Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 15, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
902 KAR 2:120E

This emergency regulation is promulgated to comply with the provisions of House Bill 50 of the 1988 General Assembly codified as KRS 214.450-214.466. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 15, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 2:120E. Standardized risk factor history form and blood donor consent form.

RELATES TO: KRS 211.180, 214.010, 214.020, 333.130, 21 CFR Ch. 1 Part 640

STATUTORY AUTHORITY: KRS 13A.110, 214.462

EFFECTIVE: July 15, 1988

NECESSITY AND FUNCTION: KRS 214.462 mandates the Cabinet for Human Resources to issue a standardized risk factor history form and blood donor consent form that meets the standards for suitability of donors as set forth in this provision and by the United States Food and Drug Administration. This regulation is being promulgated to establish the minimum content of these forms.

Section 1. Definitions. Terms that are used in this regulation are as defined in KRS 214.450.

Section 2. Kentucky Standardized Risk Factor History Form and Kentucky Standardized Blood Donor Consent Form. (1) The Kentucky standardized risk factor history form and Kentucky standardized blood donor consent form, as set out in this regulation, contain information and questions to be used by all blood establishments in the state to determine if donors of blood are at high risk for

infection with the human immunodeficiency virus, or have tested confirmatory positive for infection with the human immunodeficiency virus; or have acquired immune deficiency syndrome; or have tested confirmatory positive for infection with any causative agent for acquired immune deficiency syndrome recognized by the United States Centers for Disease Control; or have a blood borne communicable disease; or have a blood borne sexually transmitted disease. The Kentucky standardized blood donor consent form incorporates the standards for suitability of donors as set forth in KRS 214.450 to KRS 214.466 and in 21 CFR Ch. 1 Part 460 by the United States Food and Drug Administration.

(2) These two (2) forms, as set out in this regulation, shall be used by all blood establishments in the state. All potential donors of blood or donors of blood shall answer each yes/no question and sign each of the two (2) forms.

(3) A copy of these forms can be obtained from the Office of the Commissioner of the Department for Health Services between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. This office is located at 275 East Main Street, Frankfort, Kentucky 40621.

(See Forms published with ordinary regulation on pages 761 and 762 of the August 1, 1988 Administrative Register)

C. HERNANDEZ, MD, MPH, Commissioner
HARRY J. COWHERD, MD, Secretary
APPROVED BY AGENCY: July 13, 1988
FILED WITH LRC: July 15, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
904 KAR 2:016E

This emergency administrative regulation revises the educational allowance payment standards by increasing payment amounts, and including transportation (as mandated by House Bill 381). This emergency administrative regulation differs from the emergency regulation on the same subject matter that was filed June 30, 1988 as follows: the educational allowance payments for child-care for two or more children are increasing and an amount is being added to the allowance for transportation effective August 1, 1988. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development

904 KAR 2:016E. Standards for need and amount; AFDC.

RELATES TO: KRS 205.200(2), 205.210(1), 42 CFR 435.831, 45 CFR 233

STATUTORY AUTHORITY: KRS 205.200(2)

EFFECTIVE: August 11, 1988

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance

for the Aid to Families with Dependent Children Program, [hereinafter] referred to as AFDC, in accordance with federal regulations and Title IV-A of the Social Security Act. This regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Definitions. (1) "Assistance group" is composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 3. The assistance group shall include the dependent child, child's eligible parent(s), and all eligible siblings living in the home with the needy child. Additionally, if the dependent child's parent is a minor living in the home with his[her] eligible parent(s), the minor's parent(s) shall also be included in the assistance group if the minor's parent applied for assistance. The incapacitated natural or adoptive parent of the child(ren) who is living in the home shall be included as second parent if the technical eligibility factors are met.

(2) "Minor" means any person who is under the age of eighteen (18) or under the age of nineteen (19) in accordance with 45 CFR 233.90(b)(3). EXCEPTION: For the purpose of deeming income, a minor parent/legal guardian is considered any person under the age of eighteen (18).

(3) "Sanctioned individual" means any person who is required to be included in the assistance group but who is excluded from the assistance group due to failure to fulfill an eligibility requirement.

(4) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(5) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(6) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in a General Educational Development (GED) program; or

(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or

(c) The number of hours required by the individual high school/vocational school to fulfill their definition of full time; or

(d) Eight (8) clock hours per month in a literacy program.

(7) "Part-time school attendance" means a workload of anything less than "full-time school attendance."

(8) "Gross income limitation standard" means 185 percent of the sum of the assistance standard, as set forth in Section 8 of this regulation, and any educational allowance as set forth in Section 9 of this regulation.

(9) "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(10) "Recoupment" means recovery of overpayments of assistance payments.

(11) "Retrospective budgeting" means computing amount of assistance based on actual income and circumstances which existed in the second month

prior to the payment month.

(12) "Lump sum income" means income that [is not earned,] does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum.

Section 2. Resource Limitations. Real and personal property owned in whole or in part by an applicant or recipient including sanctioned individual(s) and his/her parent(s), even if the parent(s) is not an applicant or recipient, if the applicant/recipient is a dependent child living in the home of said parent, shall be considered. The amount that can be reserved by each assistance group shall not be in excess of \$1,000 equity value excluding those items specifically listed in subsection (1) of this section as follows:

(1) Excluded resources. The following resources shall be excluded from consideration:

- (a) One (1) owner-occupied home;
- (b) Home furnishings, including all appliances;
- (c) Clothing;
- (d) One (1) motor vehicle, not to exceed \$1,500 equity value;
- (e) Farm machinery, livestock or other inventory, and tools and equipment other than farm, used in a self-employment enterprise;
- (f) Items valued at less than fifty (50) dollars each;
- (g) One (1) burial plot/space per family member;
- (h) Funeral agreements not to exceed maximum equity of \$1,500 per family member;
- (i) Real property which the assistance group is making a good faith effort to sell. This exemption shall not exceed a period of nine (9) months and is contingent upon the assistance group agreeing to repay AFDC benefits received beginning with the first month of the exemption. Any amount of AFDC paid during that period that would not have been paid if the disposal of property had occurred at the beginning of the period is considered an overpayment. The amount of the repayment shall not exceed the net proceeds of the sale. If the property has not been sold within the nine (9) months, or if eligibility stops for any other reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;
- (j) Other items/benefits mandated by federal regulations.

(2) Disposition of resources. An applicant/recipient shall [must] not have transferred or otherwise divested himself/herself of property without fair compensation in order to qualify for assistance. If the transfer was made expressly for the purpose of qualifying for assistance and if the uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limitation, the household's application shall be denied, or assistance discontinued. The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer. If the amount of excess transferred resources does not exceed \$500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every \$500 increment up to a maximum of twenty-four (24) months.

Section 3. Income Limitations. In determining

eligibility for AFDC the following will apply:

(1) Gross income test. The total gross non-AFDC income of the assistance group, as well as income of parent(s), sanctioned individuals and/or amount deemed available from the parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with such assistance group, and/or amount deemed available from a stepparent(s) living in the home, and/or amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor, shall not exceed the gross income limitation standard. Disregards specified in Section 4(1) of this regulation shall apply. If total gross income exceeds the gross income limitation standard, the assistance group is ineligible.

(2) Applicant eligibility test. If the gross income is below the gross income limitation standard and the assistance group has not received assistance during the four (4) months prior to the month of application, the applicant eligibility test shall be applied. The total gross income after application of exclusions/disregards set forth in Section 4(1) and (2) of this regulation shall be compared to the assistance standard set forth in Section 8 of this regulation. If income exceeds this standard, the assistance group is ineligible. For assistance groups who meet the gross income test but who have received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation. If the assistance group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by applying disregards in Section 4(1), (2), and (3) of this regulation. If the assistance group's income, after application of appropriate disregards, exceeds the assistance standard, the assistance group is ineligible. Amount of assistance for the initial two (2) months of eligibility shall be determined prospectively in accordance with 45 CFR 233.34 and for subsequent months retrospectively, in accordance with 45 CFR 233.35.

(4) A period of ineligibility shall be established in accordance with 45 CFR 233.20(a)(3)(ii)(F), for applicants/recipients whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsections (2) or (3) of this section due to receipt of lump sum income. The ineligibility period shall be recalculated if any of the following circumstances occur:

(a) The standard of need increases and the amount of grant the assistance group would have received also changes.

(b) The income received has become unavailable to the assistance group for reasons beyond their control.

(c) The assistance group incurs and pays medical expenses in accordance with 42 CFR 435.831(C).

Section 4. Excluded/Disregarded Income. All gross non-AFDC income received or anticipated to be received by the assistance group, natural parent(s) and/or parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with such assistance group and/or stepparent(s) living in the home, shall be

considered with the applicable exclusions/disregards as set forth below:

(l) Gross income test. All incomes listed below shall be excluded/disregarded:

(a) Disregards applicable to stepparent income and/or income of the parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with the assistance unit, as set forth in Section 5 of this regulation;

(b) Disregards applicable to alien sponsor's income, as set forth in Section 6 of this regulation;

(c) Disregards applicable to self-employment income, as set forth in 45 CFR 233.20(a)(6)(v)(B) and 45 CFR 233.20(a)(11)(i)(b)(1)(i);

(d) Work Incentive Program (WIN) incentive payments;

(e) Earnings received by a dependent child from participation in the Summer Youth Program, Work Experience Program, Limited Work Experience Program, and Tryout Employment Program under the Job Training Partnership Act (JTPA) for a period not to exceed six (6) months within a given calendar year, effective March 1, 1988;

(f) Unearned income received by a dependent child from participation in a JTPA program;

(g) Reimbursement for training-related expenses made by a manpower agency to applicants or recipients in institutional and work experience training programs under the WIN program;

(h) Value of the monthly allotment of food stamp coupons or value of United States Department of Agriculture (USDA) donated foods;

(i) Nonemergency medical transportation payments;

(j) Payments from complementary programs if no duplication exists between the other assistance and the assistance provided by the AFDC program [Principal of loans];

(k) Educational grants, loans, scholarships, including payments for actual educational costs made under the GI Bill, obtained and used under conditions that preclude their use for current living costs and all education grants and loans to any undergraduate made or insured under any program administered by the United States Commissioner of Education;

(l) Highway relocation assistance;

(m) Urban renewal assistance;

(n) Federal disaster assistance and state disaster grants;

(o) Home produce utilized for household consumption;

(p) Housing subsidies received from federal, state or local governments;

(q) Receipts distributed to members of certain Indian tribes which are referred to in Section 5 of Public Law 94-114 that became effective October 17, 1975;

(r) Funds distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254, Public Law 93-134 or Public Law 94-540;

(s) Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended;

(t) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other programs

under Titles II and III, pursuant to Section 418 of Public Law 93-113;

(u) Payments to volunteers under Title I of Public Law 93-113 pursuant to Section 404(g) of Public Law 93-113 except when the value of such payments when adjusted to reflect the number of hours volunteers are serving is the same as or greater than the minimum wage under state or federal law, whichever is greater;

(v) The value of supplemental food assistance received under the Child Nutrition Act of 1966, as amended, and the special food service program for children under the National School Lunch Act, as amended;

(w) Payments from the Cabinet for Human Resources, Department for Social Services, for child foster care, adult foster care, or subsidized adoption;

(x) Payments made under the Low Income Home Energy Assistance Act (LIHEAP) and other energy assistance payments which are permitted to be excluded pursuant to 45 CFR 233.53 (c)(5)(i);

(y) The first fifty (50) dollars of child support payments collected in a month which represents the current month's support obligation and is returned to the assistance group;

(z) For a period not to exceed six (6) months within a given year, earnings of a dependent child in full-time school attendance; and

(aa) Nonrecurring gifts of [The first] thirty (30) dollars or less [of small nonrecurring gifts] received per calendar quarter for each individual included in the assistance group.

(bb) Income from a loan if the loan is not for the purpose of meeting current living expenses.

(2) Applicant eligibility test. The exclusions/disregards set forth in subsection (1) of this section and those listed below shall be applied:

(a) Earnings received from participation in the Job Corps Program under JTPA by an AFDC child;

(b) Earnings of a dependent child in full-time school attendance for a period not to exceed six (6) months within a given year;

(c) Standard work expense deduction of seventy-five (75) dollars for full-time and part-time employment; and

(d) Child care, for a child(ren) or incapacitated adult living in the home and receiving AFDC, is allowed as a work expense is allowed not to exceed \$160 per month per individual for full-time employment or \$110 per month per individual for part-time employment.

(3) Benefit calculation. After eligibility is established, exclude/disregard all incomes listed in subsections (1) and (2) of this section as well as:

(a) Child support payments assigned and actually forwarded or paid to the department; and

(b) First thirty (30) dollars and one-third (1/3) of the remainder of each individual's earned income not already disregarded, if that individual's needs are considered in determining the benefit amount. The one-third (1/3) portion of this disregard shall not be applied to an individual after the fourth consecutive month it has been applied to his/[her] earned income. The thirty (30) dollar portion of this disregard shall be applied concurrently with the one-third (1/3) disregard, however, it shall be extended for an additional eight (8) months following the four (4) months referenced in the preceding sentence. These disregards shall be applied in

accordance with 45 CFR 233.20(a)(11)(i)(D) and 45 CFR 233.20(a)(11)(i)(B) and shall not be available to the individual until he/she has not been a recipient for twelve (12) consecutive months; and

(c) Earnings of a child in full-time school attendance or earnings of a child in part-time school attendance, if not working full-time.

(4) Exceptions. Disregards from earnings in subsections (2)(c) and (d) and (3)(b) of this section shall not apply for any month in which the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists as follows:

1. The individual is unable to engage in such employment or training for mental or physical reasons; or

2. The individual has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours per day; or

3. Working conditions at such job or training would be a risk to the individual's health or safety; or

4. A bona fide offer of employment at a minimum wage customary for such work in the community was not made; or

5. Effective February 1, 1988, the child care arrangement is terminated through no fault of the client; or

6. Effective February 1, 1988, the available child care does not meet the needs of the child(ren), e.g., handicapped or retarded children.

(b) Fails to make a timely report of earnings unless good cause exists as follows:

1. The assistance group moved and reported the move timely, however, the move resulted in a delay in receiving or failure to receive the mandatory monthly report form; or

2. An immediate family member living in the home was institutionalized or died during the filing period; or

3. The specified relative was out of town during the entire filing period; or

4. The assistance group has been directly affected by a natural disaster (i.e., fire, flood, storm, earthquake).

(c) Requests assistance be terminated for the primary purpose of evading the four (4) month limitation on the deduction in subsection (3)(b) of this section.

(5) Sanction exception. The earned income of sanctioned individuals shall be counted without providing the exclusion/disregards in either subsections (2) and (3) of this section.

Section 5. Income and Resources. Income and resources of a stepparent living in the home with a dependent child and/or parent(s)/legal guardian(s) living in the home with a minor parent/legal guardian but whose needs are not included in the grant are considered as follows:

(1) Income. The gross income is considered available to the assistance group, subject to the following exclusions/disregards:

(a) The first seventy-five (75) dollars of the gross earned income;

(b) An amount equal to the AFDC assistance standard for the appropriate family size, for the support of the stepparent or parent(s)/legal guardian(s) of a minor parent/legal guardian and any other individuals living in the home but

whose needs are not taken into consideration in the AFDC eligibility determination and are or may [could] be claimed by the stepparent or parent(s)/legal guardian(s) of a minor parent/legal guardian as dependents for purposes of determining his/her federal personal income tax liability;

(c) Any amount actually paid by the stepparent or parent(s)/legal guardian(s) of a minor parent/legal guardian to individuals not living in the home who are or may [could] be claimed by him/her as dependents for purposes of determining his/her personal income tax liability;

(d) Payments by the stepparent and/or parent(s)/legal guardian(s) of a minor parent/legal guardian for alimony or child support with respect to individuals not living in the household; and

(e) Income of a stepparent and/or parent(s)/legal guardian(s) of a minor parent/legal guardian receiving Supplemental Security Income (SSI) under Title XVI.

(2) Sanction exception. The needs of any sanctioned individual are not eligible for the exclusion(s) listed in this section.

(3) Resources. Resources which belong solely to the stepparent and/or parent(s)/legal guardian(s) of a minor parent/legal guardian are not considered in determining eligibility of the parent or the assistance group.

Section 6. Alien Income and Resources. For the purposes of this section the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor. The gross non-AFDC income and resources of an alien's sponsor [and sponsor's spouse (if living with the sponsor) hereinafter referred to as sponsor] shall be deemed available to the alien(s), subject to disregards as set forth below, for a period of three (3) years following entry into the United States. If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens. A sponsored alien is ineligible for any month in which adequate information on the sponsor/sponsor's spouse is not provided. If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization is no longer in existence or does not have the financial ability to meet the alien's needs. The provisions of this section shall not apply to those aliens identified in 45 CFR 233.51(e).

(1) Income. The gross income of the sponsor is considered available to the assistance group subject to the following disregards:

(a) Twenty (20) percent of the total monthly gross earned income, not to exceed \$175;

(b) An amount equal to the AFDC assistance standard for the appropriate family size of the sponsor and other persons living in the household who are or may [could] be claimed by the sponsor as dependents in determining his/her federal personal income tax liability, and whose needs are not considered in making a determination of eligibility for AFDC;

(c) Amounts paid by the sponsor to nonhousehold members who are or may [could] be claimed as dependents in determining his/her

federal personal tax liability;

(d) Actual payments of alimony or child support paid to nonhousehold members; and

(e) Income of a sponsor receiving SSI or AFDC.

(2) Resources. Resources deemed available to the alien(s) shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he[/she] were an AFDC applicant in this state, less \$1,500.

Section 7. Earned Income Tax Credit (EITC). In the case of an applicant or recipient of AFDC, EITC payments shall be considered as earned income when received.

Section 8. Assistance Standard. The AFDC assistance standard, including amounts for food, clothing, shelter, and utilities from which countable income is deducted in determining eligibility for and the amount of the AFDC assistance payment, is as follows:

<u>Effective July 1, 1988</u>	
Number of Eligible Persons	Monthly Standard
1 child	\$155 [147]
2 persons	\$188 [179]
3 persons	\$218 [207]
4 persons	\$272 [259]
5 persons	\$319 [303]
6 persons	\$360 [342]
7 or more persons	\$401 [381]

Section 9. Educational Allowance. An educational allowance for child care shall be included in the assistance standard each month at the request of the caretaker relative, if the criteria in subsection (1) of this section are met and verified for those [said] month(s) and funds are available. Households receiving the educational allowance shall be subject to time frames, procedures, and penalties established for households required to report monthly. In addition, effective August 1, 1988 a transportation allowance shall be included in the assistance standard if the criteria in subsection (1)(a) and (b) of this section are met.

(1) Technical requirements. The following requirements shall [must] be met during any month for which an education allowance is paid.

(a) The caretaker relative shall [must] be included in the assistance grant;

(b) The caretaker relative shall [must] be enrolled full time, as defined in Section 1 of this regulation, in a literacy program, high school (including primary and secondary), vocational school, or a General Educational Development (GED) program for which no wage or child care allowance is received. If attending college, the caretaker relative shall [must] be enrolled either full or part-time, as defined in Section 1 of this regulation;

(c) A cost shall [must] have been incurred for the care of a child(ren) who is/are under the age of thirteen (13) or a child(ren) who is/are under the age of eighteen (18), if a physician determines the [said] child is unable to attend school due to a physical or mental disability, and is/are included in the assistance grant; and

(d) The payment for child care is made to a provider who is not a household member.

(2) Educational allowance payment standards. The amount of the monthly transportation allowance shall be twenty (20) dollars. The

amount of monthly educational allowance payment shall be based on the number of eligible children for whom care is being provided and whether or not enrollment is full or part-time. Effective August 1, 1988 the payment standards are as follows:

	1 Child		2 or More Children	
	Full-Time	Part-Time	Full-Time	Part-Time
Literacy	\$ 20	-	\$ 36 [25]	-
GED	\$ 94	-	169 [117]	-
Elementary School/ Junior High	\$174	-	313 [218]	-
High School	\$174	-	313 [218]	-
Vocational School	\$174	-	313 [218]	-
College/University	\$174	\$103	313 [218]	\$185 [129]
Kenan Project	\$143	= 257	=	=

(3) Limitations. The number of months a child care [an] educational allowance payment is made shall be limited according to the type of program in which the student enrolls and shall not be provided beyond completion of one (1) program at each level.

(a) Literacy: Type of Program Maximum
Literacy 24 months

(b) High school level.

1. A student may change programs within this level, however, the cumulative number of months payment is made shall not exceed the maximum for the program in which the student last enrolls as follows:

Type of Program	Maximums
General Educational Development (GED)	16 months
High School (includes primary and secondary)	27 months

2. A student wishing to continue his[/her] education past the high school level may be eligible for additional payments not to exceed the maximums for the posthigh school level.

(c) Posthigh school level. A student may change programs within this level, however, the cumulative number of months payment is made shall not exceed the maximum for the program in which the student last enrolls as follows:

Type of Program	Maximums
Vocational School	24 months
College/University	50 months

Section 10. Recoupment. The following provisions are effective for all overpayments discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup any overpayments.

(2) Overpayments, including assistance paid pending hearing decisions, shall be recovered:

(a) The overpaid assistance unit;

(b) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or

(c) Any individual member of the overpaid assistance unit whether or not currently a recipient.

(3) Overpayments shall be recovered through:

(a) Repayment by the individual to the cabinet; [and/]or

(b) Reduction of future AFDC benefits, which shall result in the assistance group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income in accordance with Section 8; [and/]or

(c) Civil action in the court of appropriate jurisdiction.

(4) Overpayments may be waived for inactive nonfraud cases involving less than thirty-five (35) dollars in overpayment.

(5) In cases which have both an overpayment and an underpayment, the cabinet shall offset one against the other in correcting the payment to current recipients.

(6) Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing is given and the administrative and judicial remedies have been exhausted or abandoned in accordance with Title 904, Chapter 2.

Section 11. Provisions contained in this regulation shall become effective October [April] 1, 1988 unless otherwise specified.

MIKE ROBINSON, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: July 28, 1988

FILED WITH LRC: August 11, 1988 at 9 a.m.

STATEMENT OF EMERGENCY
904 KAR 2:022E

This administrative regulation implements immediate withholding of earnings at the time the support order is set unless good cause is shown. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development

904 KAR 2:022E. Kentucky administrative process for child support.

RELATES TO: KRS Chapters 205, 405, 45 CFR Parts 301-307 [405.400 to 405.530]

STATUTORY AUTHORITY: KRS 405.520

EFFECTIVE: July 25, 1988

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility for administering the child support program in accordance with Title IV-D of the Social Security Act, Title 45 CFR Sections 301, 302, 303, 304, 305, 306, and 307 and KRS 205.710 to 205.800. In addition, KRS 405.400 to 405.530, the Kentucky Administrative Process for Child Support Act, provides for the establishment and enforcement of child support obligations through administrative process when paternity is not in question. The administrative process supplements existing judicial remedies

for nonsupport. Administrative process may [can] be used to establish and enforce support obligations for children receiving Aid to Families with Dependent Children (AFDC) benefits[, hereinafter referred to as AFDC,] as well as for non-AFDC children. This regulation sets forth the procedures the cabinet shall [will] employ in administratively establishing and enforcing child support obligations.

Section 1. Definitions. In addition to the terms defined in KRS 205.710 [405.420], the following terms shall be defined as set forth below.

(1) "Administrative process" [shall] means a method for establishing and enforcing child support obligations pursuant to KRS 405.400 to 405.530 and the provisions of this regulation.

(2) "Appointment letter" [shall] means the cabinet's notification to the obligor [parent] that his [the parent's] liability for support of the child is being determined. A financial statement for the parent's completion will be included with the appointment letter.

(3) "Default" [shall] means the obligor's [parent's] failure to return the financial statement [and/]or to keep an appointment to determine a support obligation under administrative process.

(4) "Notice of minimum monthly support obligation" [shall] means an administrative order issued by the cabinet pursuant to KRS 405.440 notifying the obligor [parent] of the amount of the child support obligation and of the obligor's [parent's] rights to request a hearing.

(5) "Dispute hearing" [shall] means the process whereby the obligor's [parent's] objections to a notice of minimum monthly support obligation are heard by an impartial hearing officer upon a timely request.

(6) "Person in possession or control" [shall] means the person who has custody of the earnings or property.

(7) "Order to withhold" [shall] means an administrative order issued by the cabinet to a person in possession or control of the obligor's [parent's] earnings or property to withhold an amount equal to a stated arrearage to satisfy a delinquent child support obligation.

(8) "Order to deliver" [shall] means an administrative order issued by the cabinet to have earnings or property, belonging to the obligor [parent], forwarded by the person in possession or control of the earnings or property to the cabinet to satisfy delinquent child support.

(9) "Delinquent support" [shall] means past due and unpaid installments on an obligation determined under a court order or a Cabinet for Human Resources administrative order (KRS 405.430) for support of a dependent child, which is owed to or on behalf of the child, or for maintenance to the spouse (or former spouse) with whom the child is living, only if a maintenance obligation has been established with respect to the spouse and the support obligation established with respect to the child is being enforced under the state's IV-D plan.

(10) "Order to release withholding" [shall] means an order to the person in possession or control of an obligor's [a parent's] earnings or property notifying that person that the cabinet is releasing any claim to the designated earnings or property.

(11) "Order to withhold earnings" [shall] means an administrative order issued by the cabinet to an obligor's [a parent's] employer to withhold an amount equal to the current obligation plus an amount to be applied toward liquidation of the delinquent support.

[(12) "Secretary" shall mean Secretary of the Cabinet for Human Resources or his designee.]

Section 2. Administrative Establishment. The cabinet may administratively establish a child support obligation when paternity is not in question, there is no existing order for support of the child and the parent resides or is employed in Kentucky. The cabinet shall send an appointment letter and a financial statement to the parent to assure the parent's right to participate in the establishment of the support obligation. Additionally, the cabinet may administratively establish the debt which accumulated during the first ninety (90) days of AFDC eligibility as an arrearage due the cabinet. Pursuant to KRS 205.792, the ninety (90) days may be extended.

(1) The cabinet shall determine the minimum

monthly support obligation in accordance with KRS 405.430. In default cases, the cabinet shall set the obligation at the minimum cost basis on the scale for the number of children in the case.

(a) The following steps shall be used in applying the scale:

1. The gross income, less allowable deductions, of the noncustodial parent shall be added to the gross income, less allowable deductions, of the custodial parent to determine the "Annual Family Gross Income."

2. At the annual family gross income level in the left hand column, the lower of the "income cap" or "cost basis" shall be selected for the number of children in the case.

3. The noncustodial parent's gross income shall be divided by the annual family gross income to obtain the percentage of support to be apportioned to the noncustodial parent.

4. The figure selected in subparagraph 2 of this paragraph shall be multiplied by the percentage from subparagraph 3 of this paragraph to obtain the minimum monthly support obligation.

(b) The scale is set forth below:

Annual Family Gross Income	One (1) Child (20%)		Two (2) Children (25%)		Three (3) Children (30%)		Four (4) Children (35%)	
	Cost Basis	Income Cap	Cost Basis	Income Cap	Cost Basis	Income Cap	Cost Basis	Income Cap
\$ 0-\$ 1,000	\$207	\$ 60	\$325	\$ 60	\$ 436	\$ 60	\$ 542	\$ 60
\$ 1,000-\$ 1,250	\$207	\$ 60	\$325	\$ 60	\$ 436	\$ 60	\$ 542	\$ 60
\$ 1,251-\$ 1,500	\$207	\$ 60	\$325	\$ 60	\$ 436	\$ 60	\$ 542	\$ 60
\$ 1,501-\$ 1,750	\$207	\$ 60	\$325	\$ 60	\$ 436	\$ 60	\$ 542	\$ 60
\$ 1,751-\$ 2,000	\$207	\$ 60	\$325	\$ 60	\$ 436	\$ 60	\$ 542	\$ 60
\$ 2,001-\$ 2,250	\$207	\$ 60	\$325	\$ 60	\$ 436	\$ 60	\$ 542	\$ 62
\$ 2,251-\$ 2,500	\$207	\$ 60	\$325	\$ 60	\$ 436	\$ 60	\$ 542	\$ 69
\$ 2,501-\$ 2,750	\$207	\$ 60	\$325	\$ 60	\$ 436	\$ 66	\$ 542	\$ 77
\$ 2,751-\$ 3,000	\$207	\$ 60	\$325	\$ 60	\$ 436	\$ 72	\$ 542	\$ 84
\$ 3,001-\$ 3,250	\$207	\$ 60	\$325	\$ 65	\$ 436	\$ 78	\$ 542	\$ 91
\$ 3,251-\$ 3,500	\$207	\$ 60	\$325	\$ 70	\$ 436	\$ 84	\$ 542	\$ 98
\$ 3,501-\$ 3,750	\$207	\$ 60	\$325	\$ 76	\$ 436	\$ 91	\$ 542	\$ 106
\$ 3,751-\$ 4,000	\$207	\$ 65	\$325	\$ 81	\$ 436	\$ 97	\$ 542	\$ 113
\$ 4,001-\$ 4,250	\$207	\$ 69	\$325	\$ 86	\$ 436	\$ 103	\$ 542	\$ 120
\$ 4,251-\$ 4,500	\$207	\$ 73	\$325	\$ 91	\$ 436	\$ 109	\$ 542	\$ 128
\$ 4,501-\$ 4,750	\$207	\$ 77	\$325	\$ 96	\$ 436	\$ 116	\$ 542	\$ 135
\$ 4,751-\$ 5,000	\$207	\$ 81	\$325	\$ 102	\$ 436	\$ 122	\$ 542	\$ 142
\$ 5,001-\$ 5,250	\$207	\$ 85	\$325	\$ 107	\$ 436	\$ 128	\$ 542	\$ 149
\$ 5,251-\$ 5,500	\$207	\$ 90	\$325	\$ 112	\$ 436	\$ 134	\$ 542	\$ 157
\$ 5,501-\$ 5,750	\$209	\$ 94	\$325	\$ 117	\$ 436	\$ 141	\$ 542	\$ 164
\$ 5,751-\$ 6,000	\$211	\$ 98	\$325	\$ 122	\$ 436	\$ 147	\$ 542	\$ 171
\$ 6,001-\$ 6,250	\$213	\$102	\$325	\$ 128	\$ 436	\$ 153	\$ 542	\$ 179
\$ 6,251-\$ 6,500	\$215	\$106	\$325	\$ 133	\$ 436	\$ 159	\$ 542	\$ 186
\$ 6,501-\$ 6,750	\$217	\$110	\$325	\$ 138	\$ 436	\$ 166	\$ 542	\$ 193
\$ 6,751-\$ 7,000	\$219	\$115	\$325	\$ 143	\$ 436	\$ 172	\$ 542	\$ 201
\$ 7,001-\$ 7,250	\$221	\$119	\$325	\$ 148	\$ 436	\$ 178	\$ 542	\$ 208
\$ 7,251-\$ 7,500	\$223	\$123	\$325	\$ 154	\$ 436	\$ 184	\$ 542	\$ 215
\$ 7,501-\$ 7,750	\$225	\$127	\$325	\$ 159	\$ 436	\$ 191	\$ 542	\$ 222
\$ 7,751-\$ 8,000	\$227	\$131	\$325	\$ 164	\$ 436	\$ 197	\$ 542	\$ 230
\$ 8,001-\$ 8,250	\$229	\$135	\$325	\$ 169	\$ 436	\$ 203	\$ 542	\$ 237
\$ 8,251-\$ 8,500	\$232	\$140	\$325	\$ 174	\$ 436	\$ 209	\$ 542	\$ 244
\$ 8,501-\$ 8,750	\$234	\$144	\$325	\$ 180	\$ 436	\$ 216	\$ 542	\$ 252
\$ 8,751-\$ 9,000	\$236	\$148	\$325	\$ 185	\$ 436	\$ 222	\$ 542	\$ 259
\$ 9,001-\$ 9,250	\$238	\$152	\$325	\$ 190	\$ 436	\$ 228	\$ 542	\$ 266
\$ 9,251-\$ 9,500	\$240	\$156	\$325	\$ 195	\$ 436	\$ 234	\$ 542	\$ 273
\$ 9,501-\$ 9,750	\$242	\$160	\$325	\$ 201	\$ 436	\$ 241	\$ 542	\$ 281
\$ 9,751-\$10,000	\$244	\$165	\$325	\$ 206	\$ 436	\$ 247	\$ 542	\$ 288
\$10,001-\$10,250	\$246	\$169	\$325	\$ 211	\$ 436	\$ 253	\$ 542	\$ 295
\$10,251-\$10,500	\$248	\$173	\$325	\$ 216	\$ 436	\$ 259	\$ 542	\$ 303
\$10,501-\$10,750	\$250	\$177	\$325	\$ 221	\$ 436	\$ 266	\$ 542	\$ 310
\$10,751-\$11,000	\$252	\$181	\$325	\$ 227	\$ 436	\$ 272	\$ 542	\$ 317
\$11,001-\$11,500	\$258	\$188	\$342	\$ 234	\$ 448	\$ 281	\$ 542	\$ 328
\$11,501-\$12,000	\$263	\$196	\$360	\$ 245	\$ 459	\$ 294	\$ 542	\$ 343

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\$12,001-\$12,500	\$269	\$204	\$377	\$ 255	\$ 471	\$ 306	\$ 542	\$ 357
\$12,501-\$13,000	\$274	\$213	\$395	\$ 266	\$ 483	\$ 319	\$ 542	\$ 372
\$13,001-\$13,500	\$280	\$221	\$412	\$ 276	\$ 495	\$ 331	\$ 542	\$ 386
\$13,501-\$14,000	\$286	\$229	\$430	\$ 287	\$ 506	\$ 344	\$ 542	\$ 401
\$14,001-\$14,500	\$291	\$238	\$447	\$ 297	\$ 518	\$ 356	\$ 544	\$ 416
\$14,501-\$15,000	\$297	\$246	\$465	\$ 307	\$ 530	\$ 369	\$ 556	\$ 430
\$15,001-\$15,500	\$302	\$254	\$482	\$ 318	\$ 542	\$ 381	\$ 569	\$ 445
\$15,501-\$16,000	\$308	\$263	\$500	\$ 328	\$ 553	\$ 394	\$ 581	\$ 459
\$16,001-\$16,500	\$313	\$271	\$517	\$ 339	\$ 565	\$ 406	\$ 593	\$ 474
\$16,501-\$17,000	\$319	\$279	\$521	\$ 349	\$ 577	\$ 419	\$ 606	\$ 489
\$17,001-\$17,500	\$325	\$288	\$524	\$ 359	\$ 589	\$ 431	\$ 618	\$ 503
\$17,501-\$18,000	\$330	\$296	\$528	\$ 370	\$ 600	\$ 444	\$ 630	\$ 518
\$18,001-\$18,500	\$336	\$304	\$531	\$ 380	\$ 612	\$ 456	\$ 643	\$ 532
\$18,501-\$19,000	\$341	\$313	\$535	\$ 391	\$ 624	\$ 469	\$ 655	\$ 547
\$19,001-\$19,500	\$347	\$321	\$538	\$ 401	\$ 636	\$ 481	\$ 668	\$ 561
\$19,501-\$20,000	\$353	\$329	\$542	\$ 411	\$ 648	\$ 494	\$ 680	\$ 576
\$20,001-\$20,500	\$358	\$338	\$545	\$ 422	\$ 660	\$ 506	\$ 693	\$ 591
\$20,501-\$21,000	\$364	\$346	\$549	\$ 432	\$ 671	\$ 519	\$ 705	\$ 605
\$21,001-\$21,500	\$369	\$354	\$552	\$ 443	\$ 683	\$ 531	\$ 717	\$ 620
\$21,501-\$22,000	\$375	\$363	\$556	\$ 453	\$ 695	\$ 544	\$ 730	\$ 634
\$22,001-\$22,500	\$384	\$371	\$559	\$ 464	\$ 702	\$ 556	\$ 737	\$ 649
\$22,501-\$23,000	\$393	\$379	\$563	\$ 474	\$ 709	\$ 569	\$ 744	\$ 664
\$23,001-\$23,500	\$402	\$388	\$566	\$ 484	\$ 716	\$ 581	\$ 751	\$ 678
\$23,501-\$24,000	\$410	\$396	\$570	\$ 495	\$ 722	\$ 594	\$ 759	\$ 693
\$24,001-\$24,500	\$419	\$404	\$573	\$ 505	\$ 729	\$ 606	\$ 766	\$ 707
\$24,501-\$25,000	\$428	\$413	\$577	\$ 516	\$ 736	\$ 619	\$ 773	\$ 722
\$25,001-\$25,500	\$437	\$421	\$580	\$ 526	\$ 743	\$ 631	\$ 780	\$ 736
\$25,501-\$26,000	\$446	\$429	\$584	\$ 536	\$ 750	\$ 644	\$ 787	\$ 751
\$26,001-\$26,500	\$455	\$438	\$587	\$ 547	\$ 757	\$ 656	\$ 795	\$ 766
\$26,501-\$27,000	\$464	\$446	\$591	\$ 557	\$ 764	\$ 669	\$ 802	\$ 780
\$27,001-\$27,500	\$472	\$454	\$594	\$ 568	\$ 771	\$ 681	\$ 809	\$ 795
\$27,501-\$28,000	\$481	\$463	\$598	\$ 578	\$ 777	\$ 694	\$ 816	\$ 809
\$28,001-\$28,500	\$490	\$471	\$601	\$ 589	\$ 784	\$ 706	\$ 823	\$ 824
\$28,501-\$29,000	\$499	\$479	\$605	\$ 599	\$ 791	\$ 719	\$ 831	\$ 839
\$29,001-\$29,500	\$508	\$488	\$608	\$ 609	\$ 798	\$ 731	\$ 838	\$ 853
\$29,501-\$30,000	\$517	\$496	\$612	\$ 620	\$ 805	\$ 744	\$ 845	\$ 868
\$30,001-\$30,500	\$526	\$504	\$615	\$ 630	\$ 812	\$ 756	\$ 852	\$ 882
\$30,501-\$31,000	\$535	\$513	\$619	\$ 641	\$ 819	\$ 769	\$ 859	\$ 897
\$31,001-\$31,500	\$543	\$521	\$622	\$ 651	\$ 825	\$ 781	\$ 867	\$ 911
\$31,501-\$32,000	\$552	\$529	\$626	\$ 661	\$ 832	\$ 794	\$ 874	\$ 926
\$32,001-\$32,500	\$561	\$538	\$629	\$ 672	\$ 839	\$ 806	\$ 881	\$ 941
\$32,501-\$33,000	\$570	\$546	\$633	\$ 682	\$ 846	\$ 819	\$ 888	\$ 955
\$33,001-\$34,000	\$575	\$558	\$647	\$ 698	\$ 860	\$ 838	\$ 903	\$ 977
\$34,001-\$35,000	\$581	\$575	\$661	\$ 719	\$ 873	\$ 863	\$ 917	\$1,006
\$35,001-\$36,000	\$586	\$592	\$675	\$ 740	\$ 887	\$ 888	\$ 932	\$1,035
\$36,001-\$37,000	\$591	\$608	\$690	\$ 760	\$ 901	\$ 913	\$ 946	\$1,065
\$37,001-\$38,000	\$597	\$625	\$704	\$ 781	\$ 915	\$ 938	\$ 960	\$1,094
\$38,001-\$39,000	\$602	\$642	\$718	\$ 802	\$ 928	\$ 963	\$ 975	\$1,123
\$39,001-\$40,000	\$607	\$658	\$732	\$ 823	\$ 942	\$ 988	\$ 989	\$1,152
\$40,001-\$41,000	\$613	\$675	\$746	\$ 844	\$ 956	\$1,013	\$1,004	\$1,181
\$41,001-\$42,000	\$618	\$692	\$760	\$ 865	\$ 970	\$1,038	\$1,018	\$1,210
\$42,001-\$43,000	\$623	\$708	\$774	\$ 885	\$ 983	\$1,063	\$1,032	\$1,240
\$43,001-\$44,000	\$629	\$725	\$788	\$ 906	\$ 997	\$1,088	\$1,047	\$1,269
\$44,001-\$45,000	\$634	\$742	\$803	\$ 927	\$1,020	\$1,113	\$1,071	\$1,298
\$45,001-\$46,000	\$639	\$758	\$817	\$ 948	\$1,044	\$1,138	\$1,096	\$1,327
\$46,001-\$47,000	\$644	\$775	\$831	\$ 969	\$1,067	\$1,163	\$1,121	\$1,356
\$47,001-\$48,000	\$650	\$792	\$845	\$ 990	\$1,091	\$1,188	\$1,145	\$1,385
\$48,001-\$49,000	\$655	\$808	\$859	\$1,010	\$1,114	\$1,213	\$1,170	\$1,415
\$49,001-\$50,000	\$660	\$825	\$873	\$1,031	\$1,138	\$1,238	\$1,196	\$1,444
\$50,001-\$51,000	\$666	\$842	\$987	\$1,052	\$1,161	\$1,263	\$1,219	\$1,473
\$51,001-\$52,000	\$671	\$858	\$902	\$1,073	\$1,185	\$1,288	\$1,244	\$1,502
\$52,001-\$53,000	\$676	\$875	\$916	\$1,094	\$1,208	\$1,313	\$1,268	\$1,531
\$53,001-\$54,000	\$682	\$892	\$930	\$1,115	\$1,232	\$1,338	\$1,293	\$1,560
\$54,001-\$55,000	\$687	\$908	\$944	\$1,135	\$1,255	\$1,363	\$1,318	\$1,590
\$55,001 Plus	\$676		\$944		\$1,255		\$1,318	

(2) After the minimum monthly support obligation and arrearage due the cabinet have been determined, the cabinet shall serve the notice of minimum monthly support obligation upon the obligor [parent] either in person or by certified mail, return receipt requested, in accordance with KRS 405.440.

(a) The effective date of the obligation shall be [is] the first day of the month following the

month the parent receives the notice of minimum monthly support obligation.

(b) In accordance with KRS 405.430(2), the cabinet may modify the minimum monthly support obligation as established by the cabinet.

1. If, while verifying the income information, the cabinet finds that the obligor's [parent's] earnings are greater than what was previously reported, the cabinet may increase the support

obligation. The cabinet may recover additional support which should have been paid under the correct obligation.

2. The cabinet shall not modify any obligation which was established by a court of competent jurisdiction.

Section 3. Appeal Procedures. The obligor [parent] may request a dispute hearing in accordance with KRS 405.440. An impartial hearing officer shall conduct the dispute hearing in the county of the child's or obligor's [parent's] residence. The hearing shall be scheduled within sixty (60) days of the [parent's] request. The obligor [parent] may request a hearing pursuant to the instructions in the notice of minimum monthly support obligation.

(1) The request for a dispute hearing shall [will] be considered timely if:

(a) Made within twenty (20) days of receipt of a notice of minimum monthly support obligation;

(b) Made within twenty (20) days after the obligor [parent] is notified that a request for modification of the obligation will not be honored; or

(c) Made after thirty (30) days but before fifty (50) days have passed since the obligor [parent] requested a modification of the obligation, but the cabinet has not acted upon the request.

(2) If the request is not made within the time period specified in subsection (1) of this section, the obligor [parent] must show good cause for the late request. Good cause reasons may include, but are not limited to:

(a) The obligor's [parent's] being away from home during the entire filing period;

(b) The obligor's [parent's] inability to read the notice of minimum monthly support obligation; or

(c) The obligor's [parent's] incapacity due to a serious illness during the entire filing period.

(3) The obligor [parent] or his/[her] authorized representative may review case material pertinent to the reason for the dispute and may present witnesses at the hearing.

(4) If the objection is being filed on an original notice of minimum monthly support obligations, the obligation shall be stayed pursuant to KRS 405.450(2).

(5) If the objection is being filed on a request for modification of obligation, the amount on the prior notice is enforceable and that amount must be paid while the hearing is pending.

(a) If the obligor [parent] prevails, the cabinet shall promptly return to the obligor [parent] any overpayments made since the hearing was requested.

(b) If the cabinet prevails, the obligation will be retroactive to the effective date on the notice of minimum monthly support obligation.

(6) The obligor [parent] may withdraw the hearing request by writing to the local IV-D office or the Hearing Branch in the Department for Social Insurance's Division of Administrative Review.

(7) The obligor [parent] or the cabinet may file an appeal to the circuit court within twenty (20) days after receipt of the hearing officer's decision pursuant to KRS 405.450.

Section 4. Mandatory Withholding of Earnings.

The cabinet shall initiate withholding of earnings procedures when a delinquency equal to the amount of support payable for one (1) month is identified for cases in which order was entered prior to July 15, 1988. The cabinet shall [will] issue advance notice to the obligor [parent] prior to the implementation of the withholding.

(1) The advance notice to the obligor [parent], to be sent by certified mail, return receipt requested, shall contain at a minimum the following information:

(a) The amount of the delinquent support and the amount to be withheld, including the amount to be applied toward the liquidation of overdue support;

(b) Notification that the order to withhold earnings applies to the obligor's [parent's] current and any subsequent employers;

(c) That only mistakes of fact, i.e., wrong person identified or incorrect amount of overdue or current support, may be contested;

(d) Procedures for contesting the order; and

(e) Notification that the obligor shall [parent must] contact the cabinet within ten (10) days from the date the notice was received to contest the order. Failure to contact the cabinet in a timely fashion shall [will] result in the implementation of the withholding.

(2) If the obligor [parent] contests the withholding of earnings, he shall [/she must] be given an opportunity to state and defend his case, including the right to present to the cabinet copies of subsequent support orders [and/or] payment records.

(a) Within forty-five (45) days of the date of the advance notice, the cabinet shall [must] determine whether withholding of earnings is appropriate and notify the obligor [parent] of the results of the case review.

(b) If withholding is to begin, a copy of the order to withhold earnings shall be sent to the obligor [parent].

(3) The order to withhold earnings shall be served on the employer by certified mail, return receipt requested. It shall include at a minimum the following information:

(a) The obligor's [parent's] Social Security number;

(b) The amount to be withheld, including amounts to be applied toward delinquent support;

(c) Notification that the total withheld cannot exceed the maximum permissible under the Consumer Credit Protection Act;

(d) Notification that withholding shall [must] begin no later than the first pay period that occurs after fourteen (14) days following the date the order to withhold earnings was mailed;

(e) That the employer shall [must] send the remittance to the agency designated by the cabinet within ten (10) days of date the obligor [employee] is paid;

(f) That the employer may combine amounts due the agency designated by the cabinet into one (1) transmittal if [provided that] the employer identifies by IV-D account number [and/or] Social Security number the amount attributable to each obligor [parent];

1. If more than one (1) order against the obligor [parent] exists, the cabinet shall [will] allocate the payments among the obligor's [parent's] cases;

2. Payments shall [will] first be applied toward the current month's support obligation(s);

3. In cases where there are multiple orders

being enforced by the cabinet against the obligor [parent], payments shall [will] be credited first to the account of the case containing the oldest order to withhold earnings;

(g) That the order to withhold earnings is binding until further notice and that the employer shall [will] be liable for the accumulated amount if he fails to abide by the order;

(h) That pursuant to KRS 405.991 [Chapter 405], the employer shall [will] be subject to a fine [and/or] a jail sentence for discharging, refusing to employ, or taking disciplinary action against the obligor [parent] because of the withholding of earnings; [and]

(i) That the employer shall [must] notify the cabinet when the obligor's [parent's] employment is terminated, giving the cabinet the new employer's name and address and the obligor's [parent's] last known address, if known; and

(j) That the employer may deduct an additional sum of one (1) dollar for each payment made pursuant to the order to cover his administrative costs.

(4) The order to withhold earnings may be terminated as deemed appropriate by the secretary; however, payment of the delinquent support shall not constitute the sole basis for the prevention or termination of the order to withhold earnings.

(5) Withholding shall take effect immediately for cases in which the order is entered on or after July 15, 1988 unless the obligor shows good cause. [The cabinet may initiate withholding of earnings procedures prior to the accumulation of one (1) month's arrearage upon the request of the parent obligated to pay the support.]

(a) Good cause shall be determined to exist if:

1. The obligor is threatened with the immediate loss of his primary source of earnings; or

2. Payment records indicate the obligor has voluntarily contributed support in an amount equal to at least seventy-five (75) percent of the newly established obligation.

(b) If good cause is shown, withholding shall take effect when an arrearage accrues that is equal to the amount of support payable for one (1) month.

Section 5. Additional Administrative Enforcement Remedies. When[ever] the cabinet determines that the obligor [parent] owes delinquent support, the cabinet may implement administrative enforcement remedies to collect the delinquent support amounts. Personal property shall be exempted from attachment as specified in KRS 427.060 [Chapter 427].

(1) Order to withhold. When a delinquency equal to the amount of support payable for one (1) month is identified, the cabinet shall determine the total amount of support owed. The cabinet shall serve an order to withhold to the person(s) in possession or control of the obligor's [parent's] earnings or property. A copy of the order to withhold shall be provided to the obligor [parent]. The order shall state the basis for and the amount of the delinquent support and shall state that the obligor [parent] may offer a bond satisfactory to the cabinet to avoid losing possession of the property.

(a) When one (1) or more person(s) in possession or control of the obligor's

[parent's] earnings or property is identified, the cabinet may issue and serve an order to withhold for each person in possession or control. When more than one (1) person in possession or control answers the order to withhold and the combined assets exceed the amount of the delinquent support, the cabinet shall:

1. Decide which person in possession or control to serve with an order to deliver. The cabinet may take into consideration the obligor's [parent's] request as to which source to withhold.

2. Send an order to release withholding to any person in possession or control not being served with an order to deliver.

3. Request only a portion of an asset to satisfy the delinquent support when the total asset exceeds the amount of delinquent support.

(b) The obligor [parent] may contact the cabinet for an explanation of administrative enforcement. The cabinet may accept partial payment sufficient to release the order to withhold when deemed appropriate by the secretary.

(2) Order to deliver. When the employer or the person in possession or control of the earnings or property responds to the order to withhold, the cabinet may complete and serve on the person in possession or control an order to deliver the earnings [and/or] property to the cabinet. Earnings or property delivered to the cabinet in accordance with an order to deliver shall be applied to the amount of delinquent support pursuant to federal law.

(3) Order to release withholding. The cabinet shall issue and serve an order to release withholding on its claim on the obligor's [parent's] earnings or property when the stated delinquent support is satisfied.

MIKE ROBINSON, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: July 14, 1988

FILED WITH LRC: July 25, 1988 at 3 p.m.

STATEMENT OF EMERGENCY 906 KAR 1:040E

This emergency regulation is promulgated to comply with the provisions of House Bill 50 of the 1988 General Assembly codified as KRS 214.450-214.466. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on July 15, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, Secretary

CABINET FOR HUMAN RESOURCES Office of Inspector General

906 KAR 1:040E. Blood establishment licensure.

RELATES TO: KRS 216B.010 to 216B.130, 333.120
STATUTORY AUTHORITY: KRS 214.020, 214.450 to 214.466, 21 CFR Chapter 1, part 601

EFFECTIVE: July 15, 1988

NECESSITY AND FUNCTION: KRS 214.450 to 214.466 mandates that specific requirements relating to federal licensure, donor records, administrative procedures and the posting of informational

signs must be followed by all blood establishments in the Commonwealth. This regulation has been promulgated to monitor facility compliance with these requirements.

Section 1. Licensure. All blood establishments, as defined by KRS 214.450, must be licensed by United States Food and Drug Administration (FDA).

Section 2. Donor Records. Donor records shall be maintained by the blood establishment. These records, at a minimum, shall contain the following:

- (1) A standardized blood donor consent form; and
- (2) A standardized risk factor history form.

Section 3. Administrative Procedures. The blood establishment shall establish administrative procedures to assure that:

- (1) All paid and volunteer donors may self-elect not to donate blood;
- (2) The blood establishment refuses to accept for donation or sale any blood from persons at high risk for infection with the human immunodeficiency virus, or who have been medically diagnosed as having acquired immune deficiency syndrome, or who have tested confirmatory positive for infection with the human immunodeficiency virus, or who have a blood borne communicable disease, or who have a blood borne sexually transmitted disease;
- (3) Each unit of blood collected by a blood establishment for transfusion into a living human person shall be affixed with the U.S. Food and Drug Administration required label which includes a donor identification number through with the following information can be obtained:
 - (a) Date the blood was collected;
 - (b) Name of blood establishment;
 - (c) Nonidentifying code representing the name of the blood donor;
 - (d) A blood establishment serial number for the blood;

(e) The date of laboratory testing of the blood;

(f) The name of the person and laboratory testing the blood; and

(g) The laboratory test results.

(4) The following shall be exempted from the testing requirements in subsection (3) of this section: all blood recovered from a patient through intraoperative salvage or hemodilution, if this blood is an integral part of the on-going surgery or surgical procedure and is utilized only by the patient from whom the blood is drawn.

Section 4. Sign Posting. The blood establishment shall post a sign which shall be visible to all potential blood donors. This sign shall read as follows:

"Persons with acquired immune deficiency syndrome (AIDS), or who have tested confirmatory positive for infection with the human immunodeficiency virus (HIV), or who have a blood borne communicable disease or sexually transmitted disease or who have been exposed to one (1) or more risk factors determined by the U.S. Centers for Disease Control to place such person at high risk for infection with the HIV virus or any AIDS-causative agent, are prohibited under Kentucky Revised Statutes from donating or selling blood. Persons violating the law are guilty of a Class D felony. ASK STAFF OF THIS BLOOD ESTABLISHMENT."

Section 5. Enforcement Notification. If the Office of Inspector General (OIG) ascertains that a blood establishment is not meeting the requirements of this regulation, the OIG shall inform the Commonwealth Attorney's Office of a potential violation of the applicable statutes.

WILLIAM M. GARDNER, Inspector General

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: July 13, 1988

FILED WITH LRC: July 15, 1988 at 2 p.m.

AS AMENDED

LABOR CABINET

Department of Workplace Standards
Kentucky Occupational Safety and Health
(As Amended)

COMPILER'S NOTE: The following regulations were amended by the promulgating administrative body and the Subcommittee at the August meeting of the Administrative Regulations Review Subcommittee.

TRANSPORTATION CABINET
Department of Highways
(As Amended)

603 KAR 5:072. Mandatory annual bus inspection.

RELATES TO: KRS 189.231, 281.600

PURSUANT TO: KRS 189.231, 281.600

NECESSITY AND FUNCTION: KRS 189.231 authorizes the Secretary of Transportation to restrict or regulate traffic on state-maintained highways in such manner as is reasonably necessary to promote the safety and convenience of the traveling public. KRS 281.600 authorizes the Department of Vehicle Regulation to promulgate regulations regarding safety requirements for motor vehicles and method of operation.

Section 1. Definition and Scope. As used in this regulation, the term "bus" shall mean all motor vehicles that are required to be registered under the terms of KRS 186.050 designed and used for carrying passengers and having provisions for more than nine (9) passengers including the driver. The term "bus" shall not include motor vehicles operated by any common school system [used primarily to transport school pupils], motor vehicles operated under a city bus certificate required by KRS Chapter 281 when operating within the corporate limits of a city, and regular route bus operators operating under a certificate required by KRS Chapter 281.

Section 2. Annual Inspections. The Transportation Cabinet shall require that all buses within the scope of this regulation be inspected annually by Transportation Cabinet personnel for compliance with such minimum vehicle safety equipment standards as are currently required under Federal Motor Carrier Safety Regulations adopted by the United States Department of Transportation as 49 Code of Federal Regulations, Part 393, and adopted by Kentucky Administrative Regulation 603 KAR 1:005.

Section 3. Out-of-service Sticker. In the event a bus is determined to be out of compliance with minimum safety requirements, employees of the Transportation Cabinet are authorized to affix thereto a notice identifying that the bus does not comply and require correction before it is further operated.

MARJORIE C. KLEE, Commissioner

MILO D. BRYANT, Secretary

APPROVED BY AGENCY: June 14, 1988

FILED WITH LRC: June 14, 1988 at 3 p.m.

803 KAR 2:020. Adoption of 29 CFR Part 1910.

RELATES TO: KRS Chapter 338

PURSUANT TO: KRS Chapter 338

NECESSITY AND FUNCTION: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to adopt by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.

Section 1. The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby adopted by reference with the following additions, exceptions, and deletions.

(1) 29 CFR Part 1910.1 shall read as follows:

"The provisions of this regulation adopt and extend the applicability of established federal standards contained in 29 CFR Part 1910 to all employers, employees, and places of employment throughout the Commonwealth except those excluded in KRS 338.021."

(2) 29 CFR Part 1910.2 shall read as follows: As used in this part, unless the context clearly requires otherwise:

(a) "Act" means KRS Chapter 338.

(b) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(c) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(d) "Employee" means any person employed except those employees excluded in KRS 338.021.

(e) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule."

(f) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(g) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(h) An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.

(3) 29 CFR 1910.7. "Definition and Requirements for a Nationally Recognized Testing

Laboratory [Safety Testing or Certification of Certain Workplace Equipment and Materials]. as published in Federal Register, Volume 53, Number 70, April 12, 1988, is adopted by reference.

(4) [(3)] 29 CFR 1910.16(b)(2)(ix), Longshoring and Marine Terminals, as published in the Federal Register, Volume 52, Number 186, September 25, 1987 is adopted by reference.

(5) [(4)] 29 CFR 1910.19(f) "Special Provisions for Air Contaminants," is removed as published in the Federal Register, Volume 50, Number 240, December 13, 1985, is adopted by reference.

(6) [(5)] 29 CFR 1910.19(i), Special Provisions for Air Contaminants, as published in the Federal Register, Volume 52, Number 176, September 11, 1987 is adopted by reference.

(7) [(6)] 29 CFR 1910.19(j), "Special Provisions for Air Contaminants," as published in the Federal Register, Volume Number 52, December 4, 1987, is adopted by reference.

(8) [(7)] 29 CFR 1910.20 "Access to employee exposure and medical records" is amended as follows:

(a) 29 CFR 1910.20(e)(1)(i) is amended to read "Whenever an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but no longer than fifteen (15) days after the request for access is made unless sufficient reason is given why such a time is unreasonable or impractical."

(b) 29 CFR 1910.20(e)(1)(ii) is amended to read "Whenever an employee or designated representative requests a copy of a record, the employer shall, except as specified in (v) of this section, within the period of time previously specified assure that either:"

(c) 29 CFR 1910.20(e)(1)(v) is added and shall read "Original x-ray film will be made available to the employee and/or designated representative for inspection, review, and duplication under the supervision of the employer or his representative. The employer is not required to bear the cost of duplication of x-ray film."

(d) 29 CFR 1910.20(g)(1) is amended to read "Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform each employee exposed to toxic substances or harmful physical agents of the following:"

(e) 29 CFR 1910.20(g)(2) is amended to read "Each employer shall make readily available to employees any informational materials concerning this standard which are provided to the employer by the Assistant Secretary of Labor for Occupational Safety and Health."

(9) [(8)] Subparagraph 29 CFR 1910.23(a)(7) shall be amended to read as follows: "Every temporary or permanent floor opening shall have standard railings, or shall be constantly attended by someone."

(10) The amendments to 29 CFR 1910.28(f)(2), (g)(3), (h)(2) [(3)] and (i)(1), "Safety Requirements for Scaffolding [Scaffolds]," as published in the Federal Register, Volume 53, Number 70, April 12, 1988, are adopted by reference [amended].

(11) The amendments to 29 CFR 1910.35(h), "Definitions," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are adopted by reference [is amended].

(12) [(9)] Revision to 29 CFR 1910.68(e)(3),

Manlifts, as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is adopted by reference.

(13) [(10)] 29 CFR 1910.95 "Hearing Conservation Program" is amended as follows:

(a) 29 CFR 1910.95(h)(1) shall read: Audiometric tests shall be pure tone, air conduction, hearing threshold examinations with test frequencies including as a minimum 500, 1,000, 2,000, 3,000, 4,000, and 6,000 Hz. Testing at 8,000 Hz must be included in the audiometric tests for employers using audiometers with that capacity and all audiometric tests must include 8,000 Hz after January 15, 1985.

(b) 29 CFR 1910.95(h)(4) shall read: Audiometric examinations shall be administered in a room meeting the requirements listed in Appendix D: Audiometric Test Rooms. When an audiometric test room is located in a mobile test van, background sound pressure level measurements shall be taken at each testing location.

(c) 29 CFR 1910.95(h)(5)(ii) shall read: Audiometer calibration shall be checked acoustically at least annually in accordance with Appendix E: Acoustic Calibration of Audiometers. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this check. Deviations of fifteen (15) decibels or greater require an exhaustive calibration.

(d) 29 CFR 1910.95(h)(5)(iii) shall read: An exhaustive calibration shall be performed at least every two (2) years in accordance with sections 4.1.2; 4.1.3; 4.1.4.3; 4.2; 4.4.1; 4.4.2; 4.4.3; and 4.5 of the American National Standard Specification for Audiometers, S3.6-1969. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this calibration.

(e) 29 CFR 1910.95(L)(1) shall read: The employer shall make available to affected employees or their representatives copies of this standard and shall also post a notice of the availability of this standard in the workplace.

(f) 29 CFR 1910.95(o) shall read: Paragraphs (c) through (n) of this section shall not apply to employers engaged in oil and gas well drilling and servicing operations, agriculture, or construction.

(g) 29 CFR 1910.95 Appendix E shall read: Acoustic Calibration of Audiometers.

This Appendix is Mandatory.

Audiometer calibration shall be checked acoustically, at least annually, according to the procedures described in this Appendix. The equipment necessary to perform these measurements is a sound level meter, octave-band filter set, and a National Bureau of Standards 9A coupler. In making these measurements, the accuracy of the calibrating equipment shall be sufficient to determine that the audiometer is within the tolerances permitted by American Standard Specification for Audiometers, S3.6-1969.

1. Sound Pressure Output Check.

a. Place the earphone coupler over the microphone of the sound level meter and place the earphone on the coupler.

b. Set the audiometer's hearing threshold level (HTL) dial to seventy (70) dB.

c. Measure the sound pressure level of the tones that each test frequency from 500 Hz through 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) for each earphone.

d. At each frequency the readout on the sound level meter should correspond to the levels in Table E-1 or Table E-2, as appropriate, for the type of earphone, in the column entitled "sound level meter reading."

2. Linearity check.

a. With the earphone in place, set the frequency to 1,000 Hz and the HTL dial on the audiometer to seventy (70) dB.

b. Measure the sound levels in the coupler at each ten (10) dB decrement from seventy (70) dB to ten (10) dB, noting the sound level meter reading at each setting.

c. For each ten (10) dB decrement on the audiometer the sound level meter should indicate a corresponding ten (10) dB decrease.

d. This measurement may be made electrically with a voltmeter connected to the earphone terminals.

3. Tolerances.

When any of the measured sound levels deviate from the levels in Table E-1 or Table E-2 plus or minus three (3) dB at any test frequency between 500 and 3,000 Hz, four (4) dB at 4,000 Hz, or five (5) dB at 6,000 Hz and 8,000 Hz, an exhaustive calibration is advised. An exhaustive calibration is required if the deviations are greater than ten (10) dB at any test frequency.

TABLE E-1 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-39 EARPHONES

Frequency, Hz	Reference threshold level for TDH-39 earphones, dB	Sound level meter reading dB
500	11.5	81.5
1000	7.0	77.0
2000	9.0	79.0
3000	10.0	80.0
4000	9.5	79.5
6000	15.5	85.5
8000	13.0	83.0

TABLE E-1 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-39 EARPHONES

Frequency, Hz	Reference threshold level for TDH-49 earphones, dB	Sound level meter reading dB
500	13.5	83.5
1000	7.5	77.5
2000	11.0	81.0
3000	9.5	79.5
4000	10.5	80.5
6000	13.5	83.5
8000	13.0	83.0

(14) [(11)] 29 CFR 1910.101(b) shall be

amended by revocation of referenced pamphlets P-1-1965 and the adoption of P-1-1974, herein filed by reference.

(15) The amendment to 29 CFR 1910.103(a)(1)(ii), "Hydrogen," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is adopted by reference [amended].

(16) [(12)] 29 CFR 1910.106 "Flammable and combustible liquids" is amended as follows:

(a) 29 CFR 1910.106(a)(3) shall read: "The term automotive service station, or service stations, shall mean that portion of property where flammable or combustible liquids used as motor fuel are stored and dispensed from fixed equipment and into the fuel tanks of motor vehicles and shall include any facilities available for the sale and servicing of tires, batteries, accessories and for minor automotive maintenance work and shall also include private stations not accessible or open to the public such as those used by commercial, industrial or governmental establishments. This section shall not apply to agriculture."

(b) The amendment to 29 106(a)(35), "Flammable and Combustible Liquids," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is adopted by reference [amended].

(c) [(13)] 29 CFR 1910.106(g)(1)(i)(g), Flammable and Combustible Liquids as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is removed.

(17) The amendment to 29 CFR 1910.107(a)(8), "Spray Finishing Using Flammable and Combustible Materials," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is adopted by reference [amended].

(18) The amendment to 29 CFR 1910.108(a)(3), "Dip Tanks Containing Flammable or Combustible Liquids," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is adopted by reference [amended].

(19) The amendment to 29 CFR 1910.109(d)(2)(iii)(a), "Explosives and Blasting Agents," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is adopted by reference [amended].

(20) The amendments to 29 CFR 1910.110(a)(14), (b)(2)(iii), (c)(5)(i)(g)(1) and (f)(5)(iv), "Storage and Handling of Liquefied Petroleum Gases," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are adopted by reference [amended].

(21) The amendments to 29 CFR 1910.111(b)(1)(ii) and the new paragraph 1910.111(b)(1)(vi), "Storage and Handling of Anhydrous Ammonia," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are adopted by reference [is amended].

[(22)] 29 CFR 1910.111(b)(1)(vi), "Storage and Handling of Anhydrous Ammonia," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is adopted by reference.]

(22) [(23)] [(14)] 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response, as published in the Federal Register, December 19, 1986, Volume 51, No. 244, is adopted by reference.

(23) [(24)] [(15)] 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response, as published in the Federal Register, May 4, 1987, Volume 52, No. 85, is adopted by reference.

(24) [(25)] [(16)] 29 CFR 1910.134 is amended as follows:

(a) 29 CFR 1910.134(c) shall read: "Proper selection of respirators shall be made according to the guidance of American National Standard Practices for Respiratory Protection Z88.2 - 1980."

(b) 29 CFR 1910.134(d) the third sentence shall read: "Breathing air shall meet at least the requirements of the specification for Grade D breathing air as described in Compressed Gas Association Commodity Specification G-7.1 - 1973."

(c) 29 CFR 1910.134(g) shall read: Identification of Air-purifying Respirator Canisters and Cartridges.

1. The primary means of identifying an air-purifying respirator canister or cartridge shall be by means of properly worded labels. The secondary means of identifying an air-purifying respirator canister or cartridge shall be by an identifying color or colors.

2. All who issue or use air-purifying respirators falling within the scope of this standard shall ensure that all canisters and cartridges purchased or used by them are properly labeled and colored in accordance with this standard before they are placed in service and that the labels and colors are properly maintained at all times thereafter until the canisters and cartridges have completely served their purpose. The user shall refer to the labeling to determine the type and degree of protection the canister or cartridge will afford.

3. On each air-purifying respirator canister and cartridge, the following shall appear in bold letters:

CANISTER FOR _____
(Name of atmospheric contaminant)

or

CARTRIDGE FOR _____
(Name of atmospheric contaminant)

In addition, either or both of subparagraphs a and b of this paragraph, and subparagraph (c) of this paragraph, shall appear beneath the appropriate phrase on the canister or cartridge label.

a. For respiratory protection in atmospheres containing not more than _____
by volume of

(Concentration)

(Name of atmospheric contaminant)

b. For respiratory protection in atmospheres containing

(Type of particulate contaminant)

c. Do not use in atmospheres containing less than nineteen and five-tenths (19.5) percent oxygen by volume at sea level.

4. Each respirator canister or cartridge, or canister or cartridge label, shall be a distinctive color as indicated in Table I-1. The color coating used shall offer a high degree of resistance to changes such as chipping, scaling, peeling, blistering, and fading, and to the effects of ordinary atmospheres to which they may be exposed under normal conditions of storage and use.

(d) 29 CFR 1910.134 Table I-1 shall read:

TABLE I-1
Color Assigned to Canister or Cartridge

Atmospheric Contaminant(s) to Be Protected Against	Color Assigned	ISCC-NBS Centroid Color Number	ISCC-NBS Centroid Color Name
Acid gases	White	263	White
Organic vapors	Black	267	Black
Ammonia gas	Green	139	Vivid green
Carbon monoxide gas	Blue	178	Strong blue
Acid gases and organic vapors	Yellow	82	Vivid yellow
Acid gases, ammonia, and organic vapors	Brown	75	Deep yellow brown
Acid gases, ammonia, carbon monoxide, and organic vapors	Red	11	Vivid red
Other vapors and gases not listed above	Olive	106	Light olive
Radioactive materials (except tritium and noble gases)	Purple	218	Strong purple
Dusts, fumes, and mists (other than radioactive materials)	Orange	48	Vivid orange

NOTES:

(1) A purple (ISCC-NBS Centroid Number 218) stripe shall be used to identify radioactive materials in combination with any vapor or gas.

(2) An orange (ISCC-NBS Centroid Number 48) stripe shall be used to identify dusts, fumes, and mists in combination with any vapor or gas.

(3) Where labels only are colored to conform with this table, the canister or cartridge body shall be gray (ISCC-NBS Centroid Number 265), or a metal canister or cartridge body may be left in its natural metallic color.

(4) The user shall refer to the wording of the label to determine the type and degree of protection the canister or cartridge will afford.

(25) [(26)] [(17)] 29 CFR 1910.141(c)(2)(i) shall read as follows: "(1) Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy."

(26) [(27)] [(18)] Amendment to 29 CFR 1910.145(f), Accident Prevention Tags, as published in Federal Register, Volume 51, Number 182, September 19, 1986, is adopted by reference.

(27) [(28)] [(19)] 29 CFR 1910.151 relating to medical services and first aid shall be changed to read as follows:

"(a) The employer shall ensure the ready availability of medical personnel for advice and consultation on matters of occupational health."

"(b) Employers with eight (8) or more employees within the establishment shall have persons adequately trained to render first aid and first aid supplies approved by the consulting physician, along with a signed list of these supplies, shall be readily available."

Outside salesmen, truck drivers, seasonal labor, and others who while performing their duties, are away from the premises more than fifty (50) percent of the time are not to be included in determining the number of employees."

"(c) All other employers shall, in the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, have a person or persons adequately trained to render first aid. First aid supplies approved by the consulting physician shall be readily available."

"(d) Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use."

(28) The amendments to [(29)] 29 CFR 1910.155(c)(3)(i) and the new paragraph 1910.155(c)(3)(iv)(E), "Scope, Application and Definitions Applicable to this Subpart," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are adopted by reference [is amended].

[(30)] 29 CFR 1910.155(c)(3)(iv)(E), "Scope, Application and Definitions Applicable to this Subpart N - Materials Handling and Storage," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is adopted by reference.]

(29) [(31)] [(20)] 29 CFR 1910.156(a)(2) "Application" is amended to read: "The requirements of this section apply to fire brigades; industrial fire departments; private fire departments; and municipal public fire departments and fire protection districts. Personal protective equipment requirements apply to members of fire brigades and fire departments performing interior structural fire fighting. The requirements of this section do not apply to airport crash rescue, forest fire fighting operations, or volunteer fire fighters."

(30) [(32)] [(21)] Revision to 29 CFR 1910.157(f)(16), Portable Fire Extinguishers, as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is adopted by reference.

(31) [(33)] [(22)] 29 CFR 1910.177(a)(2), Servicing Multipiece and Single Piece Rim Wheels, shall be amended as follows: Amendments as published in the Federal Register, Volume 52, Number 186, September 25, 1987 are adopted by reference.

(32) The amendment to [(34)] 29 CFR 1910.178(a)(7), "Powered Industrial Trucks," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is adopted by reference [amended].

(33) [(35)] [(23)] Revisions to 29 CFR 1910.179(j)(2)(iii) and (iv), Overhead and Gantry Cranes, as published in the Federal Register, Volume 51, Number 188, September 29, 1986, are adopted by reference.

(34) [(36)] [(24)] Revision to 29 CFR 1910.179(m)(1), Overhead and Gantry Cranes, as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is adopted by reference.

(35) [(37)] [(25)] Revision to 29 CFR 1910.180(d)(6), Crawler Locomotive and Truck Cranes, as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is adopted by reference.

(36) [(38)] [(26)] Revisions to 29 CFR 1910.180(g)(1) and (2)(ii), Crawler and

Locomotive Truck Cranes, as published in the Federal Register, Volume 51, Number 188, September 29, 1986, are adopted by reference.

(37) The amendment to [(39)] 29 CFR 1910.180(i)(4)(i), "Crawler, Locomotive and Truck Cranes," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is adopted by reference [amended].

(38) [(40)] [(27)] Revisions to 29 CFR 1910.181(g)(1) and (3), Derricks, as published in the Federal Register, Volume 51, Number 188, September 29, 1986, are adopted by reference.

(39) The amendment to [(41)] 29 CFR 1910.181(j)(4)(i), "Derricks," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is adopted by reference [amended].

(40) The amendments to [(42)] 29 CFR 1910.211(d)(11)(iii) and (12) and the new paragraphs 1910.211(d)(11)(iv), (61), (62), (63), (64), (65), and (66), "Definitions," as published in the Federal Register, Volume 53, Number 49, March 14, 1988, are adopted by reference [amended].

[(43)] 29 CFR 1910.211 (d)(11)(iv)(d)(61) and (d)(62), (d)(63), (d)(64), (d)(65), (d)(66), "Definitions," as published in the Federal Register, Volume 53, Number 49, March 14, 1988, are adopted by reference.]

(41) [(44)] [(28)] 29 CFR 1910.217(b)(7)(xii) relating to machines using part revolution clutches shall be amended by adding the following:

"This provision will not prevent the employer from utilizing a reversing means of the drive motor with the clutch-brake control in the 'inch' position."

(42) [(45)] [(29)] Revisions to 29 CFR 1910.217(e)(1)(i) and (ii), Mechanical Power Presses, as published in the Federal Register, Volume 51, Number 188, September 29, 1986, are adopted by reference.

(43) The amendments to 29 CFR 1910.217(c)(3)(ii)(b) and the new paragraph (h) to 1910.217, "Mechanical Power Presses," as published in Federal Register, Volume 53, Number 49, March 14, 1988, are adopted by reference.

(44) [(46)] [(30)] Revisions to 29 CFR 1910.218(a)(2)(i) and (ii), Forging Machines, as published in the Federal Register, Volume 51, Number 188, September 29, 1986, are adopted by reference.

(45) [(47)] [(31)] Amendments to 29 CFR 1910.243, "Guarding of Portable Powered Tools" as published in the Federal Register, Volume 50, Number 22, February 1, 1985 are adopted by reference.

(46) The amendment to [(48)] 29 CFR 1910.251(b), "Definitions," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is adopted by reference [amended].

(47) [(49)] [(32)] Subparagraph 29 CFR 1910.252(a)(6)(iv), (d)(2) shall be corrected to read as follows:

"Wiring and electrical equipment in compressor or booster pump rooms or enclosures shall conform to the provisions of section 1910.309(a) for Class I, Division 2 locations."

(48) [(50)] [(33)] Revision to 29 CFR 1910.252(c)(6), Welding, Cutting and Brazing, as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is adopted by reference.

(49) The amendment to [(51)] 29 CFR 1910.265(d)(2)(iv)(c), "Sawmills," as published in Federal Register, Volume 53, Number 70, April

12, 1988, is adopted by reference [amended].

(50) The amendments to [(52)] 29 CFR 1910.266(c)(4)(iii) and (iv), "Pulpwood Logging," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are adopted by reference [amended].

(51) [(53)] [(34)] 29 CFR 1910.268(c), Telecommunications, shall be revised as follows: Revisions as published in the Federal Register, Volume 52, Number 187, September 28, 1987 are adopted by reference.

(52) [(54)] [(35)] 29 CFR 1910.272, "Grain Handling Facilities," as published in the Federal Register, Volume 52, Number 251, December 31, 1987, is adopted by reference. The amendments to 29 CFR 1910.272, "Grain Handling Facilities," as published in the Federal Register, Volume 53, Number 96, May 18, 1988, are adopted by reference [is amended].

(53) The amendment to [(55)] 29 CFR 1910.399(a)(1), "Subpart S - Electrical," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is adopted by reference [amended].

(54) [(56)] [(36)] Amendment to 29 CFR 1910.430(e)(1), Commercial Diving Equipment, as published in the Federal Register, Volume 51, Number 181, September 18, 1986, is adopted by reference.

(55) [(57)] [(37)] 29 CFR 1910.440(a)(1), Commercial Diving Recordkeeping Requirements, as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is removed.

(56) [(58)] [(38)] 29 CFR 1910 Subpart T Appendix B "Commercial Diving Operations" as published in the Federal Register, Volume 50, Number 6, January 9 1985, is adopted by reference.

(57) [(59)] [(39)] 29 CFR 1910.1000, "Air Contaminants," Table Z-1 is amended as published in the Federal Register, Volume 50, Number 240, December 13, 1985, is adopted by reference.

(58) [(60)] [(40)] 29 CFR 1910.1000, Table Z-2, Benzene, shall be amended as follows: Amendments as published in the Federal Register, Volume 52, Number 176, September 11, 1987 are adopted by reference.

(59) [(61)] [(41)] 29 CFR 1910.1000, Table Z-2, "Formaldehyde," as published in the Federal Register, Volume Number 52, December 4, 1987, is amended.

(60) [(62)] [(42)] 29 CFR 1910.1001 "Asbestos" is amended as follows:

(a) Amendments as published in the Federal Register, Volume 51, Number 119, June 20, 1986, are adopted by reference.

(b) 29 CFR 1910.1001(d)(6)(ii) is amended to add: "The employer shall ensure that all sampling will be conducted in accordance with the ORM in Appendix A, before sampling commences."

(c) 29 CFR 1910.1001(d)(6)(iv) is amended to add: "The employer shall ensure that all analyses are performed in accordance with the elements outlined in Appendix A, and that all asbestos counters meet the criterion specified in Appendix A. This notice shall be given prior to the start of the analyses."

(d) 29 CFR 1910.1001(g)(3)(i) is amended to read: "Where respiratory protection is required, the employer shall institute a respirator program in accordance with American National Standards Practices for Respiratory Protection, ANSI Z88.2 - 1980, with the exception of Appendix A5, Suggested Procedures for Carrying

Out Qualitative Respirator - Fitting Tests, and Appendix A6, Suggested Procedures for Carrying Out Quantitative Respirator - Fitting Tests."

(e) 29 CFR 1910.1001(j)(1)(ii) is amended to read: "Sign specifications. The warning signs required by paragraph (j)(1)(i) of the section shall be of a vertical format measuring twenty (20) inches in length and fourteen (14) inches in width, and shall be printed in letters of sufficient size and contrast as to be readily visible and legible, and shall bear the following information:"

(61) [(63)] [(43)] 29 CFR 1910.1001, Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite, as published in Federal Register, October 17, 1986, Volume 51, No. 201, is adopted by reference.

(62) [(64)] [(44)] 29 CFR 1910.1001, Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite, as published in Federal Register, May 12, 1987, Volume 52, No. 91, is adopted by reference.

(63) [(65)] [(45)] 29 CFR 1910.1005 4,4'-methylene bis (2-chloroaniline) and 29 CFR 1910.1003 through .1016 paragraphs (c)(6), Laboratory Activities, printed in the Federal Register, Volume 39, Number 125, June 27, 1974, are in effect.

(64) [(66)] [(46)] Paragraph 1910.1005(c)(7) of the 29 CFR 1910 General Industry Standards shall read as follows:

"Premixed Solutions: Where 4,4'-methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area is not required; however, (i) only authorized employees shall be permitted to handle such materials."

(65) [(67)] [(47)] 29 CFR 1910.1025 "Occupational Exposure to Lead" shall be amended as follows: "Table 1 - Implementation Schedule" is amended to read:

TABLE 1 - Implementation Schedule

INDUSTRY ¹ ug/m ³	COMPLIANCE DATES		
	200 ug/m ³	100 ug/m ³	50
Primary Lead Production	(2)	June 29, 1984	June 29, 1991
Secondary Lead Production	(2)	June 29, 1984	June 29, 1986
Lead Acid Battery Manufacture	(2)	June 29, 1983	June 29, 1986
Automobile/Manufacture/Solder Grinding	(2)	N/A	June 29, 1988
Electronics, Gray Iron Foundries, Ink Manufacture, Paints and Coatings Manufacture, Wall Paper Manufacture, Can Manufactures, and Printing	(2)	N/A	June 29, 1982
Lead Pigment Manufacture, Nonferrous Foundries, Leaded Steel Manufacture, Lead Chemical Manufacture, Ship Building and Ship Repair,	(2)	N/A	N/A

Battery Breaking in
the Collection and
Processing of Scrap
(excluding collection
and processing of
scrap which is part
of a secondary smelting
operation), Secondary
Smelting of Copper, and
Lead Casting

All Other Industries (2) N/A June 11,
1984

¹ Includes ancillary activities located on the same worksite.

² On effective date. This continues an obligation from Table Z-2 of 29 CFR 1910.1000 which had been in effect since 1971 but which was deleted upon effectiveness of this section.

(66) [(68)] [(48)] 29 CFR 1910.1028, Benzene, as published in the Federal Register, Volume 52, Number 176, September 11, 1987 is adopted by reference.

(67) [(69)] [(49)] 29 CFR 1910.1029 "Coke Oven Emissions" shall be amended as follows: Revision as published in the Federal Register, Volume 50, Number 178, September 13, 1985 are adopted by reference.

(68) [(70)] [(50)] Corrections to 29 CFR 1910.1043, Cotton Dust as published in the Federal Register, Volume 51, Number 128, July 3, 1986, are adopted by reference.

(69) [(71)] [(51)] Amendments and corrections to 29 CFR 1910.1047, Ethylene Oxide and Appendices A, B, C and D, as published in the Federal Register, Volume 51, Number 132, July 10, 1986 are adopted by reference. The amendments to 29 CFR 1910.1047, "Ethylene Oxide," as published in the Federal Register, Volume 53, Number 66, April 6, 1988, are adopted by reference [is amended].

(70) [(72)] [(52)] 29 CFR 1910.1048, "Formaldehyde," as published in the Federal Register, Volume Number 52, December 4, 1987, is adopted by reference.

(71) [(73)] [(53)] 29 CFR 1910.1200, Hazard Communication, shall be amended as follows: Amendments as published in the Federal Register, Volume 52, Number 163, August 24, 1987 are adopted by reference.

(72) [(74)] [(54)] Revision of 29 CFR 1910.1200(i)(3), Hazard Communication, and an amendment removing the last paragraph in 1910.1200 Appendix D, as published in the Federal Register, Volume 51, Number 189.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: June 1, 1988

FILED WITH LRC: June 9, 1988 at 1 p.m.

COMPILER'S NOTE: The following regulation was amended by the promulgating administrative body and the Committee at the August 8, 1988 meeting of the Interim Joint Committee on Education, and became effective on August 8, 1988.

CABINET FOR HUMAN RESOURCES
Department for Social Services
Division of Children's Residential Services
(As Amended)

905 KAR 7:230. Education of youth in the children's residential services programs.

RELATES TO: KRS Chapters 605, 610, 630, 635, 640, 645

PURSUANT TO: KRS 194.050, 605.110

EFFECTIVE: August 8, 1988

NECESSITY AND FUNCTION: KRS 605.110 requires that children maintained in any facility or program operated by the Cabinet for Human Resources shall so far as possible maintain a common school education. This regulation sets forth procedures for complying with this statute in Department for Social Services (DSS), children's residential services, residential, clinical, and day treatment[, and group home] programs. All references to DSS programs shall include both state operated and state contracted programs.

Section 1. Department for Social Services. (1) DSS shall work in cooperation with the Kentucky Department of Education (KDE) to provide educational services for all youth placed in residential, clinical, and day treatment programs. [The manager of DSS Education Branch shall have the option of belonging to the State Teachers Retirement System or the Kentucky Retirement System.]

(2) DSS shall cooperatively plan programs and state agency children's fund budgets with the Superintendent of Public Instruction and the local education agency (LEA) providing DSS education programs.

Section 2. Instructional Services. Recognizing the diversity of ages and abilities of youth in CRS programs and mainly the recognition of the large number of youth with serious academic deficits a variety of instructional delivery systems shall be used for each youth through the individual education plan (IEP). The IEP components, for youth not identified as handicapped, will include the youth's strengths and weaknesses, specific educational goals and objectives, specific criteria for the measurement of goals and objectives, listing of persons responsible for carrying out the objectives and suggested teaching materials and/or strategies for use in carrying out the objectives. Section 5 of 707 KAR 1:051, Individual Education Program (IEP), shall apply to identified handicapped youth. The IEP shall be planned and coordinated with the individual treatment plan (ITP) developed for all youth in CRS programs.

(1) Evaluation of youth. All DSS youth will be administered assessments, which include medical, visual, auditory, intellectual, academic, vocational (for youth fourteen (14) and older) and social. Assessments and reports will be uniform for all DSS youth. Any other assessments necessary will be designated by the Exceptional

Children's Admissions and Release Committees as described in 707 KAR 1:051, Section 3. All procedures for child evaluation described in 707 KAR 1:051, Section 4 shall be followed.

(2) Instructional options. The following opportunities shall be made available to CRS youth by the beginning of the 1989-90 school year.

(a) Fifty (50) percent of the academic instructional units provided for each program shall be secondary education minimum foundation units.

(b) The other fifty (50) percent of academic instructional units provided shall be special education units.

(c) Chapter I funds shall be utilized for supplementary instruction.

(3) A curriculum shall be developed and coordinated by the DSS by the beginning of the 1989-90 school year and revised annually as needed. This curriculum shall recognize the wide range of academic abilities of DSS youth and be in keeping with 704 KAR 3:304 and 704 KAR 10:050.

(a) A minimum of two (2) hours a day of direct reading instruction shall be planned for youth with reading levels below grade six (6). This instruction shall include listening skills.

(b) An independent living course shall be developed which will include but not be limited to economics, every day living skills, law related education, family life education, drug and alcohol education, prevention of family violence, parenting and social skills. This course will be developed in modules to accommodate DSS open entry/open exit youth attendance.

(c) Provision shall be made for a program of instruction in preparation for the General Education Development (GED) test which leads to the attainment of the high school equivalency certificate as described in 709 KAR 1:030. An agreement shall be developed between the Superintendent of Public Instruction and the Department for Social Services regarding the GED testing of youth age sixteen (16) and above when appropriate to the youth. Youthful offenders shall be provided the GED exam at the maximum security DSS facility.

(d) Learning strategies to help youth improve their approach to new instructional materials shall be included.

(e) Vocational curriculum shall emphasize incremental job ready skills as well as total vocational certification (e.g., completion of skills for front end alignment of cars, tire changing, etc. for youth who may not complete a total auto mechanics course).

(f) A tutoring approach shall be utilized using state adopted textbooks for the variety of grade 9-12 courses needed for Carnegie Unit Credits. The tutoring shall be provided by a secondary certified teacher, certified in areas of English, math, science, or social studies or who has satisfactorily taught DSS youth for two (2) years prior to school year 1989-90.

(g) Computer literacy shall be included.

(h) Correspondence courses will be utilized for youth completing the GED or graduation requirements.

(i) Drivers training (preparation for written driving test).

(4) The LEA shall develop an annual education plan for each DSS program it serves. This plan shall be submitted to the Superintendent of Public Instruction, the DSS facility program

director and the DSS education branch. These plans shall include but not be limited to annual education goals and objectives, for the coming school year and evaluation of the effectiveness of the goals and objectives for the previous calendar year. These plans shall include all components of the education programming including staffing, curriculum, vocational education, accomplishments of youth, etc.

(5) A uniform system for awarding credits shall be developed for the residential and clinical branches. Day treatment programs shall have credit application compatible with the local education agency providing their teachers.

Section 3. Programs for Exceptional Children in Department for Social Services State Agency Facilities. Programs for exceptional youth in DSS clinical facilities shall follow 707 KAR 1:051 and 707 KAR 1:060 as well as 707 KAR 1:054, programs for the emotionally disturbed. Programs for exceptional children operated in DSS residential and day treatment programs shall follow regulations set forth in 707 KAR 1:051 and 707 KAR 1:060. A new unit titled special education, state agency exceptional children shall be developed for residential and day treatment programs and shall serve, in a noncategorical manner, youth with handicapping conditions of learning disabilities, mentally handicapped and/or emotionally disturbed.

(1) General provisions. Follow procedures described in 707 KAR 1:054, 707 KAR 1:056 and 707 KAR 1:057, Section 1.

(2) Eligibility criteria. Follow procedures described in 707 KAR 1:054, 707 KAR 1:056 and 707 KAR 1:057, Section 2.

(3) Admissions and release committee. Follow procedures described in 707 KAR 1:054, 707 KAR 1:056 and 707 KAR 1:057, Section 3.

(4) Child evaluation. Shall be in accordance with evaluations stated in Kentucky administrative regulations for exceptional children.

(5) Individual education program (IEP). Follow procedures described in 707 KAR 1:054, 707 KAR 1:056 and 707 KAR 1:057, Section 5.

(6) Placement. Placement in the state agency educational handicapped program will be determined by the admissions and release committee pursuant to procedures as described in 707 KAR 1:051, Section 6.

(7) Classroom plan. This classroom will operate as a noncategorical unit. Both identified and nonidentified exceptional youth shall be served together to promote least restrictive environment. The membership may be ten (10) pupils per teacher without a classroom teacher aide or fifteen (15) pupils per classroom with a teacher aide.

(8) Membership and age range. The age range will be that of the facility not to exceed four (4) years in any one (1) unit.

(9) Teachers for these units in residential and day treatment programs will be certified in learning disabilities, emotionally disturbed, educable mentally handicapped or learning and behavior disorders. Teachers in clinical programs shall be certified as teachers of emotionally disturbed children.

(10) After appropriate procedures are followed for the identification, evaluation, and placement of a referred DSS youth, if the committee determines that the youth needs special educational services other than provided

at the DSS facility the LEA providing the DSS education program will be asked to provide the needed service.

Section 4. Staffing by School Year 1989-90. (1) The academic teacher pupil ratio for residential and day treatment programs shall be ten (10) pupils per teacher without a classroom teacher aide and fifteen (15) pupils per teacher with a classroom aide. Each program shall have one (1) classroom aide regardless of ratio. All aides shall have clerical and instructional support duties. In clinical programs the ratio shall be eight (8) pupils per teacher with a classroom aide. This is in addition to Chapter I and vocational teachers.

(2) The number of summer school or extended employment teachers in day treatment programs shall be based on the previous summer's average daily attendance (ADA) except as agreed upon by the Superintendent of Public Instruction and the Department for Social Services. In the case of new programs without a previous summer ADA staffing shall be agreed upon by the Superintendent of Public Instruction and the Department for Social Services. Clinical and residential programs shall be staffed with the same ratio year around.

(3) By the beginning of the 1989-90 school year, the academic instructional portion of residential and day treatment programs shall be staffed with fifty (50) percent special education certified teachers or a one (1) year endorsement for teaching special education if a fully certified special education teacher is unavailable and the other fifty (50) percent of teachers shall be secondary certified in the areas of English, math, science, and/or social studies or accepted by DSS as meeting the needs of youth in the program. Priority will be given to teachers who have expertise in reading instruction.

(4) Administrative personnel shall be provided as follows: clinical, residential and/or day treatment programs shall have a head teacher included in the teacher pupil ratio who teaches 900 minutes per week and performs administrative duties for 900 minutes per week or a head teacher who teaches a full day and receives extra duty pay for administrative duties. Head teacher duties shall include administering educational assessments, IEP development, coordinate exceptional children's due process procedures, provide support to teachers in behavior management, provide the on-site education decisions as designated by the local school district, attend treatment team meetings to facilitate a coordinated effort between education staff and DSS program staff and other duties as assigned by their employer, the LEA.

(5) One (1) school psychologist shall be provided for the youthful offender programs.

Section 5. Hiring, Retention and Evaluation of Education Personnel by School Year 1988-89. (1) When filling a teacher vacancy in a DSS program the local superintendent will provide the DSS program director an opportunity to interview the candidate. The DSS program director will interview the potential teacher candidate regarding youth treatment issues. The LEA superintendent will consider the program director's input about the potential candidate's success in the treatment program prior to hiring that teacher for the DSS facility. Priority will

be given to teachers who want 230 day employment.

(2) If a teacher's job performance is counterproductive to the treatment of youth, the DSS program director and the DSS education branch manager shall provide specific objective reasons why the teacher is unsuitable to the promotion of DSS goals for youth. A copy of this report shall be given to the LEA superintendent and the State Superintendent of Public Instruction. The LEA Superintendent shall give serious consideration to this information in assigning teachers to the DSS program. In addition teachers will be evaluated by local education agency administrative personnel as established in 704 KAR 3:345.

Section 6. Calendar. (1) By school year 1989-90 the regular calendar year shall be followed as established in 702 KAR 7:020. In addition to the number of days provided in the local education agency calendar all DSS programs shall be provided with additional instructional days which when added to the regular calendar year will total 230 days, except as provided in KRS 158.135.

(2) By school year 1989-90 in addition to attending local education agency in-service programs appropriate to teaching duties in DSS facilities, the third week in September will be set aside for state, regional and/or individual program in-service designed particularly for teachers assigned to DSS programs. These in-service programs will be planned jointly between the DSS education branch personnel, representative teachers and local education agency personnel.

(3) Teachers are required to participate in DSS in-service training on the following topics:

- (a) DSS policies and procedures;
- (b) Safe physical management or other topics regarding health and safety of DSS youth; and
- (c) Other pertinent topics as negotiated between DSS and local school district personnel.

Section 7. Textbooks. State adopted textbooks shall be provided for all state agency youth in grades 1-8, by the local education agency providing educational services. State agency funds shall be utilized to purchase state adopted textbooks for youth in grades 9-12.

Section 8. Transitions. (1) DSS shall be recognized as a receiver or sender of individual youth school records prior to and after placement in DSS programs.

(2) The worker assigned to a committed youth shall, with parental permission, obtain a copy of the school records of a committed youth prior to the youth's placement in a DSS residential, clinical, group home or day treatment program. School records will include class schedule and grades at withdrawal, credits earned, attendance data and health records. The DSS social worker will immediately forward the records to the facility where the youth is placed. Parents will be given notice, in writing, of their right to refuse access to their child's school records.

(3) DSS facility teachers shall forward credit and other school information to the local education agency where youth will attend upon release from the facility. This shall be at time of release or no more than one (1) week later.

Section 9. Policy Application. Teachers and or

teachers aides shall follow all DSS policies for the care and treatment of youth. In the case of conflicting policies (e.g. the use of corporal punishment), the DSS policies shall be followed.

Section 10. Eligibility. If a specific activity (e.g. football, debate, etc.) is not provided to youth in a DSS facility, the youth will not lose eligibility to participate based on the requirements in 702 KAR 7:070. This will be figured on a month per month basis (e.g., nine (9) months in a DSS facility without a formal football program leaves nine (9) months of eligibility in local education agency). This shall not exceed one (1) additional year eligibility. All other eligibility criteria however, shall be met by the youth.

Section 11. Facilities. The DSS shall ensure that clean, safe classrooms which are sufficient in size to carry out the individualized curriculum are provided. If any of the day treatment students are identified as handicapped set forth in KRS 157.200(1) the district shall apply regulation 702 KAR 5:100 for travel reimbursement.

Section 12. Instructional Equipment and/or Supplies. An equitable system of distributing instructional equipment and/or supply money shall be established by the Superintendent of Public Instruction. This system shall consider new program start-up costs and the need for individualized instructional materials. The system shall be consistently applied to all DSS programs covered under KRS 158.135.

Section 13. State Agency Funds. State agency funds as described in KRS 158.135 shall be allocated for use by all local education agencies in an equitable manner using teacher pupil ratio and other requirements outlined in this regulation, 905 KAR 7:110. Priority should first be given to staffing, adequate instructional materials and in-service training. LEA's should receive the percentage of indirect costs established for them by the Kentucky Department of Education. After those priorities are met, funds may be considered for clerical support, etc. The Kentucky Department of Education shall request the budget state agency children's funds sufficient to meet the needs.

Section 14. Youth Funds. Funds generated by youth in vocational and/or other programs shall be first utilized for expenditures to enhance the instructional program and second shall be placed in the youth activity fund of the DSS program and be subject to use as designated in the activity fund charter.

Section 15. Annual Education Plans. Meetings shall be conducted annually in each LEA providing DSS services and shall include representatives from the Kentucky Department of Education, the DSS education branch, the LEA and the DSS program director. These meetings shall be designed to review the program's educational annual plan and to resolve any difficulties that pertain to treatment of youth, policy conflicts, exchange of information, personnel performance, student performance and budget negotiations. The meetings shall be recorded and minutes distributed to those participating in the meetings.

[Section 16. Services for Group Home Youth. Home instruction as outlined in 707 KAR 1:051, Section 1(1)(b), shall be provided for group home youth who have been expelled or suspended from school immediately after five (5) school days have passed or if requested by the DSS program director as the best alternative education plan for a youth as designated by the treatment team. The home instruction will be provided for those youth who will not be able to attend the regular school setting for a minimum of twenty (20) school days. If fewer than twenty (20) days instruction is needed the LEA teachers shall provide the DSS program director with school assignments which can be carried out by group home staff.]

Section 16. [17.] Accreditation. By school year 1989-90, an accreditation supplement shall be developed with standards and indicators of educational program expectancies for LEA's providing education to state agency youth. This supplement will be used in DSS programs at the same time the LEA is having other programs accredited.

LARRY MICHALCZYK, Acting Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: June 6, 1988

FILED WITH LRC: June 7, 1988 at 11 a.m.

AMENDED AFTER HEARING

TRANSPORTATION CABINET
Department of Vehicle Regulation
(Amended After Hearing)

601 KAR 1:005. Safety regulations.RELATES TO: KRS Chapter 138, 281STATUTORY AUTHORITY: KRS 138.665, 281.600, 281.726, 281.730, 281.750

NECESSITY AND FUNCTION: This regulation sets out safety procedures to be followed by motor carriers operating in the Commonwealth of Kentucky. It further sets forth the requirement for a unique identifier on the sides of each vehicle subject to the taxes of KRS 138.660.

Section 1. (1) Motor Carrier Safety Regulations adopted and issued by the United States Department of Transportation relating to the following subjects: Title 49, Code of Federal Regulations, Part 391, dated October 1, 1983 as amended through June 12, 1986, Qualifications of Drivers; Title 49, Code of Federal Regulations, Part 392, dated October 1, 1983 as amended through August 19, 1987, Driving of Motor Vehicles; Title 49 Code of Federal Regulations, Part 393, dated October 1, 1983 as amended through February 26, 1987, Parts and Accessories Necessary for Safe Operation; Title 49, Code of Federal Regulations, Part 394, dated October 1, 1983 as amended through March 10, 1987, Notification, Recording and Reporting of Accidents; Title 49, Code of Federal Regulations, Part 395, dated October 1, 1983 as amended through November 23, 1984, Hours of Service of Drivers; Title 49, Code of Federal Regulations, Part 396, dated October 1, 1983 as amended through September 28, 1984, Inspection, Repair and Maintenance; Title 49, Code of Federal Regulations, Part 397, dated October 1, 1983 as amended through September 28, 1984, Transportation of Hazardous Materials; Driving and Parking Rules; are hereby adopted and incorporated herein by reference, and all commercial motor vehicles operated for-hire or in private carriage, intrastate and interstate, shall comply therewith. These regulations are not applicable to motor vehicles primarily designed for carrying passengers and having provisions for not more than eight (8) passengers and the driver, motorcycles, side car attachments and motor vehicles owned by the federal government, a state, a county, a city, or a board of education.

(2) Subject to the following exemptions and exceptions:

(a) City buses, suburban buses, taxicabs, and motor vehicles (except those motor vehicles transporting hazardous materials, Part 397) operated exclusively in a residential or business district of a city are not required to comply with the aforesaid safety regulations.

(b) Private carriers engaged exclusively in farm-to-market agricultural operation when operated during daylight hours are not required to comply with the above safety regulations relative to light fixture requirements. They are, however, required to have two (2) brake lights and mechanical turn signals as set forth in 49 CFR 393. The term "farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private carrier

is using the vehicle to transport agricultural products from his farm or to transport farm machinery, farm supplies, or both to his farm. However, the term "farm-to-market agricultural transportation" does not include the operation of a motor vehicle transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 49 CFR 177. The term "daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.

(c) Motor vehicles which are used exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility which is located at a point not more than fifty (50) air miles from the harvest area are not required to comply with the above safety requirements relative to light fixtures when operated during daylight hours. They are, however, required to have two (2) brake lights and mechanical turn signals as set forth in 49 CFR 393.

Section 2. Title 49, Code of Federal Regulations, Part 390 dated October 1, 1983 as amended through April 14, 1986, General, is hereby adopted for the purposes of application to 49 Code Federal Regulations Section 391-397.

Section 3. A summary of the content of each federal regulation herein incorporated by reference follows:

(1) Part 390 - applicable definitions and general policy.

(2) Part 391 - qualification and disqualification criteria for drivers; background and character of drivers; required examination and tests of drivers; required physical qualification and medical examinations of drivers; driver qualification recordkeeping; and limited driver exemptions.

(3) Part 392 - vehicle operation standards including the use of alcohol and drugs by the driver; the safe operation of the vehicle; the use of lighted lamps and reflectors on the vehicle; the duties of the driver in case of an accident; fueling precautions; and prohibited practices.

(4) Part 393 - parts and accessories necessary for the safe operation of a motor vehicle including lighting devices, brakes, window construction, fuel systems, coupling devices, emergency equipment, miscellaneous parts and accessories; and protection against shifting or falling cargo.

(5) Part 394 - establishes the duties of motor carriers to make reports and keep records of accidents which occur during their operations.

(6) Part 395 - outline of the allowed hours of service of drivers.

(7) Part 396 - specifics of the inspection of a motor vehicle by the driver and federally authorized personnel and the records required to be maintained on vehicle maintenance and inspection.

(8) Part 397 - standards for the transportation of hazardous materials including driving, placarding and parking procedures.

Section 4. Buses. Buses must be maintained in a clean and sanitary condition so that the health of passengers will not be impaired. Seats

must be comfortable in order that passengers will not be subjected to unreasonable discomfort which might be detrimental to their health and welfare. Employees in charge of buses shall be courteous and helpful to passengers, properly caring for baggage so that it will not be damaged, and should be acquainted with the routes traveled and schedules maintained, so that the passengers will not be subjected to unnecessary delays. All operators must take into consideration the health and welfare of their passengers and control their operations in the public interest. Express and freight, mail bags, newspapers and baggage must be so placed as not to interfere with the driver or with the safety and comfort of passengers. Such items must be protected from the weather but shall not be carried in the aisles or in such position as to block exits or doorways on the bus. No aisle seat shall be permitted in any bus and the driver's seat must be separated from every other seat.

Section 5. Overcrowding of Passenger Vehicles. No bus operated by an authorized carrier, except city or suburban buses, shall transport passengers in excess of the load limit hereinafter set forth. The load limit shall be the rated seating capacity for which the vehicle is licensed plus twenty-five (25) percent of said rated seating capacity. This load limit is subject to the provision that in no event shall any authorized carrier, including city or suburban bus operators, permit standees to occupy that space forward of a plane drawn through the rear of the driver's seat perpendicular to the longitudinal axis of the bus. This forward space shall be plainly marked with a line, or otherwise equipped with identification, so as to indicate to standees that they are prohibited from occupying it. No passenger shall be permitted to occupy the rear door-well of any bus vehicle that is equipped with such a rear door-well. Taxicabs shall not carry a number of passengers greater than the rated seating capacity of the vehicle, and in no event more than fifteen (15) passengers exclusive of the driver.

Section 6. Identification. All [authorized] carriers must at all times display on each side of every vehicle employed by them in their operations the name of the person conducting the said operation as it appears upon the certificate or permit authorizing the operation. An assumed or trade name may be used providing the appropriate statutes and regulations are complied with and the assumed or trade name also appears upon the certificate or permit. The letters shall be of sufficient size so as to be readily legible. The vehicle identification [company number of the vehicle must be prominently displayed on each side of the vehicle and the cab] card issued for the vehicle must at all times be prominently displayed on the inside thereof. The name of the driver operating a vehicle engaged in transportation of persons for hire shall be prominently displayed in the vehicle.

Section 7. Tax Identification Number. (1) Every commercial motor vehicle having a declared gross weight above 26,000 pounds with three (3) or more axles, which is subject to those taxes in KRS 138.660, shall when operating upon the

public highways of the Commonwealth of Kentucky, display on the vehicle the control number of the motor carrier under whose authority the vehicle is being operated and a unique vehicle identification number for the vehicle. The motor carrier control number required by this regulation shall only be accepted by the Department of Vehicle Regulation for the purpose of exterior display on the vehicle, and shall not be accepted for any other purpose. These numbers may be permanently affixed to the vehicle or displayed by use of a removable device. The term commercial motor vehicle as used in this section of the administrative regulation shall not include farm vehicles properly registered under KRS 186.050(4).

(2) The control number of a motor carrier for the purposes of this regulation shall mean either an Interstate Commerce Commission motor carrier (ICC MC) number as required by 49 CFR 1058.2; a U.S. Department of Transportation (DOT) number as required by 49 CFR 290.21; or a Kentucky highway motor fuel use license number (KYU) as required by KRS 138.665. All ICC MC or DOT numbers shall be validated with the Department of Vehicle Regulation prior to their being accepted as a control number. This number shall be placed on both sides of the main body of the cab directly under the name or name and address of the motor carrier. The numbers shall be immediately preceded by an alpha prefix indicating that the number is an ICC, MC, DOT, or KYU number. The figures shall be in sharp color contrast to the background of the vehicle and of such size, shape and color as to be readily legible during daylight hours from a distance of fifty (50) feet when the vehicle is not in motion. These numbers shall be placed on the vehicle no higher than the top of the side window, and no lower than the bottom of the cab door.

(3) The unique vehicle identification number, for the purpose of this regulation, shall mean a company unit number assigned to the vehicle. This number shall be displayed on the front of the vehicle readily visible in daylight hours from a distance of 100 feet when the vehicle is not in motion. The number shall be in sharp color contrast to the background of the vehicle, and be placed no higher than the windshield and no lower than the front bumper.

(4) If a KYU number and the unique vehicle identification number was permanently affixed on the exterior of both cab doors or affixed to a panel directly adjacent to the cab doors of the vehicle prior to August 1, 1988, it shall be considered in compliance with this section of the administrative regulation provided the number complies with all visibility, height, and prefix requirements. [Effective July 1, 1988 every motor vehicle combination unit having a total of three (3) or more axles and a declared gross weight above 26,000 pounds operating upon the public highways of the Commonwealth shall at all times display on the vehicle the Kentucky Highway Motor Fuel Use License number (KYU number) and the unique identification number (company unit number) assigned by the motor carrier under whose authority the vehicle is being operated. The numbers shall be displayed on the exterior of both cab doors of the vehicle in figures with sharp color contrast to the background, and shall be of such size, shape and color as to be readily legible, during daylight

hours, from a distance of fifty (50) feet while the vehicle is not in motion. The numbers may be painted permanently on the vehicle or displayed by use of a removable device so prepared as otherwise to meet the identification and legibility requirements.]

Section 8. [7.] Out of Service Sticker. In the event a commercial vehicle is determined to be operating either improperly registered or without registration or in violation of any safety regulation or requirement, officers of the Division of Motor Vehicle Enforcement are authorized to affix thereto a notice indicating the nature of the violation, requiring its correction before the motor vehicle is further operated. Refusal of the vehicle operator to grant permission for an officer of the Division of Motor Vehicle Enforcement to conduct a safety inspection of either the vehicle or its operator shall be cause for the officer to place the vehicle out of service until such permission is granted. Operation of such a vehicle in violation of the notice affixed thereto shall constitute a separate violation of these regulations.

Section 2. [8.] Copies of all incorporated material may be viewed in the Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Vehicle Enforcement, State Office Building, Frankfort, Kentucky 40601, or obtained by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

MILO D. BRYANT, Secretary
APPROVED BY AGENCY: August 4, 1988
FILED WITH LRC: August 5, 1988 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Amended After Hearing)

902 KAR 17:010. State health plan.

RELATES TO: KRS 216B.040(2)(a) [Chapters 194, 216B, Executive Order 86-366]

STATUTORY AUTHORITY: KRS 194.050, 1986 Acts Chapter 474 [Executive Order 86-366]

NECESSITY AND FUNCTION: Pursuant to 1986 Acts Chapter 474 the Statewide Health Coordinating Council is created to prepare and review, as necessary, a state health plan which establishes

a health planning policy for the Commonwealth and describes the health services needed to provide for the well being of persons residing in the state. The Cabinet for Human Resources prepares a Preliminary State Health Plan for the Statewide Health Coordinating Council in preparing the state health plan. The plan becomes final upon approval of the governor. [The Cabinet for Human Resources is authorized by KRS 194.050 to adopt such rules and regulations as are necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The cabinet and the Statewide Health Coordinating Council are responsible for development of the state health plan.] The Commission for Health Economics Control in Kentucky utilizes the state health plan in review of applications for certificates of need to establish and modify health services and health facilities in the Commonwealth. The function of this regulation is to assist in the inventory of existing health resources and to set planning goals and guidelines.

Section 1. The Kentucky State Health Plan 1988-1990 [1986-1988], was adopted by the Statewide Health Coordinating Council on June 7, 1988, amended after a public hearing on August 3, 1988 [November 8, 1985, amended on January 22, 1986, January 9, 1987, and December 2, 1987,] and approved by Governor Wallace G. Wilkinson as the document that sets out planning policies and guidelines for use by the Commission for Health Economics Control in Kentucky. A copy of the Kentucky State Health Plan 1988-1990 [1986-1988 as amended on January 22, 1986, January 9, 1987, and December 2, 1987], is on file in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621 and is open and available for public inspection during normal business hours.

Section 2. The Review Criteria and Standards Section, pages 175 through 199 [198], of the Kentucky State Health Plan 1988-1990 [1986-1988] is hereby adopted by reference as regulations of the Cabinet for Human Resources as if fully set out herein.

C. HERNANDEZ, M.D., M.P.H., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: August 5, 1988
FILED WITH LRC: August 10, 1988 at 10 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, AUGUST 15, 1988

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 2:030. Compensation plan.

RELATES TO: KRS 18A.030, 18A.110, 18A.165

STATUTORY AUTHORITY: 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. Reentrance to State Service. (1)

Appointing authorities, with the approval of the commissioner, may place reemployed, 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 layoff and who are reinstated or reemployed in the same or a similar job classification within five (5) years from the date of layoff may receive the salary they were receiving at the time of layoff, even if such salary is above the maximum of the pay grade.

(3) Former employees reemployed, reinstated or probationarily 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 reemployment, 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 reevaluation 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.

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 reemployment, 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. The participation of an appointing authority in the program for educational achievement awards is contingent upon adequate funding, to be determined by the appointing authority through the budgetary process, for all eligibles within the agency. Upon request of the appointing authority and subject to the approval of the commissioner, a permanent, full-time employee [with status] may receive one (1) [a] lump sum educational achievement award per fiscal year [for either]:

(1) For satisfactorily completing outside of work hours 260 classroom hours (or the equivalent as determined by the commissioner) of job related instruction in approved courses. Approved courses, must have been completed after

a merit employee initially gained permanent full-time status in state government or after a full-time nonmerit employee initially served six (6) months in the unclassified service. Employees shall not receive credit for courses taken while on educational leave or for courses which previously counted toward an educational achievement award. 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 outside of work hours an approved diploma, high school equivalency certificate, or a passing score on the G.E.D. test. The approved diploma, certificate, or passing score must have been obtained on or after January 1, 1984. Employees receiving an approved high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test shall receive a lump sum educational achievement award of ten (10) percent of their annual base salary. A high school level educational achievement award shall not be granted to employees who present new credentials but have previously:

(a) Received a high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test; or

(b) Completed college course work on the undergraduate or graduate level. [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.]

(3) To apply for an educational achievement award an employee shall submit the educational achievement request form DPT-10 and supporting documentation to the appointing authority or his designee. In compliance with the standards set forth in Section 6 of this regulation, the appointing authority may recommend the application for approval and may forward the documentation to the Commissioner of the Department of Personnel for final approval. A [The] lump sum educational achievement award [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 Reevaluation and Grade Adjustment. (1) Class reevaluation 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 reevaluation 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: August 15, 1988

FILED WITH LRC: August 15, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 28, 1988, at 10 a.m. in Room 381, Capitol Annex. Individuals interested in attending this hearing shall notify this agency

in writing by September 23, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Thomas C. Greenwell, Commissioner, Department of Personnel, Capitol Annex, Room 373, Frankfort, Kentucky 40601, (502) 564-4460.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Anne Keating

(1) Type and number of entities affected: All appointing authorities in the executive branch. All permanent full-time employees in the executive branch.

(a) Direct and indirect costs or savings to those affected: Each full-time permanent employee will be eligible to earn one educational achievement increase per fiscal year for course work completed after 6 months of service. Courses must be completed off work hours and not while on educational leave. These changes will make the benefit accessible to all employees on the same terms, rather than give an advantage to employees who can go on work hours, or take educational leave. No one who has already advanced to a higher level of education will be able to duplicate credentials for an EAI. While reducing some areas of eligibility, the regulation insures that agencies will offer the benefit to all eligible employees so long as funding exists. Employees taking many courses will need to defer EAI to a later year. Appointing authority will be able to defer some payments. The net result may be marginal savings to agencies.

1. First year: Marginal, if any savings.

2. Continuing costs or savings: No significant change from first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The same paperwork will be required.

(2) Effects on the promulgating administrative body: The regulatory changes will insure uniformity in handling EAI's, but Department of Personnel does not anticipate any significant costs or savings in processing EAI's.

(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: The same paperwork will be required.

(3) Assessment of anticipated effect on state and local revenues: Appointing authority will have the ability to estimate, more accurately, the potential number of EAI's that eligible employees may earn per fiscal year and request funding accordingly.

(4) Assessment of alternative methods; reasons

why alternatives were rejected: These changes have developed in response to perceived potential inequities in the operation of the program; earlier versions have inadvertently allowed individuals to request EAI's for courses taken over many years, possibly even before employment with state government, and to duplicate credentials.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None exists to our knowledge.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. This benefit is only for permanent full-time employees.

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 2:090. Service regulations.

RELATES TO: KRS 18A.030, 18A.110

STATUTORY AUTHORITY: 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 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 6. [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 7. [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 8. [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 request, 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 request 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: August 15, 1988

FILED WITH LRC: August 15, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 28, 1988, at 10 a.m. in Room 381, Capitol Annex. Individuals interested in attending this hearing shall notify this agency in writing by September 23, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Thomas C. Greenwell, Commissioner, Department of Personnel, Capitol Annex, Room 373, Frankfort, Kentucky 40601, (502) 564-4460.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Anne Keating

(1) Type and number of entities affected: All appointing authorities in the executive branch. All applicants and employees over age 70 in the executive branch.

(a) Direct and indirect costs or savings to those affected: Federal law prohibits discrimination based on age against anyone over 40 years of age. It is no longer permissible to exclude applicants over age 70, nor to impose mandatory retirement.

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: Paperwork will decrease as waivers will no longer be required for employees at age 70 to remain on board.

(2) Effects on the promulgating administrative body: Department of Personnel will no longer process waivers.

(a) Direct and indirect costs or savings: Minimal savings or none as Department of Personnel receives few requests for waivers.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Paperwork and reporting to Department of Personnel in this area will cease.

(3) Assessment of anticipated effect on state and local revenues: Employees who stay beyond age 70 will remain on the payroll although very few do so.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This is in response to an amendment to the Federal Age Discrimination law which went into effect 1/1/87.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 18A.140 continues to reference age 70 as a cut off.

(a) Necessity of proposed regulation if in conflict: Repeal of this section of the regulation does not create a 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. Only applies to applicants and employees over age 70.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Age Discrimination in Employment Act of 1967, as amended in 1986 and effective January 1, 1987, bans mandatory retirement in most cases and prohibits discrimination against employees or applicants on account of age when over 40 years of age.

2. State compliance standards. 101 KAR 2:090 §6 and 7 have made age 70 the maximum hiring age and normal retirement age except on waiver.

3. Minimum or uniform standards contained in the federal mandate. See above.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Department of Personnel proposes to eliminate the section of the regulation in violation of the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

DEPARTMENT OF PERSONNEL (Proposed Amendment)

101 KAR 2:100. Leave regulations.

RELATES TO: KRS 18A.030, 18A.110

STATUTORY AUTHORITY: KRS Chapter 18A, 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) To be eligible for state contributions for life insurance and health benefits, an employee must have worked more than half of the work days in a month.

(10) [(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.

(11) [(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.

(12) [(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.

(13) [(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) To be eligible for state contributions for life insurance and health benefits, an employee must have worked more than half of the work days in a month.

(9) [(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.

(10) [(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.

(11) [(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 reemployed shall have unused sick leave balances revived upon appointment and placed to their credit.

(12) [(11)] In cases of absence due to illness or injury for which Workers' Compensation benefits are received, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, Workers' Compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. Upon return to work an employee's sick leave shall be reinstated to the extent that Workers' Compensation Benefits were assigned. [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.]

(13) [(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.

(14) [(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, or whose health

prevents performance of duties and responsibilities, 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 subpoenas 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 manageable 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 "nonexempt" 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.

(5) To be eligible for state contributions for life insurance and health benefits, an employee must have worked more than half of the work days in a month.

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: August 15, 1988

FILED WITH LRC: August 15, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 28, 1988, at 10 a.m. in Room 381, Capitol Annex. Individuals interested in attending this hearing shall notify this agency in writing by September 23, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Thomas C. Greenwell, Commissioner, Department of Personnel, Capitol Annex, Room 373, Frankfort, Kentucky 40601, (502) 564-4460.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Anne Keating

(1) Type and number of entities affected: Section 2(11): Employees covered by the Department of Personnel Workers' Compensation Program and subject to KRS 18A, and their appointing authorities except for Transportation Cabinet. Section 2(13)(b): Employees eligible for sick leave under KRS 18A. Section 1(9): Employees covered by KRS 18A who are eligible for health and life insurance.

(a) Direct and indirect costs or savings to those affected: Section 2(11): None. This regulation clarifies the regulation section that is already in effect. Section 2(13)(b): None. This amendment enables the employer to place on sick leave an employee unable to function on the job in those rare circumstances where the employee does not recognize his incapacity. Section 1(9): Employees who go on leave without pay will be required to pay for health and life insurance for each month in which they have not worked over half of the work days in a month. Paid leave (i.e., annual leave, sick leave and special leave) constitutes days worked; benefits may be continued at the group rate. This regulation will ensure that everyone who

receives benefits earns them in the same manner. Previously, employees who were on leave without pay would come to work for one day per month, or take one paid leave day to get benefits paid for. Others would be paid benefits without showing up, in months where paid holidays occurred, until absent without pay over 30 working days. The costs to the employee will be the monthly group rate for health and life insurance. Every month approximately 100 employees are on leave without pay over half of the work days. On November 1, 1988 health insurance will cost \$89.07 per month. Life insurance costs \$1.05 per month per individual but is currently out for bids.

1. First year: Section 2(11) and Section 2(13)(b) None, Section 1(9): Starting November 1, 1988: Savings to state: $100 \times 12 \times \$89 = \$106,884 + 100 \times 12 \times \$1.05 = \$1260$. Cost to employee: $\$89/\text{month} + \$1.05/\text{month}$.

2. Continuing costs or savings: Section 2(11) and Section 2(13)(b) None; Section 1(9) Same, subject to increases in group rates.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Section 2(11) and Section 2(13)(b): None; Section 1(9) None.

(b) Reporting and paperwork requirements: Section 2(11) and Section 2(13)(b): No change, Section 1(9): Employees will need to make arrangements to pay for monthly premiums at the group rate. This can be done with minimal paperwork.

(2) Effects on the promulgating administrative body: Section 2(11) and Section 2(13)(b): None, Section 1(9): The Commonwealth will provide health and life insurance benefits to employees under a uniform standard. Formerly, it was necessary to work one day per month to be eligible for paid benefits. Now it will be necessary to work over half the work days of the month. This is consistent with the standards in effect to earn annual leave and sick leave.

(a) Direct and indirect costs or savings: Section 2(11) and Section 2(13)(b): None, Section 1(9): The Commonwealth will save $106,884 + 1,260 = \$108,144$.

1. First year:

2. Continuing costs or savings: Same, subject to increase in group rates.

3. Additional factors increasing or decreasing costs: Section 1(9): No increase; instead of processing requests for premiums, Department of Personnel will advise these employees how to proceed.

(b) Reporting and paperwork requirements: Both Sections: None.

(3) Assessment of anticipated effect on state and local revenues: See 2(a) above.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Section 2(11): The old standard was confusing to participants as worded; Section 2(13)(b): employers have had difficulty in a few cases getting employees who cannot function due to illness to take sick leave. Section 1(9): The alternative method has resulted in inequitable treatment; most employees work full time for benefits; others gain them for one day of work per month.

(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? Yes

DEPARTMENT OF PERSONNEL
(Proposed Amendment)

101 KAR 2:110. Employee evaluation plan.

RELATES TO: KRS 18A.030, 18A.110

STATUTORY AUTHORITY: 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, prior to January 1, of the evaluation year; each part-time employee who works over 100 hours each month and who has completed his initial probationary period of service prior to January 1, of the evaluation year; each federally funded, time limited employee who has completed six (6) months service prior to January 1, of the evaluation year; each employee on probation as a result of promotion 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 categories. 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) Midyear 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 midyear evaluation, discuss the employee's performance with him, and initiate corrective measures, as needed.

(3) Year-end [Annual final] evaluation. A year-end [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 midyear 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 rating of performance.

(4) When an employee receives two (2) successive 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. 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: August 15, 1988

FILED WITH LRC: August 15, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 28, 1988, at 10 a.m. in Room 381, Capitol Annex. Individuals interested in attending this hearing shall notify this agency in writing by September 23, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Thomas C. Greenwell, Commissioner, Department of Personnel, Capitol Annex, Room 373, Frankfort, Kentucky 40601, (502) 564-4460.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Anne Keating

(1) Type and number of entities affected: Full-time and part-time classified employees and federally funded time limited employees who are subject to evaluations. Appointing authorities in the executive branch.

(a) Direct and indirect costs or savings to those affected: This regulation clarifies who is subject to evaluation and removes all mention of performance pay. Payment of performance pay was removed by the budget reduction plan. Removal of mention of pay may prevent litigation in the future. We have many Personnel Board appeals pending on the issue of performance pay.

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: No change except for removal of calculations.

(2) Effects on the promulgating administrative body: No change.

(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: No change.

(3) Assessment of anticipated effect on state and local revenues: May prevent additional litigation; minimal.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is to address problems that arose from an alternative method.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 18A.112(9)

(a) Necessity of proposed regulation if in conflict: There is no conflict where the regulation does not address pay.

(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.

DEPARTMENT OF PERSONNEL (Proposed Amendment)

101 KAR 2:120. Incentive programs.

RELATES TO: KRS 18A.110, 18A.202

STATUTORY AUTHORITY: 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. Definitions. (1) Suggestion system coordinator means a designee of the appointing authority who reviews and processes evaluations from the cabinet or agency and brings suggestions approved by the agency to the attention of the suggestion council.

(2) Employee suggestion council means a group comprised of cabinet or agency suggestion system coordinators.

(3) Chairman of the employee suggestion council means a designee of the Commissioner of Personnel who shall provide administrative support to the council.

Section 2. [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 3. [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.]

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

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

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

[(f)] [(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 4. [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 reevaluation 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 interaccount 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 5. [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 6. [5.] Council Review. (1) A suggestion may be reviewed by the council on its own motion, or upon request of the suggester. 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 30th 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: August 15, 1988

FILED WITH LRC: August 15, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 28, 1988, at 10 a.m. in Room 381, Capitol Annex. Individuals interested in attending this hearing shall notify this agency in writing by September 23, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Thomas C. Greenwell, Commissioner, Department of Personnel, Capitol Annex, Room 373, Frankfort, Kentucky 40601, (502) 564-4460.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Anne Keating

(1) Type and number of entities affected: Suggestion council; employees, in the classified service.

(a) Direct and indirect costs or savings to those affected: None. This regulation eliminates a section, (3)(c), which duplicates (3)(b); the regulation also allows the council on its own motion, to address suggestions as needed. This confirms what has been past practice for resolution of questions.

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: No change.

(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: No change.
 - (3) Assessment of anticipated effect on state and local revenues: No change.
 - (4) Assessment of alternative methods; reasons why alternatives were rejected: These changes are to eliminate duplication in the regulation and to confirm procedures developed by necessity.
 - (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? Yes.

**DEPARTMENT OF PERSONNEL
(Proposed Amendment)**

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

RELATES TO: KRS 18A.155

STATUTORY AUTHORITY: 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) To be eligible for state contributions for life insurance and health benefits, an employee must have worked more than half of the work days in a month.

(10) [(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.

(11) [(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.

(12) [(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.

(13) [(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) To be eligible for state contributions for life insurance and health benefits, an employee must have worked more than half of the work days

in a month.

(9) [(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.

(10) [(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.

(11) [(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 reemployed shall have unused sick leave balances revived upon appointment and placed to their credit.

(12) In cases of absence due to illness or injury for which Workers' Compensation benefits are received, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, Workers' Compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. Upon return to work an employee's sick leave shall be reinstated to the extent that Workers' Compensation Benefits were assigned. [(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.]

(13) [(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.

(14) [(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, or whose health prevents performance of duties and responsibilities, 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 subpoenas 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 manageable 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 "nonexempt" 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 accrued 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.

(5) To be eligible for state contributions for life insurance and health benefits, an employee must have worked more than half of the work days in a month.

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: August 15, 1988

FILED WITH LRC: August 15, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 28, 1988, at 10 a.m. in Room 381, Capitol Annex. Individuals interested in attending this hearing shall notify this agency in writing by September 23, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Thomas C. Greenwell, Commissioner, Department of Personnel, Capitol Annex, Room 373, Frankfort, Kentucky 40601, (502) 564-4460.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Anne Keating

(1) Type and number of entities affected: Section 2(11): Employees covered by the Department of Personnel Workers' Compensation Program and subject to KRS Chapter 18A, and their appointing authorities except for Transportation Cabinet. Section 2(13)(b): Employees eligible for sick leave under KRS Chapter 18A. Section 1(9): Employees covered by KRS Chapter 18A who are eligible for health and life insurance.

(a) Direct and indirect costs or savings to those affected: Section 2(11): None. This regulation clarifies the regulation section that is already in effect. Section 2(13)(b): None. This amendment enables the employer to place on sick leave an employee unable to function on the job in those rare circumstances where the employee does not recognize his incapacity. Section 1(9): Employees who go on leave without pay will be required to pay for health and life insurance for each month in which they have not worked over half of the work days in a month. Paid leave (i.e., annual leave, sick leave and special leave) constitutes days worked; benefits may be continued at the group rate. This

regulation will ensure that everyone who receives benefits earns them in the same manner. Previously, employees who were on leave without pay would come to work for one day per month, or take one paid leave day to get benefits paid for. Others would be paid benefits without showing up, in months where paid holidays occurred, until absent without pay over 30 working days. The costs to the employee will be the monthly group rate for health and life insurance. Every month approximately 100 employees are on leave without pay over half of the work days. On November 1, 1988 health insurance will cost \$89.07 per month. Life insurance costs \$1.05 per month per individual but is currently out for bids.

1. First year: Section 2(11) and Section 2(13)(b) None, Section 1(9): Starting November 1, 1988: Savings to state: $100 \times 12 \times \$89 = \$106,884 + 100 \times 12 \times \$1.05 = \$1260$. Cost to employee: $\$89/\text{month} + \$1.05/\text{month}$.

2. Continuing costs or savings: Section 2(11) and Section 2(13)(b) None; Section 1(9) Same, subject to increases in group rates.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Section 2(11) and Section 2(13)(b): None; Section 1(9) None.

(b) Reporting and paperwork requirements: Section 2(11) and Section 2(13)(b): No change, Section 1(9): Employees will need to make arrangements to pay for monthly premiums at the group rate. This can be done with minimal paperwork.

(2) Effects on the promulgating administrative body: Section 2(11) and Section 2(13)(b): None, Section 1(9): The Commonwealth will provide health and life insurance benefits to employees under a uniform standard. Formerly, it was necessary to work one day per month to be eligible for paid benefits. Now it will be necessary to work over half the work days of the month. This is consistent with the standards in effect to earn annual leave and sick leave.

(a) Direct and indirect costs or savings: Section 2(11) and Section 2(13)(b): None, Section 1(9): The Commonwealth will save $106,884 + 1,260 = \$108,144$.

1. First year:

2. Continuing costs or savings: Same, subject to increase in group rates.

3. Additional factors increasing or decreasing costs: Section 1(9): No increase; instead of processing requests for premiums, Department of Personnel will advise these employees how to proceed.

(b) Reporting and paperwork requirements: Both Sections: None.

(3) Assessment of anticipated effect on state and local revenues: See 2(a) above.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Section 2(11): The old standard was confusing to participants as worded; Section 2(13)(b): employers have had difficulty in a few cases getting employees who cannot function due to illness to take sick leave. Section 1(9): The alternative method has resulted in inequitable treatment; most employees work full time for benefits; others gain them for one day of work per month.

(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? Yes

GENERAL GOVERNMENT CABINET
Board of Pharmacy
(Proposed Amendment)

201 KAR 2:130. Schedule I and II controlled substances.

RELATES TO: KRS Chapter 217

STATUTORY AUTHORITY: KRS 217.814(7), (8), 217.819(1)

NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a nonequivalent drug product formulary of drugs which should not be interchanged by pharmacists. In conformance with the publication cited "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations," this regulation lists Schedule I and II controlled substances.

Section 1. The following are determined to be noninterchangeable: controlled substances listed in Schedules I and II in the Kentucky Controlled Substances Act of 1972 (KRS 218A) shall be noninterchangeable.

Section 2. Approved drug products that the FDA considers to be therapeutically equivalent to other pharmaceutically equivalent products with no potential bioequivalence issues are exempted from this regulation.

RICHARD L. ROSS, Executive Director

APPROVED BY AGENCY: August 15, 1988

FILED WITH LRC: August 15, 1988 at 10 a.m.

PUBLIC HEARING: A public hearing has been scheduled on September 22, 1988, at 10 a.m. (EDT) at the Office of the Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort. However, this hearing will be cancelled unless interested persons notify the following office in writing by September 17, 1988, of their desire to appear and testify at the hearing: Richard L. Ross, Executive Director, Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Richard L. Ross, Executive Director

(1) Type and number of entities affected: All consumers of the Commonwealth.

(a) Direct and indirect costs or savings to those affected: Saving to consumer of lowest priced generic drug in stock which is therapeutically equivalent to the one prescribed.

1. First year: \$15,000

2. Continuing costs or savings: \$30,000

3. Additional factors increasing or decreasing costs (note any effects upon competition): Competition would require more pharmacies to have generic drugs in stock to make available a choice to the consumer.

(b) Reporting and paperwork requirements: Only paperwork requirement would be documentation on the prescription by the pharmacist that a generic drug was dispensed.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The savings would benefit the consumer not the promulgating administrative body.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: As in 1(b). Paperwork by pharmacist only when generic drug dispensed.

(3) Assessment of anticipated effect on state and local revenues: Saving on prescription price to consumer which should not effect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative method would not allow the consumer the choice of a generic and/or the one prescribed.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict.

(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. Substitution would be required of all pharmacists who have a lower priced generic drug in stock which is therapeutically equivalent to the one prescribed. Those pharmacists who do not have a lower priced generic stock would not be effected by this change in the regulation.

GENERAL GOVERNMENT CABINET
Board of Nursing
(Proposed Amendment)

201 KAR 20:161. Investigation and disposition of complaints.

RELATES TO: KRS 314.011(13), 314.031, 314.071(4), 314.091, 314.991(3)

STATUTORY AUTHORITY: KRS Chapter 314

NECESSITY AND FUNCTION: To protect and safeguard the health and safety of the citizens of Kentucky and to provide for procedures in the receipt and disposition of complaints.

Section 1. Receipt of Complaints. (1) The board shall receive and process each complaint made against any licensee, applicant or unlicensed individual if the complaint alleges acts which may be in violation of the provisions of KRS Chapter 314.

(2) Complaints shall be received by the executive director or staff member(s) designated by the board to investigate complaints.

(3) All complaints shall be in writing and shall be dated and fully identify the complainant by name and address. The executive director or president of the board may file a complaint based upon information received by oral, telephone or written communications if the facts of the complaint are determined to be accurate and indicate acts which may be in violation of the provisions of KRS Chapter 314.

(4) A certified copy of a court record for a misdemeanor or felony conviction shall be considered a valid complaint.

(5) The person responsible for receiving complaints shall make an investigation to verify facts in complaints and to collect additional information. If it is determined the facts are true and of sufficient gravity to warrant further action, the staff may request an informal conference with the individual against whom the complaint has been made.

(6) The person responsible for receiving complaints shall evaluate information received to determine if an apparent violation of the provisions of KRS Chapter 314 has been committed, consult with legal counsel as indicated, and shall make recommendations for disposition of complaint.

(7) All preliminary information will be treated as confidential during the investigation and shall not be disclosed to board members or to the public. If a board member has participated in the investigation or has substantial knowledge of facts prior to a hearing on the complaint that could influence an impartial decision by the member, that member shall not participate in the adjudication of the complaint.

Section 2. Disposition of Complaints. (1) Administrative hearing.

(a) The board may schedule a formal administrative hearing to determine whether disciplinary action will be taken on the grounds set out in KRS 314.091.

(b) At least thirty (30) days prior to an administrative hearing, the individual shall be sent a letter of the specific charges by certified mail and shall be advised of legal rights in accordance with KRS 314.091. Service of process shall be deemed complete upon mailing a copy of the letter of charges by certified mail to the last known address of the licensee or applicant, whether or not said letter is subsequently claimed by addressee.

(c) All subpoenas shall be issued by the executive director on behalf of the board. The person requesting the subpoenas shall bear the cost of serving the subpoenas, paying witness fees and expenses. The board shall bear the cost of witnesses subpoenaed in the board's behalf.

(2) Agreed order.

(a) The board may enter into an agreement with an applicant/licensee for voluntary surrender, suspension, probation, reinstatement or limitation of license, public or private reprimand, and/or to impose a civil penalty. The terms of the agreement may include other conditions or requirements to be met by applicant/licensee.

(b) The agreed order may contain terms which ensure protection of public health and safety, or which serve to educate or rehabilitate the applicant/licensee.

(c) The agreed order when approved by the board will terminate the investigation of a specific complaint.

(3) Consent decree.

(a) If a nurse or applicant agrees to waive her right to a hearing and there is no evidence of intentional violation of the mandatory licensure provisions of KRS Chapter 314, the board may issue a consent decree in accordance with the provisions of KRS 314.991 to impose a civil penalty of not more than \$1000 against a nurse or an applicant for licensure as a nurse or for registration as an advanced registered nurse practitioner who has:

1. Practiced as a nurse in the Commonwealth of Kentucky without a temporary work permit or a current, active license issued by the board [not longer than six (6) months] prior to filing an application for licensure.

2. Practiced as an advanced registered nurse practitioner in the Commonwealth of Kentucky without current, active registration issued by the board [not longer than six (6) months] prior to filing an application for registration.

3. Practiced as an advanced registered nurse practitioner [for not longer than six (6) months] after notification by either the board or the certifying agency of expiration of the current certification granted by the appropriate national organization or agency [as required by KRS 314.042(4)].

4. Practiced [for not longer than six (6) months] pursuant to a license or work permit obtained on the basis of a check for an application fee which was returned unpaid by the bank.

5. Elected and qualified for a consent decree to cure noncompliance with continuing education requirements, as set forth in 201 KAR 20:215, Section 3.

(b) The use of a consent decree shall be restricted to only those applicants or nurses described above and who have not violated any other provision of KRS Chapter 314 or any other laws of the Commonwealth of Kentucky or of the United States.

(c) The license or registration may be issued by board staff after the applicant or nurse meets all requirements for licensure or registration and after payment of the civil penalty by applicant or nurse.

(d) Upon ratification by the board of the consent decree the investigation of the specific complaint will be terminated.

(e) If consent decree is not ratified by the board, a letter of charges may be issued pursuant to KRS 314.091 and the matter resolved as directed therein.

Section 3. The executive director or person(s) responsible for receiving complaints shall notify the complainant and the person against whom the complaint was made of the final disposition of the case.

SHARON M. WEISENBECK, Executive Director

APPROVED BY AGENCY: August 5, 1988

FILED WITH LRC: August 12, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on September 26, 1988 at 10 a.m. in Room 420 of the Professional Towers Building, 4010 Dupont Circle, Louisville, Kentucky. Those interested in attending this hearing shall notify the following office in writing by September 21, 1988: Sharon M. Weisenbeck, Kentucky Board of Nursing, 4010 Dupont Circle, Suite 430, Louisville, Kentucky 40207.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sharon Weisenbeck

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: Disciplinary cases are generally resolved either by hearing or by Agreed Order. Agreed Orders are not effective until approved by the board. Depending on when

an Agreed Order is signed, an affected licensee may have to wait up to 2 months for the next board meeting, during which time they may not lawfully practice. Several years ago the board adopted a "Consent Decree" process for certain cases, involving periods of unlicensed practice of six months or less. The purpose was to create a vehicle for the resolution of recurring types of cases, not involving a threat to public safety, which would allow the licensee to immediately return to practice. Agency experience with the Consent Decree process has been satisfactory. Since the adoption of the Consent Decree process several other categories of cases have been identified as being appropriate for this somewhat shorter procedure, all involving nonpatient care licensure deficiencies. The board has now determined that it is appropriate to remove the six month time limitation from consent decree cases. Each year there are a small number of cases in which licensees cannot qualify for consent decrees solely because the period of deficiency exceeds six months. In those cases the affected licensees must withdraw from practice until the board can meet to approve an Agreed Order. Our experience indicates that these cases do not involve any greater threat to public safety than those of shorter duration and that there is no benefit to the public in requiring these licensees to refrain from practice while awaiting the next board meeting. We note that the regulation has also been amended to expressly exclude from the consent decree process any case in which there is evidence of an intentional violation of the licensure law. It is felt that this amendment, together with enhanced civil penalties for deficiencies of longer than six months duration, will be sufficient to promote compliance with the law.

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

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: No change from existing regulatory requirements.

(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: The alternative was to maintain the status quo. It was felt that the time delay involved in the traditional Agreed Order procedure imposed a substantial cost upon affected licensees without an appreciable benefit to the consuming public. In fact, even a temporary loss of the services of nursing personnel, particularly those in critical and advanced care specialties, has an adverse impact upon the citizenry.

(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? Yes. Tiering was applied in the sense that certain categories of disciplinary cases have been identified as being appropriate for disposition via consent decree instead of agreed order, assuming that the licensee does not wish to have a hearing on the matter. The consent decree process is appropriate for cases where: 1) The noncompliance is documentary or financial in nature. 2) The problem did not arise in a patient care context and does not present a threat to patient safety. 3) There is no evidence of intent to evade the licensure law. 4) The defect has been cured by the licensee. 5) There is no evidence of other violations of the law. 6) The case is of a variety which recurs with some frequency. 7) Use of the consent decree process will not unduly depreciate the seriousness of the violation in question. The board has, to date, identified a total of five categories of cases meeting those criteria. In each of these cases there must be no evidence of other, more serious violations of the Nursing Practice Act or of intent to evade the licensure law. Given that requirement, it is felt that the consent decree process is adequate to encourage compliance with the law for these types of cases.

TOURISM CABINET
Department of Fish & Wildlife Resources
(Proposed Amendment)

301 KAR 2:044. Taking of migratory wildlife.

RELATES TO: KRS 150.010, 150.015, 150.025, 150.170, 150.300, 150.305, 150.320, 150.330, 150.340, 150.360, 150.603

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: In accordance with KRS 150.015, this regulation is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The function of this regulation is to provide for the prudent taking of migratory wildlife within reasonable limits based upon an adequate supply. This amendment is necessary to change season dates where appropriate.

Section 1. Seasons. (1) Doves: September 1 through September 30 [October 31]; October 8 [November 28] through October 31; December 1 through December 6.

(2) Woodcock: October 1 through December 4.

(3) Common snipe: October 1 through December 4.

(4) Experimental September duck: September 7 [9] through September 11 [13].

Section 2. Limits.

Species	Bag Limits	Possession Limits
Doves	15 [12]	30 [24]
Woodcock	5	10
Common snipe	8	16
Experimental September wood duck, wood duck[, teal and other ducks]	*2 [4]	*4 [8]

*Daily bag limit shall be two (2) wood [is four (4)] ducks[, no more than two (2) of which may

be wood ducks, and no more than one (1) of which may be a species other than teal or wood duck]. The possession limit is double the daily bag limit.

Section 3. Bag and Possession Limits. (1) After two (2) or more days of shooting, possession limits apply to transporting, but do not permit a double bag limit in the field.

(2) The above species (except doves) dressed in the field, or being prepared for transportation, shall [must] have one (1) fully feathered wing or head attached to the bird for identification purposes.

Section 4. Shooting Hours. (1) Doves: from 11 a.m. until sunset during the period September 1 through September 30; and October 8 through October 31; from sunrise to sunset during the period December 1 [November 28] through December 6.

(2) Common snipe and woodcock: from one-half (1/2) hour before sunrise to sunset.

(3) Experimental September duck: from one-half (1/2) hour before sunrise to sunset.

Section 5. Falconry Hunting. The wildlife species listed in this regulation may be pursued and taken by a licensed falconer with any legal hunting raptor during the regular hunting dates listed for each species. All bag and possession limits apply to falconry hunting.

Section 6. Exceptions to Statewide Migratory Bird Seasons on Specified Wildlife Management Areas. Unless excepted below, all sections of this regulation apply to the following areas:

(1) Ballard Wildlife Management Area, located in Ballard County.

(a) Doves: September 1 through September 30; and October 8 through October 14 only. Areas so designated by signs are closed. No firearms permitted on this area except during shooting hours.

(b) Woodcock and snipe: seasons closed.

(2) West Kentucky Wildlife Management Area, located in McCracken County.

(a) Doves: September 1 through September 30; and October 8 through October 14 [16] only.

(b) Woodcock and snipe: hunting permitted on tracts 2, 3, 6, and 7 only.

(c) All tracts designated by numbers followed by the letter "A" are closed to hunting.

(3) Central Kentucky Wildlife Management Area, located in Madison County.

(a) Doves: September 1 through September 30; and October 8 through October 14 [16] only.

(b) Woodcock and snipe: seasons closed.

(4) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.

(a) Doves: September 1 through September 30 and December 1 through December 6 only.

(b) Woodcock and snipe: December 1 through December 4 only.

(5) Fort Campbell Wildlife Management Area, located in Christian and Trigg Counties.

(a) Doves: September 1 [3] through October 12 [September 25], September 26 through October 12 [31] as announced by Fort Campbell Hunting and Fishing Unit, and November 24 [28] through December 11 [6] only. Hunting permitted during these periods in designated areas only.

(b) Woodcock and snipe: November 24 [26] through December 4.

(c) September wood duck: September 7 through

11 only. Hunting permitted during these permits in designated areas only.

(6) Closed Areas. The hunting of doves, woodcock, common snipe, and ducks is prohibited on the following wildlife management areas: that portion of Grayson Lake Wildlife Management Area east of the Little Sandy River and on Bruin Creek portions of Grayson Lake; Beaver Creek Wildlife Management Area, including all private in-holdings, located in Pulaski and McCreary Counties; Robinson Forest Wildlife Management Area, located in Breathitt, Perry, and Knott Counties; Redbird Wildlife Management Area, including all private in-holdings, located in Leslie and Clay Counties; Cane Creek Wildlife Management Area, including all private in-holdings, located in Laurel County; and Mill Creek Wildlife Management Area, located in Jackson County.

Section 7. Waterfowl Stamp Requirements. Those hunting ducks during the experimental September duck season shall [must] possess appropriate state and federal waterfowl stamps as stipulated in KRS 150.330 and 150.603.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
CHARLES E. PALMER, JR., Chairman

APPROVED BY AGENCY: June 13, 1988

FILED WITH LRC: August 15, 1988 at 10 a.m.

PUBLIC HEARING: A public hearing will be held on September 26, 1988 at 2 p.m. in the Commission Room of the Department of Fish and Wildlife Resources central offices at Frankfort, Kentucky. Those interested in attending this hearing shall contact: Lauren Schaaf, Director, Wildlife Division, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: An estimated 90,000 persons will participate in the migratory bird hunting proposed by this regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license, a federal migratory bird hunting and conservation stamp and a state waterfowl stamp if hunting waterfowl. Indirect costs would be determined by the hunter, depending on his level of participation.

1. First year: Persons participating in the hunting proposed for authorization by this regulation would be required to possess a valid hunting license (\$8.50 for residents) unless exempt by regulations. Waterfowl hunters would be required to possess a \$10 federal migratory bird hunting and conservation stamp and a \$5.25 state waterfowl stamp.

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

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Randomly selected waterfowl hunters will be asked to report their hunting success by completing and mailing a Kentucky waterfowl survey in a postage paid envelope.

(2) Effects on the promulgating administrative body: Requires time and effort in developing,

publishing, reporting on, and enforcing the proposed regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcement of the regulation.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is \$140,000.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The results of the waterfowl harvest survey will be tabulated and reported to the U.S. Fish and Wildlife Service in accordance with experimental hunting season agreement.

(3) Assessment of anticipated effect on state and local revenues: A positive effect could be expected on state revenues since hunters are required to purchase a hunting license and pay other state taxes on items purchased in connection with hunting and the hunting trip. The average migratory bird hunter in Kentucky will expend about \$70 a season on food, lodging, transportation and equipment. This will add about \$6,300,000 to the income of local businesses.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest of migratory birds be through a regulated hunting season that is held within a specific time frame. Therefore, the only available alternative to regulated hunting is to close the season which was rejected since migratory birds are a renewable resource and involved species are at population levels that permit regulated hunting for the benefit of Kentucky sportsmen.

(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: 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. Only one class of citizen, the hunter, is impacted by this regulation. Disregarding physiography and distribution of the species sought by hunters is assumed to be uniform, thus negating the need to recognize tiers. Tiering according to physiography is impractical and unnecessary as a means of species protection or provision of hunter opportunity.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 53, No. 132, Monday, July 11, 1988.

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

3. Minimum or uniform standards contained in the federal mandate. Woodcock - season frameworks between September 1, 1988, and February 28, 1989, with a 65 day maximum season. Bag limits may be a maximum of 5 per day with 10

in possession.

Wood duck - season frameworks allow 5 days in September. Bag limits may be two daily with 4 in possession.

Dove - season frameworks allow either 70 or 60 days between September 1, 1988, and January 15, 1989. Bag limits may be either 12 per day with 24 in possession for the 70 day season or 15 per day with 30 in possession for the 60 day season.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes X No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Hunting encourages spending by hunters for local goods and services. Local tax revenues will increase slightly.

3. State the aspect or service of local government to which this administrative regulation relates. This activity relates to KRS Chapter 150.

4. How does this administrative regulation affect the local government or any service it provides? Hunting encourages spending by hunters for local goods and services. State tax revenues will increase slightly. Activities involving hunting will not increase state or local expenditures.

TOURISM CABINET

Department of Fish & Wildlife Resources (Proposed Amendment)

301 KAR 2:240. Special bobcat harvest season.

RELATES TO: KRS 150.010, 150.025, 150.170, 150.180, 150.183, 150.300, 150.305, 150.330, 150.340, 150.360, 150.365, 150.370, 150.390, 150.399, 150.400, 150.410, 150.415, 150.416, 150.417

STATUTORY AUTHORITY: KRS Chapter 13A.350, 150.025

NECESSITY AND FUNCTION: This regulation is necessary to reinstitute a bobcat harvest season in Kentucky for the continued protection of bobcats while insuring a permanent and continued supply of this wildlife resource for present and future residents of the state. The function of this regulation is to provide for the prudent taking of bobcats within reasonable limits based upon an adequate supply.

Section 1. Bobcat Taking Season, Zone, Methods of Harvest, Limits and Zone Quota, and License Requirements. (1) Bobcat taking season. The day following closure of deer gun season [November

24] through January 31 or until the season quota is attained, whichever comes first.

(2) Harvest zone. That portion of the state east of the line formed by and including Lewis, Rowan, Menifee, Powell, Estill, Jackson, Rockcastle, Pulaski and Wayne counties.

(3) Methods of harvest. Bobcats may be taken by hunting or by calling during daylight hours only, or by trapping. Callers may use only hand or mouth operated calls.

(4) Limits and zone quota.

(a) The limit is two (2) bobcats per person per season.

(b) The bobcat harvest quota is 400. Should it be determined that the quota of 400 bobcats will be filled prior to January 31, the season will close. Notice will be given a minimum of twenty-four (24) hours in advance of the time and date of closing. All participants in the special bobcat season should regularly contact department officials within the harvest zone, or call the wildlife division during business hours (8 a.m. - 4:30 p.m.) at 502/564-4406 to determine the status of the harvest. No bobcats will be tagged later than four (4) days after the announced date of closing or no later than forty-eight (48) hours following the January 31 season ending date, whichever comes first.

(5) License requirements. Bobcat hunters or trappers must have in their possession valid Kentucky licenses for the respective method of harvest, except as exempted by KRS 150.170.

Section 2. Requirements for Possession, Tagging of Bobcats, Untagged Pelts, Tagging Agents and Possession of Bobcat Tags. (1) No person shall [may] possess an untagged bobcat outside the legal bobcat harvest zone. It is illegal to hold a live bobcat in Kentucky except those held for exhibition by public agencies or for temporary exhibition by individuals as permitted by the commissioner.

(2) Anyone harvesting a bobcat must take it to a tagging agent (authorized personnel of the department) for tagging within forty-eight (48) hours of being harvested, except as specified in Section 1(4)(b) of this regulation. Prior to tagging, the taker must validate eligibility according to Section 1(5) of this regulation and provide his/her social security number. At the time a bobcat is tagged, the taker must provide the tagging agent with the entire skinned bobcat carcass suitably enclosed in a plastic bag unless the owner of the bobcat intends to have the animal mounted or otherwise processed. The tagging agent shall [may] refuse to tag any bobcat if the carcass is not suitably enclosed in plastic.

(3) The tagging agent will not tag an illegally taken bobcat. Any untagged bobcat pelt for which there is no carcass or any bobcat taken illegally may be seized.

(4) It is illegal for anyone other than a department employee to possess an unused bobcat tag.

Section 3. Processing Requirements. (1) Taxidermists are required to report monthly the status of bobcats in their possession. Taxidermists receiving tagged bobcat pelts or entire bobcats must leave the tag attached until after the pelt is tanned or until the pelt is to be mounted. All untanned or unmounted bobcat pelts without a tag are subject to seizure.

(2) The lower jaw from bobcat carcasses

received by taxidermists or fur processors, and the removed bobcat tag or the tag number must be provided to the department when the bobcat is skinned. Jaw mail-in envelopes will be provided upon request to the wildlife division.

(3) Tags must remain attached to all bobcat pelts until the furs are processed.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
CHARLES E. PALMER, JR., Chairman

APPROVED BY AGENCY: August 12, 1988

FILED WITH LRC: August 15, 1988 at 10 a.m.

PUBLIC HEARING: A public hearing will be held on September 27, 1988 at 9 a.m. in the Commission Room, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Those interested in attending this hearing shall contact: Lauren Schaaf, Director, Wildlife Division, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: The addition of bobcat to the furbearer list will allow their taking during the furbearer taking season within 35 eastern Kentucky counties only. This additional opportunity will be utilized by approximately 500 hunters and 1000 trappers. The total season harvest is not expected to exceed 300.

(a) Direct or indirect costs or savings to those affected: There are no significant costs involved in this activity.

1. First year: This regulation applies only to people who are already licensed hunters or trappers. No special licenses are required.

2. Continuing costs or savings: None.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Bobcats must be taken to department personnel for tagging.

(2) Effects on the promulgating administrative body: Requires time and effort in conducting research and preparing a population status report as required by the U.S. Fish and Wildlife Service. Requires time and effort in developing and publishing the proposed regulation. Department personnel will be required to tag all bobcats taken. No extra enforcement effort will be required.

(a) Direct and indirect costs or savings: All costs are associated with developing and publishing the regulation and tagging by department personnel.

1. First year: The estimated cost associated with establishing and advertising this regulation is \$500. Personnel will be required to tag bobcats as part of their normal duties.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Annual bobcat population status report required by the U.S. Fish and Wildlife Service.

(3) Assessment of anticipated effect on state and local revenues: Local economies in the bobcat harvest zone will benefit from expenditures of participating sportsmen. Persons taking bobcats will benefit from the sale of the

pelts which are the most valuable of Kentucky's furbearing species.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only available alternative to regulated hunting or trapping of bobcats within the designated bobcat harvest zone is to maintain season closure or to institute a statewide bobcat harvest. The season closure alternative was rejected because current research indicates that a harvest conducted as prescribed will not be detrimental to the population and will provide substantial opportunity and economic benefits. A statewide bobcat harvest season was rejected due to insufficient bobcat population data for regions outside the proposed harvest zone.

(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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. This regulation has nothing to do with federal statutes. However, the regulation does provide guidelines for attachment of federal bobcat pelt tags required for legal export of bobcat pelts outside the United States.

2. State compliance standards. N/A

3. Minimum or uniform standards contained in the federal mandate. N/A

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

DEPARTMENT OF AGRICULTURE (Proposed Amendment)

302 KAR 15:030. Beef cattle shows and sales.

RELATES TO: KRS 246.250

STATUTORY AUTHORITY: KRS 246.250

NECESSITY AND FUNCTION: To establish requirements for state-supported purebred beef cattle shows and sales.

Section 1. General Requirements for Shows and Sales. (1) All animals exhibited in the show shall be consigned and sold in the sale.

(2) No exhibitor may consign more than four (4) females and four (4) [two (2)] male or eight (8) [six (6)] females to the show and sale.

(3) A minimum of thirty (30) [forty (40)] animals shall be consigned to each event. [Consignments must be made from a minimum of at least five (5) different states.]

(4) Any show, exhibition, and sale of purebred

cattle to be eligible to receive the aforesaid appropriations must provide that the entries in all classes must be open upon equal terms to the breeders of such cattle in all of the states of the United States, and the Dominion of Canada may be included. The commissioner shall determine with respect to each of the aforesaid breeds of cattle which show, exhibition and sale is the largest to be held in Kentucky in each year and, in making such determination, he may consider such shows, exhibitions and sales as may have been held in Kentucky in any previous two (2) year period.

(5) Cosponsors of state-supported shows and sales shall set the highest possible objectives and plans for each event and, in almost all instances, they shall exceed those set by the usual consignment sale.

(6) Each cooperating agency shall select, in cooperation with the department, an auctioneer and sales manager experienced in conducting sales of national scope.

(7) The judge or judges for the show shall be of national prominence and selected in cooperation with the department from approved lists that may be published by the breed associations.

(8) Animals considered unsound in any manner shall not be accepted by show and sale officials.

(9) The cooperating agency shall prepare and present to the department adequate records pertaining to the show and sale prior to final settlement on advertising. These records shall include:

(a) A list of consignors, animals sold, premiums awarded, selling price, name and address of purchaser;

(b) Sample copies of printed advertisements and promotional material and copies of invoices covering advertising costs; and

(c) Financial statement showing the total receipts and disbursements for the event.

(10) Dates for state-supported purebred shows and sales shall be selected in cooperation with the department and shall not conflict with similar events. Consideration shall be given to marketing patterns, seasons, and the possibility of tying the show and sale in with other major national and state activities.

(11) The location of these national events shall be selected in cooperation with the department after due consideration is given to the following:

(a) Facilities for showing and selling high quality cattle;

(b) Housing accommodations for exhibitors and buyers;

(c) Transportation, air travel and highway network;

(d) Arrangements for handling wire bids; and

(e) Added attractions in the area.

(12) Show and sale planning committees appointed by each state breed association shall include the Director of the Department of Agriculture's Livestock Show Program and representatives of the national and state breed association. Representatives from other groups and organizations, such as Chamber of Commerce, tourist commission, and farm organizations shall be added to the committees when they are willing and able to make a contribution to the success of the show and sale. The committee chairman and other officers for the event shall be elected by the committee.

(13) All persons attending a consignment show

or sale do so at their own risk.

(14) Official registration papers for each animal consigned shall be presented to the show and sale officials when consignment is made. [All records on pedigree information shall cover at least three (3) preceding generations and be presented to the show and sale officials when consignment is made.]

(15) The cooperating agency may charge an entry fee up to but not to exceed the amount of premium offered by the department. A sales commission may be charged by the cooperating agency to cover the actual cost of the sale but in no case shall the commission exceed fifteen (15) percent of the gross sales.

(16) Sales practices and procedures recommended by the individual breed association shall apply as minimum requirements to all matters pertaining to the sale not otherwise covered by departmental policy or law.

Section 2. Terms and Conditions of Sale. (1) Terms of the sale in addition to those recommended by the individual breed association shall be established by the cooperating agency with the approval of the department.

(2) The auctioneer shall be responsible for settling disputes as to bids and his decision on such matters shall be final.

(3) All payments shall be made to the individual designated by the cooperating agency.

(4) The purchaser assumes all risk for animals as soon as they are struck off; however, the cooperating agency shall care for the animals free of charge for a period of at least twenty-four (24) hours.

(5) Arrangements shall be made by the cooperating agency for adjustments or refunds on sales that fail to comply with rules and regulations.

Section 3. Catalogue Requirements. (1) The consignment show and sale catalogue shall be prepared by the sales committee and shall contain a listing of all show classes and the premiums allocated in addition to the information pertaining to the sale.

(2) Each animal listed for sale in the catalogue shall be identified in as much detail as possible. All production records along with the pedigree, calfhood vaccination for Bang's disease, classification information, and other information relating to its breeding and show honors shall be listed.

(3) Both consignor and breeder shall be listed on the pedigree of each animal in the catalogue.

(4) The names and complete addresses of all consignors and the lot number of the animals they consign shall be given.

(5) The catalogue shall contain information on:

(a) Location of show and sale headquarters;

(b) Hotel or motel room reservations;

(c) Shipping arrangements;

(d) Provisions for handling wire and mail bids;

(e) Sponsors;

(f) Entertainment; and

(g) Educational activities.

(6) No commercial advertisements shall appear in the catalogue.

(7) Catalogues shall be ready for distribution not later than fifteen (15) days in advance of the event.

(8) The catalogue shall feature a section on the location of the event in relation to other major towns, major highways, and tourist

attractions.

Section 4. Advertising Requirements. (1) All advertising for shows and sales shall be planned and contracted in cooperation with the department, and all shows and sales shall be advertised as state-supported events cosponsored by the national and state associations and the department.

(2) The cost of the show and sale catalogue may be considered advertising costs to be paid by the department.

(3) Initial advertising, nationwide shall begin at least four (4) months in advance of the sale.

Section 5. Health Requirements. (1) All animals consigned to the show and sale must be accompanied by an official health certificate from the state of origin which bears the approval of the livestock sanitary official of the state of origin showing compliance with Kentucky's exhibition and sale requirements. Current health regulations shall be published in the catalogue.

(2) All records qualifying animals for the show and sale must be presented to the cooperating agency or their representatives when the entry is made.

WARD "BUTCH" BURNETTE, Commissioner

APPROVED BY AGENCY: August 11, 1988

FILED WITH LRC: August 15, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed amendment will be held on September 23, 1988 at 2 p.m. in the Seventh Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Those interested in attending this hearing shall contact: J. Michael Noyes, General Counsel, Department of Agriculture, Room 719, 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 days before the hearing date, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Claycomb

(1) Type and number of entities affected: Matching grants are provided to sixteen purebred cattle associations pursuant to KRS 246.250.

(a) Direct and indirect costs or savings to those affected:

1. First year: The matching grants under the department supported purebred cattle shows and sales program will be unchanged. Exhibitors will be permitted at their option to exhibit additional animals as provided in the regulations. No additional cost or savings.

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: No change - KRS 246.250 sets the maximum funds available to qualified breed associations.

1. First year: No change.

2. Continuing costs or savings: No significant change in either cost or savings.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No

change.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlap, conflict 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: This regulation is permissive. Purebred beef cattle associations which participate in the state's supported shows and sales program will be permitted to develop rules which will allow exhibitors to show or exhibit additional animals.

TIERING: Was tiering applied? Yes

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

STATUTORY AUTHORITY: 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 setup 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 setup 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 setup.

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 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. 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 fifty (50) [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. Upon receipt of proper application and permit fee and upon completion of satisfactory inspection as set forth in Sections 1, 2, 3, 4, and 5 of this regulation the commissioner 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.

WARD "BUTCH" BURNETTE, Commissioner

APPROVED BY AGENCY: July 21, 1988

FILED WITH LRC: July 21, 1988 at 3 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment will be held on September 23, 1988 at 10 a.m. in the Seventh Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky.

Those interested in attending this hearing shall contact: J. Michael Noyes, General Counsel, Department of Agriculture, Room 719, 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 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: \$25 increase in fee to conform to statutory amendment.

2. Continuing costs or savings: Same

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

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: None. KRS 247.234 (as amended by Chapter 151, 1988 Acts) requires fee increase.

(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. Fee set by KRS 247.234 (as amended) applies to all licenses under the Act.

CORRECTIONS CABINET (Proposed Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY 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 August 12 [June 10], 1988 and hereinafter should be referred to as Corrections 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.

- | | | | |
|------|--|----------|--|
| 1.1 | Legal Assistance for Corrections Staff | 17.2 | Assessment Center Operations |
| 1.2 | News Media | 17.3 | Controlled Intake of Inmates |
| 1.4 | <u>The operation of Contracted Adult Correctional Facilities (Added 8/12/88)</u> | 18.4 | Classification of the Inmate |
| 1.6 | Extraordinary Occurrence Reports | 18.5 | Custody/Security Guidelines [(Amended 6/10/88)] |
| 1.9 | Institutional Duty Officer | 18.6 | Classification Document |
| 1.11 | Population Counts and Reporting Procedures | 18.7 | Transfers |
| 1.12 | Operation of Motor Vehicles by Corrections Cabinet Employees | 18.8 | Guidelines for Transfers Between Institutions [(Amended 6/10/88)] |
| 2.1 | Inmate Canteen | 18.9 | Out-of-State Transfers [(Amended 6/10/88)] |
| 2.2 | Warden's Fund | 18.10 | Parole Progress Reports |
| 2.10 | Surplus Property | 18.11 | Kentucky Correctional Psychiatric Center Transfer Procedures |
| 3.1 | Code of Ethics | 18.12 | Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill |
| 3.2 | Inclement Weather and Emergency Conditions Policy | 18.13 | Population Categories |
| 3.3 | Holding of Second Jobs by Bureau Employees | 18.15 | Protective Custody |
| 3.10 | Staff Clothing and Personal Appearance | 19.1 | Government Services Projects |
| 3.12 | Institutional Staff Housing | 19.2 | Community Services Projects |
| 3.14 | Corrections Cabinet Payroll Deduction Policy and Procedure | 20.1 | Study Release |
| 4.1 | Attendance at Professional Meetings | 20.6 | Vocational Study Release |
| 4.2 | Staff Training and Development | 22.1 | Privilege Trips |
| 4.3 | Firearms and Chemical Agents Training | 25.1 | Gratuities |
| 4.4 | Educational Assistance Program | 25.2 | Public Official Notification of Release of an Inmate |
| 6.1 | Open Records Law | 25.3 | Prerelease |
| 7.2 | Asbestos Abatement | 25.4 | Inmate Furloughs (Amended 8/12/88) |
| 8.4 | Emergency Preparedness | 25.6 | Community Center Program (Amended 8/12/88) |
| 9.1 | Use of Force | 25.7 | Expedient Release |
| 9.3 | Transportation of Convicted Offenders | 25.8 | Extended Furloughs |
| 9.4 | Transportation of Inmates to Funerals or Bedside Visits | 27-01-01 | Probation and Parole Procedures |
| [9.5 | Return of Escapees by Automobile (Deleted 8/12/88)] | 27-02-01 | Duties of Probation and Parole Officers |
| 9.6 | Contraband | 27-03-01 | Workload Formula Supervisor/Staff Ratio |
| 9.7 | Storage, Issue and Use of Weapons Including Chemical Agents | 27-05-01 | Testimony, Court Demeanor and Availability of Legal Services |
| 9.8 | Search Policy | 27-06-01 | Availability of Supervision Services |
| 9.9 | Transportation of Inmates (Amended 8/12/88) | 27-06-02 | Equal Access to Services [(Amended 6/10/88)] |
| 9.10 | Security Inspections | 27-07-01 | Cooperation with Law Enforcement Agencies [(Amended 6/10/88)] |
| 9.11 | Tool Control | 27-09-01 | Kentucky Community Resources Directory |
| 9.15 | Institutional Entry and Exit Policy and Procedures | 27-10-01 | Advanced Supervision [(Added 6/10/88)] |
| 9.18 | Informants | 27-11-01 | Intensive Supervision (Amended 8/12/88) |
| 9.19 | Found Lost or Abandoned Property | 27-12-01 | Supervision: Case Classification [(Amended 6/10/88)] |
| 10.2 | Special Management Inmates | 27-12-02 | Risk/Needs Assessment [(Added 6/10/88)] |
| 10.3 | Safekeepers | 27-12-03 | Initial Interview [(Added 6/10/88)] |
| 10.4 | Special Needs Inmates | 27-12-04 | Conditions of Regular Supervision/Request for Modification [(Amended 6/10/88)] |
| 11.2 | Nutritional Adequacy of the Diet for Inmates | 27-12-05 | Releasee's Report [(Amended 6/10/88)] |
| 11.3 | Special Diet Procedures | 27-12-06 | Grievance Procedures for Offenders |
| 13.1 | Pharmacy Policy and Formulary | 27-12-07 | Employment, Education/Vocational Referral |
| 13.2 | Health Maintenance Services | 27-12-08 | Supervision Plan [(Amended 6/10/88)] |
| 13.3 | Medical Alert System | 27-12-09 | Casebook [(Amended 6/10/88)] |
| 13.4 | Health Program Audits | 27-12-10 | Guidelines for Monitoring Supervision Fee [(Amended 6/10/88)] |
| 13.5 | Acquired Immune Deficiency Syndrome | 27-12-11 | Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority [(Amended 6/10/88)] |
| 14.2 | Personal Hygiene Items | 27-12-12 | Other Financial Obligations (Not Ordered by Releasing Authority) [(Amended 6/10/88)] |
| 14.3 | Marriage of Inmates | 27-12-13 | Community Service Work |
| 14.4 | Legal Services Program | 27-12-14 | Client Travel Restrictions [(Amended 6/10/88)] |
| 14.6 | Inmate Grievance Procedures (Amended 8/12/88) | 27-13-02 | Alcohol Detection |
| 15.1 | Hair and Grooming Standards | | |
| 15.2 | Offenses and Penalties | | |
| 15.3 | Meritorious Good Time | | |
| 15.5 | Restoration of Forfeited Good Time | | |
| 15.6 | Adjustment Procedures and Programs | | |
| 16.1 | General Inmate Visiting Procedure | | |
| 16.2 | Inmate Correspondence | | |
| 16.3 | Telephone Calls | | |
| 16.4 | Inmate Packages | | |
| 17.1 | Inmate Personal Property (Amended 8/12/88) | | |

27-14-01 Interstate Compact Transfers
[(Amended 6/10/88)]

27-14-02 Interstate Compact Out-of-state
Probation and Parole Violation
[(Amended 6/10/88)]

27-15-01 Supervision Report; Violations,
Unusual Incidents [(Amended 6/10/88)]

27-17-01 Absconder Procedures

27-18-01 Probation and Parole Issuance of
Detainer/Warrant

27-19-01 Preliminary Revocation Hearing
[(Amended 6/10/88)]

27-20-01 Division of Probation and Parole
Controlled Intake Program

27-20-02 Prisoner Intake Notification

27-20-03 Prisoner Status Change

27-21-01 Apprehension and Transportation of
Probation and Parole Violators
[(Amended 6/10/88)]

27-22-01 Fugitive Unit - Apprehensions

27-22-02 Fugitive Unit - Transportation of
Fugitives

27-23-01 In-state Transfer [(Amended 6/10/88)]

27-24-01 Closing Supervision Report [(Amended
6/10/88)]

27-24-02 Reinstatement of Clients to Active
Supervision [(Amended 6/10/88)]

27-25-01 Application for Final Discharge from
Parole

27-26-01 Assistance to Former Clients and
Dischargees

27-27-01 Restoration of Civil Rights

27-28-01 Firearms/Explosives: Application for
Relief from Disability

27-29-01 Parole Review Dates Modification
[(Added 6/10/88)]

28-01-01 Probation and Parole Investigation
Reports (Introduction, Definitions,
Confidentiality, Timing, and General
Comments)

28-01-02 Probation and Parole Investigation
Reports (Administrative
Responsibilities)

28-01-03 Probation and Parole Investigation
Reports (Presentence/Postsentence
Investigation Interview Procedure)

28-01-04 Probation and Parole Investigation
Reports (Presentence/Postsentence
Verification, Composition, Case
Material and Submission Schedules)

28-01-05 Probation and Parole Investigation
Reports (Computation of Jail Custody
Credit)

28-01-06 Probation and Parole Investigation
Reports (Misdemeanant Presentence
Investigation Reports for the
Circuit and District Courts)

28-01-07 Probation and Parole Investigation
Reports (Supplemental Postsentence
Investigation Report, Case Material,
and Submission Schedule)

28-01-08 Probation Parole Investigation
Reports (Partial Investigation
Reports and Submission Schedule)

28-01-09 Release of Information of Factual
Content on Presentence/Postsentence
Investigation Reports (Added 8/12/88)

28-02-01 Expedient Release Program [(Amended
6/10/88)]

28-03-01 Parole Plans/Halfway Houses/Extended
Furlough/Sponsorship/Gradual Release
[(Amended 6/10/88)]

28-04-01 Furlough Verifications

28-05-01 Out-of-state Investigations
[(Amended 6/10/88)]

JOHN T. WIGGINTON, Secretary

APPROVED BY AGENCY: August 12, 1988

FILED WITH LRC: August 12, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 26, 1988 at 9 a.m., in the State Office Building Auditorium. 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 Jones

(1) Type and number of entities affected: 2229 employees of the Corrections Cabinet, 6862 inmates, 10,784 parolees and 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 regulations 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.

TRANSPORTATION CABINET

Department of Highways

Division of Specialized Programs
(Proposed Amendment)

603 KAR 8:010. Transportation scholarship program.

RELATES TO: KRS Chapter 176, HB 516 (1988 RS) (Budget Summary, page TRAN-32) [1986 Acts Chapter 401]

STATUTORY AUTHORITY: KRS 174.080, HB 516 (1988 RS) (Budget Summary, page TRAN-32)

NECESSITY AND FUNCTION: An adequate staff is essential to the efficient operation of the engineering functions within the Transportation Cabinet. The purpose of the Transportation Scholarship Program is to provide highly qualified individuals to fill the cabinet's needs and improve the overall engineering

expertise available within the cabinet. This regulation provides policy and procedure for the Transportation Scholarship Program for civil engineers and civil engineering technologists, or other branches of engineering if approved by the Secretary of Transportation.

Section 1. Responsibilities. (1) The Secretary of Transportation shall be responsible for approving scholarships in civil engineering or engineering technology, or other branches of engineering when a need exists in the Transportation Cabinet.

(2) The State Highway Engineer, subject to the approval of the Secretary of Transportation, shall be responsible for the overall policies, guidance, administration, and proper utilization of the Transportation Scholarship Program.

(3) Universities participating in the program shall enter into a written agreement with the Transportation Cabinet in which the university agrees to accept the following responsibilities:

(a) Appoint a scholarship selection committee from the faculty of the university department affected. That committee shall [will] receive and review applications for scholarships to attend their university and make recommendations for awards to the State Highway Engineer.

(b) Notify all successful applicants of requirements for enrollment and attendance at the university.

(c) Provide academic guidance and counseling to each scholarship recipient.

(d) Provide to the Transportation Cabinet semester grades, semester grade point averages, and overall grade point averages for each scholarship student.

(e) Aid the cabinet in overall coordination of the program and provide space for meetings.

(f) Notify the cabinet immediately if any scholarship student fails to enroll or attend the university, or leaves the university.

Section 2. Eligibility. To be eligible for a scholarship, an applicant shall be:

(1) A senior attending an accredited Kentucky high school, or a high school graduate who is a resident of Kentucky; or

(2) A university student enrolled in preengineering, engineering, or engineering technology who is a resident of Kentucky and who meets minimum academic standards established by the Transportation Cabinet.

Section 3. Application for Scholarship. An eligible applicant shall submit a scholarship application to the university the applicant desires to attend by the deadline listed on the application. Application forms are available at each of the participating universities, accredited Kentucky high schools or the Kentucky Transportation Cabinet, Office of the State Highway Engineer, State Office Building, Frankfort, Kentucky.

Section 4. Award of Scholarship. Scholarships shall be awarded by the State Highway Engineer in accordance with recommendations by the university scholarship selection committees, except the numbers of scholarships may be reduced because of funding limitations, and except a scholarship may be denied to any student whose performance during work assignments with the cabinet has been unsatisfactory.

Section 5. Priority System. (1) If the cabinet's need for civil engineers or civil engineering technologists exceeds the supply of available funds, a priority system for awarding scholarships shall be put into effect by the State Highway Engineer.

(2) Priority shall be given as follows:

(a) Priority 1 - University seniors already in the program.

(b) Priority 2 - University juniors already in the program.

(c) Priority 3 - University sophomores already in the program.

(d) Priority 4 - Upper-class university students not in the program.

(e) Priority 5 - High school graduates applying for university freshman scholarships.

(f) Priority 6 - Graduate students working toward an advanced degree.

Section 6. Benefits. (1) Subject to the availability of funds and changes in the cost of attending the universities, benefits for the scholarship students shall consist of a monthly stipend paid during the normal academic year.

(2) Stipend payments shall not be made during summer school unless a student is attending a surveying camp which is required for graduation and for which university credit is awarded. These [Such] students shall continue on stipend during the camp.

(3) Benefits shall be payable to scholarship recipients enrolled in preengineering, civil engineering, or civil engineering technology at a state university which has a written agreement with the Transportation Cabinet. Scholarship recipients enrolled in other engineering programs shall [will] be paid benefits only if the Secretary of Transportation has declared there is a need in the Transportation Cabinet for engineers in branches other than civil.

Section 7. Scholarship Students. An applicant who is awarded a transportation scholarship shall comply with the following:

(1) Apply, be accepted, and enroll as a full-time student in preengineering, civil engineering, or civil engineering technology at a university with an agreement with the Transportation Cabinet.

(2) Pay all university tuition and fees, room, board, and book costs.

(3) Execute a contract with the Transportation Cabinet which requires at a minimum that:

(a) He shall provide the cabinet, on request, copies of all grade reports issued by the university.

(b) He shall pursue a degree in civil engineering or civil engineering technology on a full-time basis and maintain adequate grades as established by the Transportation Cabinet.

(c) He shall work one (1) calendar year for the Transportation Cabinet after graduation for each academic year a scholarship was received. Employment by any other agency of state government shall not satisfy this obligation.

(d) He shall refund all scholarship monies received in the event he breaches the scholarship program contract.

(e) He shall forfeit or refund the scholarship monies in the event he resigns from the Transportation Cabinet or scholarship program before completing the work obligation, fails to make adequate grades, fails to remain in school full-time pursuing a degree in engineering or

engineering technology, or is dismissed after permanent employment due to his violation of any personnel statutes or administrative regulation before completing the work obligation.

Section 8. Work performed as a seasonal employee during periods a scholarship student is not in school shall not count toward the student's work obligation. However, if a student fails to complete a degree in civil or other branch of engineering or engineering technology but subsequently becomes a permanent, full-time employee of the Transportation Cabinet, work performed as a permanent, full-time employee shall satisfy the student's work obligation on a month-for-month basis.

MILO D. BRYANT, Secretary

O. GILBERT NEWMAN, State Highway Engineer

APPROVED BY AGENCY: July 6, 1988

FILED WITH LRC: July 20, 1988 at 4 p.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on September 22, 1988 at 9 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by September 16, 1988 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: The amendment will affect only two students each year out of the 80 scholarships.

(a) Direct and indirect costs or savings to those affected:

1. First year: Stipend to each graduate scholarship student will be \$4,000.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Application for scholarship is required.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Direct cost of \$8,000.

2. Continuing costs or savings: Direct cost of \$8,000.

3. Additional factors increasing or decreasing costs: The students will receive training in areas in which the Transportation Cabinet needs more expertise. The students are then required to work for the cabinet.

(b) Reporting and paperwork requirements: Review of applications and grades.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative was rejected so that the Transportation Cabinet could take advantage of specialized programs at the graduate level in areas where the cabinet needs this specialized knowledge such as construction management and bridge design.

(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? Yes.

WORKERS' COMPENSATION BOARD Department of Workers' Claims (Proposed Amendment)

803 KAR 25:025. Joint self-insurers.

RELATES TO: KRS 342.350

STATUTORY AUTHORITY: KRS 342.350

NECESSITY AND FUNCTION: This regulation establishes the procedure and minimum requirements through which groups of employers may join together to self-insure their workers' compensation liability.

Section 1. Definitions. (1) "Group members" means employers who form a self-insurance group and who have common ownership, common interests or both.

(2) "Common ownership" means two (2) or more entities with more than fifty (50) percent common ownership. For the purpose of creating a group of self-insured employers and certification thereof as such under this regulation, all group member employers having more than fifty (50) percent common ownership shall constitute one (1) group member employer.

(3) "Common interests" means two (2) or more entities that are members of a bona fide trade association or are engaging in similar activities and with similar worker's compensation risks.

(4) "Manual premium" means the premium produced by using applicable manual rates, manual classifications and payrolls without regard to premium discounts and experience modifications.

(5) "Normal premium" means the premium produced by the application of a percentage to the manual premium. This percentage shall be agreed upon by the trustees and the excess insurers, and shall be based upon the actual past and anticipated future premiums and losses of the group members.

(6) "Aggregate excess insurance" means an insurance policy which covers statutory claims in excess of a certain percentage of the normal premium subject to a maximum dollar amount. "Statutory claims" means all occurrences taking place within the liability period of the aggregate excess insurance policy for which liability is or may be imposed on an employer under KRS Chapter 342.

(7) "Specific excess insurance" means an insurance policy which covers the amount of any claim from any one (1) occurrence involving one (1) or more employees in the same accident or occurrence in excess of a specified dollar amount subject to a maximum dollar amount.

(8) "Loss fund" means the amount of the total retained liability for claims by the group members as set forth in the aggregate excess insurance policy.

(9) "Self-insurance fund" means the loss fund together with all other expenses of the group related to the self-insurance program, including aggregate and specific excess insurance, servicing organization fees, bonds, related

taxes and other reasonable and necessary expenses.

(10) "Assessments" means charges to group members to sustain the self-insurance fund.

(11) "Surplus funds" means monies in the self-insurance fund resulting from investment income and resulting from earned premiums in excess of all losses and other costs for the period in which premiums were earned, including all reserves for outstanding liabilities.

(12) "Dividends" means periodic payments to group members from surplus funds.

(13) "Trustees" means persons to be elected by the group members and/or selected by the board of directors of the association for stated terms to direct the administration of the self-insurance fund.

(14) "Fiscal agent" means a person, partnership or corporation, other than a servicing organization or employees or agents of a servicing organization, with whom the trustees enter into a contract for the receipt, investment and disbursement of the self-insurance fund.

(15) "Servicing organization" means a person, partnership or corporation with whom the trustees enter into a contract to perform one (1) or more of the following services:

- (a) Adjustment of claims;
- (b) Safety engineering;
- (c) Purchase of excess insurance;
- (d) Accumulation of statistics and the preparation of needed premium and loss reports and tax reports;
- (e) Development of members, assessments and dividends;
- (f) Administration of a revolving fund; and
- (g) Preparation of self-insurance reports as may be required by the trustees or law.

(16) "Manual" means the manual on worker's compensation insurance as filed by the National Council on Worker's Compensation and approved by the Kentucky Department of Insurance.

(17) "Board" means the Workers' Compensation Board, Department of Workers' Claims [Labor], Commonwealth of Kentucky.

Section 2. Requirements for Group Self-insurance. (1) A group of employers must file an application and an indemnity agreement in the form prescribed by the board to become group self-insurers. Such application must be filed not later than thirty (30) days prior to the proposed inception date of the self-insurance program. The indemnity agreement shall jointly and severally bind the group and each member thereof to comply with the provisions of the Kentucky Workers' Compensation Act, the rules and regulations of the board, and the decision of the trustees for operation of the group fund.

(2) Applicants must either meet the requirements of common ownership or common interests, or both.

(3) Group members must have a total estimated annual normal premium of not less than \$100,000. The total group must have a combined net worth of not less than \$500,000 as shown by sworn statements by the owners or officers of each group member. Statements need not be certified, but must have been prepared by a certified public accountant.

Section 3. New Members. New members of a group must meet all the requirements of an original

member.

Section 4. Withdrawals. (1) Members of a group. In order to withdraw from a self-insurance group a member must give sixty (60) days notice to the trustees and the board, must receive written acknowledgment from the trustees, and is not entitled to receive any dividends for at least two (2) years after the effective date of its withdrawal.

(2) Entire group. Should a group determine to withdraw from its self-insurance program, the trustees must give thirty (30) days notice to the board and to each of the group members by certified mail and may pay no dividends without the specific written approval of the board for at least three (3) years following the close of each self-insurance year during which it operated. It must also show the board that it has made satisfactory arrangements for the continued payment and servicing of all outstanding claims.

Section 5. Trustees; Duties. (1) Trustees shall consist of not less than three (3) nor more than seven (7) persons, none of whom are to be officers, employees or agents of a servicing organization. The trustees shall have the authority to administer the operations of the self-insurance fund.

(2) The trustees on behalf of the group members shall be responsible for the assessment and collection of all funds from the group members for the self-insurance fund, and for the disbursements of all funds in accordance with written agreements between the trustees and all group members. Such disbursements shall include the payment of claims, or payments into a revolving fund from which such claim payments shall be made, payments of insurance and bond premiums, payment of fees under agreements with servicing organizations and fiscal agents, payment of dividends to members, payment of self-insurance taxes and payment of all other expenses which may be reasonable and necessary.

(a) The trustees may contract with a fiscal agent and/or servicing organization to perform these functions.

(b) A revolving fund of not more than twenty (20) percent of estimated annual normal premiums may be established for the use by a servicing organization for the payment of claims.

(3) The trustees may perform, if qualified, any or all of the functions of a servicing organization or may contract with a servicing organization to perform these functions.

(a) A servicing organization must be qualified to perform the functions that it contracts to perform. Its employees and/or agents must be duly licensed to perform those functions for which a license is required under Kentucky law.

(b) Any contract with a servicing organization that includes the adjustment and settlement of claims must include a requirement that the servicing organization will adjust to final conclusion any and all claims that result from an occurrence during the period for which the contract is effective.

(c) If there is to be a revolving fund, the servicing organization must maintain a fidelity bond as required herein.

(4) Excess insurance.

(a) The trustees must purchase aggregate excess insurance for losses in excess of a percentage of the normal premium which shall be

the retained liability of the group members. That retained liability and other fixed costs of the fund must not exceed 100 percent of the assessment of the group members, unless such amount over 100 percent is secured by unencumbered surplus monies of the group fund. The limit of liability of the aggregate excess insurance shall not be less than \$1,000,000 or fifty (50) percent of the normal premium, whichever is higher.

(b) The trustees shall purchase specific excess insurance with a limit of at least \$1,000,000 per occurrence.

(c) Contracts for excess insurance. Any casualty insurance company, to be eligible to write excess liability coverage for self-insurers in the State of Kentucky, shall at all times, in its financial statement on file with the Insurance Commissioner, show assets, including surplus to policy holders, at least equal to the latest Insurance Department requirements for admission of a new company to do business in the state. The financial and policyholder's ratings, as shown in the most current issue of "Best's Insurance Reports, Property-Liability," shall not be less than "IX" and "A," or "XII" and "B+" respectively. (The ratings are to be read separately, i.e., a rating of "X" and "B+" is not acceptable.) If, upon the publishing of "Best's" the company does not have a minimum rating of "A" policyholder's and "IX" financial or "B+" policyholders and "XII" financial, then the authorization for the company to write excess coverages shall be withdrawn immediately. In the event a company is not rated by "Best's", that company may be approved at the discretion of the board.

(5) Fund balances.

(a) Not less than thirty (30) days prior to inception of each self-insurance year, the trustees must collect from its group members an amount equal to not less than twenty-five percent of the anticipated self-insurance fund for the ensuing year and must collect not less than one-third (1/3) of the remaining balance each thirty (30) days thereafter. The amount to be collected shall be based upon estimated annual assessments and shall be adjusted each year accordingly. The assessment to each member shall bear a relationship to the normal premium chargeable to that member.

(b) Disbursements from the fund shall be only for those purposes related to the self-insurance program. Dividends may not be paid for at least twenty-four (24) months after the expiration of the self-insurance term and may be paid only from surplus funds. The distribution of dividends between members shall be based upon a formula which may or may not reflect any individual member's claim experience. Additional dividends may be paid periodically thereafter from surplus funds.

(c) The formula to be used for assessments and for the distribution of dividends shall be in accordance with a written agreement between all members of the group.

(d) The trustees or its fiscal agent shall not utilize any of the monies collected as premiums for any purpose unrelated to worker's compensation. Further, it shall be prohibited from borrowing any monies from the fund. The trustees may, at their discretion, invest any surplus monies not needed for current obligations, but such investments shall be limited to U.S. Government bonds, U.S. Treasury

notes, investment share accounts in any savings and loan association whose deposits are insured by a federal agency, and certificates of deposit if issued by a duly chartered commercial bank. Such deposits in savings and loan associations and commercial banks shall be limited to institutions in the state of Kentucky and the safety of any investments which exceed the federally insured amounts shall be the responsibility of the trustees.

(e) Any variation from the requirements set forth in this subsection must be specifically authorized by a written order of the board.

(6) Group members.

(a) The trustees shall not accept as a member of the group, any employer that does not have a net worth of at least two (2) times its estimated annual assessment, unless such employer pays its full annual assessment in advance. The trustees shall not accept as a member of the group any employer that does not meet all other qualifications for being a member of the group as set forth in the bylaws of the group.

(b) At the discretion of the trustees, the self-insurance program may include the Kentucky employees of foreign (out-of-state) employers.

(c) The trustees may suspend or expel any member from the group due to adverse claims experience and/or lack of cooperation with safety and loss prevention policies by giving the member and the board thirty (30) days notice.

(d) The trustees shall secure from each member of the group within forty-five (45) days of the close of the self-insurance year a report of actual payrolls for the year and shall produce from such report a premium adjustment. The trustees shall secure from each member an agreement to report such payrolls in accordance with the rules and classifications of the manual. Willful failure to properly report in accordance with such rules may result in immediate expulsion from the group. Such expulsion shall be reported to the board.

(e) At least thirty (30) days prior to due date, the trustees shall notify each group member of all assessments due, including annual adjustments, and failure by any member to pay such assessments within thirty (30) days if such notice may, at the discretion of the trustees, result in immediate suspension or expulsion from the group.

(7) Reports.

(a) The trustees shall utilize the services of a certified public accountant and shall file a certified audit each year with the board within 180 days of the end of the self-insured term.

(b) Within 120 days of the end of each self-insurance term, the trustees shall furnish group members a statement setting forth all premiums, losses and expenses and the allocation of assessments and the distribution of dividends among its members.

(c) The trustees shall file such additional reports as may be required by appropriate agencies of the Commonwealth.

(8) Bonds.

(a) The trustees shall provide a fidelity bond to the board in the amount of not less than \$100,000 for each trustee.

(b) The fiscal agent shall provide a fidelity bond to the trustees for not less than fifty (50) percent or \$1,000,000, whichever is the lower, of the funds to be handled by the fiscal agent. This requirement shall be waived if the

fiscal agent is a national bank.

(c) The servicing organization shall provide a fidelity bond to the trustees of not less than two (2) times the amount of the revolving fund.

(d) In lieu of the bonds required under paragraphs (a), (b) and (c) of this subsection, the trustees may secure a fidelity blanket bond in an amount not less than fifty (50) percent of the self-insurance fund or \$1,000,000, whichever is the lower; said bonds to include the trustees, personnel of the servicing organization and the fiscal agent, unless the fiscal agent is a national bank.

(e) The fund must provide a self-insurance surety bond to the board on a form prescribed by the board in an amount not less than seventy-five (75) percent of the aggregate reinsurance retention level [annual normal premium, but not exceeding \$250,000].

(f) Any corporate surety, to be eligible for writing self-insurers' bonds in the state of Kentucky, shall be authorized by the insurance commissioner of the state of Kentucky to transact such a business in the state, and its latest financial statement on file with the insurance commissioner shall at all times show assets, including surplus to policyholders, at least equal to the latest Insurance Department requirements for admission of a new company to do business in the state. The policyholders' and financial ratings, as shown in the most current issue of "Best's Insurance Reports, Property-Liability," shall not be less than "B+" and "XII," or "A" and "IX," respectively. (The ratings are to be read separately, i.e., a rating of "X" and "B+" is not acceptable.) In the event a company is not rated by "Best's," a corporate surety may be approved at the discretion of the board. No surety shall expose itself to any loss on any one (1) risk in an amount exceeding its current U.S. Treasury limit.

(9) The group shall be considered as an individual employer for all purposes of taxation and the individual members of said groups shall not be exposed to tax liability other than liability existing as a result of the interindemnity agreement with the other group members and the self-insurance fund.

ARMAND ANGELUCCI, Chairman

APPROVED BY AGENCY: July 21, 1988

FILED WITH LRC: July 21, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing will be held on this regulation on September 22, 1988, at 3 p.m. at the Capital Plaza Tower, Ground Floor Auditorium, Frankfort, Kentucky. Those persons interested in attending this hearing shall notify, in writing, at least five days before the hearing, the following person: Glenn Schilling, Commissioner, Department of Workers' Claims, the 127 Building, U.S. 127 South, Frankfort, Kentucky. If no written notification to attend the hearing is received at least five days before the hearing, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Glenn L. Schilling, Commissioner

Summary of Proposed Regulation: This regulation does not replace a previous regulation, but amends the present regulation 803 KAR 25:080 in the following respects. Section 1, definitions, of the present

regulation has been amended to provide a definition of a group of self-insured employers which definition simply enunciates the past and present policy of the Workers' Compensation Board; Section 1, definitions, of the present regulation has been amended to include a definition of "statutory claims" which has likewise been the past and present policy of the board in interpretation of the words "statutory claims"; Section 1, definitions (17) has been amended to conform to the present status of the Department of Workers' Claims as set out in newly enacted KRS Chapter 342; Section 5, Trustees (8) bonds (a) has been amended to provide that the fidelity bond for trustees of the self-insurer's fund afford a fidelity bond in minimum limits for each individual trustee; and Section 5, Trustees (8) bonds (e) has been amended to provide a surety bond for a self-insurer's fund in an amount in relation to the aggregate reinsurance retention level rather than in relation to annual normal premium and eliminating a maximum dollar amount.

(1) Type and number of entities affected: The regulation, as amended, will affect only group self-insurers of whom there are presently 10 in number and any future applicants for certification as group self-insurers. The purpose of group self-insurers is to permit entities having like or common operations or ownership to indemnify each other for the payment of compensation benefits to employees and thus avoid certain expenses of bonds required of individual self-insurers. To insure that there be adequate indemnification among group members, the present regulation has been amended to set out the past and present policy and discretion of the Workers' Compensation Board that a group self-insured cannot consist merely of entities having a common ownership; to provide that any aggregate excess insurance proposed by a group self-insurer insure for excess aggregate claims above retention for occurrences which during a policy period ultimately result in a claim; to provide a fidelity bond in a minimum amount of \$100,000 for each trustee of the self-insured fund rather than in a minimum amount of \$100,000 for all trustees; and to require that a self-insured fund provide a surety bond to the minimum amount of 75 percent of the aggregate reinsurance retention level in lieu of 75 percent of annual normal premium which could be grossly inadequate in the event of insolvency of the self-insurer's fund and to also eliminate the present maximum dollar amount.

(a) Direct and indirect costs or savings to those affected:

1. First year: By reason of the requirements for greater security for fidelity losses and for surety bond of self-insurer's fund there may be an increased cost to some self-insured groups. The amount of any such increased cost cannot be estimated.

2. Continuing costs or savings: The potential increased cost to those affected will continue each year the self-insured group seeks recertification.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None known.

(b) Reporting and paperwork requirements: No additional reporting or paperwork forms will be necessary.

(2) Effects on the promulgating administrative

body:

(a) Direct and indirect costs or savings:

1. First year: There will be no change in either direct or indirect costs or savings with respect to the promulgating administrative body.

2. Continuing costs or savings: There will be no change with respect to direct or indirect costs or savings.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Reporting and paperwork requirements will not be affected.

(3) Assessment of anticipated effect on state and local revenues:

(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:

TIERING: Was tiering applied? No. Tiering is not appropriate since there are no multiple classes involved.

PUBLIC PROTECTION & REGULATION CABINET
Harness Racing Commission
(Proposed Amendment)

811 KAR 1:035. Claiming races.

RELATES TO: KRS 230.630(1), (3), 230.640

STATUTORY AUTHORITY: KRS 230.630(3), (4), (7)

NECESSITY AND FUNCTION: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this regulation is to regulate claiming races.

Section 1. Who May Claim. A horse entered in a claiming race may be claimed for its entered price by a licensed horse owner who has a horse programmed to start in a pari-mutuel race at that meeting, or by a licensed horse owner who has received a claim certificate from the commission, or by any person who has qualified for a license as a horse owner and who has received a claim certificate from the commission. An authorized agent may claim for a qualified owner. To qualify for a license as an owner, the applicant must have a current United States Trotting Association membership as an owner or membership as an associate-member. Any person seeking to effect a false claim by inducing another to claim a horse for him will be subject to the penalties provided by Section 9 of this regulation.

Section 2. Prohibitions. (1) No person shall claim his own horse nor shall he claim a horse trained or driven by him.

(2) No person shall claim more than one (1) horse in a race.

(3) No qualified owner or his agent shall claim a horse for another person.

(4) No owner shall cause his horse to be claimed directly or indirectly for his own account.

(5) No person shall offer, or enter into an agreement, to claim or not to claim or attempt

to prevent another person from claiming any horse in a claiming race.

(6) No person shall enter a horse against which there is a mortgage, bill of sale, or lien of any kind, unless the written consent of the holder thereof shall be filed with the clerk of the course of the track conducting such claiming race.

Section 3. Claiming Procedure. (1) Owner's credit. The owner must have to his credit with the track giving the race an amount equivalent to the specified claiming price plus the existing Kentucky sales tax and requisite fees for transfer of registration. By accepting the claim, the racetrack assumes responsibility for payment to the owner of the horse claimed. The money due for a claimed horse is to be paid to the owner losing said horse within forty-eight (48) hours (Sundays excepted) by the track, provided that said horse has a current test complying with subsection (14) of this section.

(2) Owner's consent. No declaration may be accepted unless written permission of the owner is filed with the race secretary at the time of declaration.

(3) Program. The claiming price shall be printed on the program and all claims shall be for the amount so designated and any horse entered in a claiming race may be claimed for the designated amount.

(4) Claim box. All claims shall be in writing, sealed and deposited at least fifteen (15) minutes before the time originally scheduled for the race to begin in a locked box provided for this purpose by the association.

(5) Opening of claim box. No official shall open said box or give any information on claims filed until after the horses leave the paddock for the post parade. Immediately after the race, the claim box shall be opened and the claim, if any, examined by the judges.

(6) Multiple claims on same horses. Should more than one (1) claim be filed for the same horse, the owner shall be determined by lot by the judges.

(7) Delivery of claimed horse. A horse claimed shall be delivered immediately by the original owner or his trainer to the successful claimant upon authorization of the presiding judge. The horse's halter must accompany the horse. Altering or removing the horse's shoes will be considered a violation of this rule. The hopple measurements of a claimed horse must be made available to the successful claimant by the paddock judge.

(8) Refusal to deliver claimed horse. Any person who refuses to deliver a horse legally claimed out of a claiming race shall be suspended together with the horse until delivery is made.

(9) Vesting of title to claimed horse. Every horse claimed shall race in all heats or dashes of the event in the interest and for the account of the owner who declared it in the event, but title to the claimed horse shall be vested in the successful claimant from the time the word "go" is given in the first heat or dash, and said successful claimant shall become the owner of the horse whether it be alive or dead or sound or unsound, or injured during the race or after it; provided, however, that the final vesting of title to a claimed horse is subject to the conditions and provisions of subsection (14) of this section.

(10) Affidavit by claimant. The judges may require any person making a claim for a horse to make affidavit that he is claiming said horse for his own account or as authorized agent and not for any other person. Any person making such affidavit willfully and falsely shall be subject to punishment as hereinafter provided.

(11) Penalty for thirty (30) days. A claimed horse may start in a race in which the claiming price is less than the price at which it was claimed. The day claimed shall not count, but the following calendar day shall be the first day and the horse may be entered whenever necessary so that the horse may start on the 31st calendar day following the claim for any claiming price. If a horse is claimed no right, title or interest therein shall be sold or transferred except in a claiming race for a period of thirty (30) days following the date of claiming. Further, such horse shall be required to continue to race at the track where claimed for a period of thirty (30) days or the balance of the current racing meeting whichever comes first.

(12) Return of claimed horse to owner or stable. No horse claimed out of a claiming race shall be eligible to start in any race in the name or interest of the original owner for thirty (30) days, nor shall such horse remain in the same stable, or under the care or management of the first owner or trainer, or anyone connected therewith unless reclaimed out of another claiming race.

(13) Scratched horse. A horse scratched from a claiming race is not eligible to be claimed. The owner or trainer of a horse entered in a subsequent claiming race may request the judge to scratch the horse from that race. For a period of thirty (30) days, a horse entered in a claiming race but not in a subsequent claiming race, and is scratched, shall make the next start in a claiming race for a price not higher than the previous claiming price.

(14) Blood sample where horse is claimed. No blood sample shall be taken of a horse which has been claimed, if said horse has a valid veterinarian certificate within twelve (12) months of said claim, which certificate includes the horse's lip tattoo number and which is negative for Equine Infectious Anemia. In the event that said horse does not have said certificate, then a blood sample shall be taken immediately after the race in the paddock by a licensed veterinarian, and the sample identified as being from a claimed horse shall be forwarded within twenty-four (24) hours to an approved laboratory to be tested for Equine Infectious Anemia. Pending the receipt of a negative test for Equine Infectious Anemia the monies paid for the claimed horse shall be held by the track. In the event of a positive test for Equine Infectious Anemia the ownership of the claimed horse shall revert to the owner from whom the horse was claimed and the claiming monies shall be returned to the person or persons who claimed the horse. The cost of the test is to be borne by said owner and the test may be waived by the claimant at his discretion by so indicating on the claiming slip.

Section 4. Subject to the conditions of Section 3(14) of this regulation, the track shall pay the claiming price to the owner at the time the registration certificate is delivered for presentation to the successful claimant and

shall withhold and pay the Kentucky sales tax to the Commonwealth as required by law.

Section 5. Claiming Conditions. Whenever possible claiming races shall be written to separate horses five (5) years old and up from young horses and to separate males from females. If sexes are mixed, mares shall be given a twenty (20) percent minimum price allowance, provided, however, that there shall be no price allowance given to a spayed mare racing in a claiming race. An allowance for age shall be given. Two (2) year olds shall be given a 100 percent allowance, three (3) year olds fifty (50) percent allowance, and four (4) year olds twenty-five (25) percent allowance. Claiming races for two (2) year olds may be conditioned. Claiming races for three (3) year olds may be conditioned. The lowest claiming class written at a specific meeting may be conditioned.

Section 6. Minimum Price. No claiming race shall be offered permitting claims for less than the minimum purse offered at that time during the same racing week.

Section 7. Determination of Claiming Price. Except as provided in Section 3(11) of this regulation, and except as provided in 811 KAR 1:030, Section 21, no horse owner shall be prohibited from determining the price for which his horse shall be entered.

Section 8. The current registration certificate of all horses entered in claiming races must be on file with the racing secretary together with a separate claiming authorization form signed by the registered owner or owners and indicating the minimum amount for which the horse may be entered to be claimed. To facilitate transfer of claimed horses the presiding judge may sign the transfer provided that he then send the registration certificate and claiming authorization to the registrar for transfer.

Section 9. Any person violating any of the provisions of this regulation shall be fined, suspended or expelled.

Section 10. Fraudulent Claim. (1) If the judges determine that the declaration of any horse to a claiming race is fraudulent on the part of the declarer they may void the claim and at the option of the claimant order the horse returned to the person declaring it in.

(2) If the judges determine that any claim of a horse is fraudulent on the part of the person making the claim, they may void the claim and may, at the option of the person declaring it in, return the horse to the person declaring it in.

Section 11. (1) Should any stable be eliminated by sale or removal from the grounds, the right to claim is void. However, when a stable has been eliminated by claiming, the owner so affected shall have the right to claim a horse during the next thirty (30) racing days at any recognized meeting in this state even though all or a portion of the next thirty (30) racing days take place in the following calendar year. The owner or trainer of a stable eliminated by claiming shall get a written statement from the deputy commissioner or his

assistant stating the date and place that the said stable was eliminated by claiming. Should such stable acquire a horse before availing itself of the privilege, then the privilege shall be void.

(2) Should any stable be eliminated by fire or other hazards, such stable shall have claiming privilege under the conditions indicated for the stable eliminated by claiming, at the discretion of the deputy commissioner or his assistant.

CARL B. LARSEN, Executive Director
THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: July 29, 1988

FILED WITH LRC: August 15, 1988 at 10 a.m.

PUBLIC HEARING: A public hearing has been scheduled on this regulation on September 26, 1988, at 10 a.m. at the office of the Kentucky Harness Racing Commission. Anyone interested in attending this hearing, shall notify in writing: Carl B. Larsen, Executive Director, Kentucky Harness Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky, 40511, at least five days before the hearing.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carl B. Larsen

(1) Type and number of entities affected: Licensed owners of standardbred race horses in Kentucky - 2184 in 1987; 1988 licenses are still being issued.

(a) Direct and indirect costs or savings to those affected: There is no cost or savings to owners as the owner determines the claim price he will accept for his horse. This amendment will simply restrict an owner from entering his horse at a higher claim price for thirty days if he scratches his horse in order to prevent the horse from being claimed.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): The owner determines the claim price he will accept for his horse and may raise or lower the claim price after 30 days if he scratches.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: The Kentucky Harness Racing Commission is not affected by this amendment.

(a) Direct and indirect costs or savings: There is no direct or indirect cost or savings to the Kentucky Harness Racing Commission as the paperwork and personnel involved in claiming a horse are provided by the race tracks regulated by this agency.

1. First year:

2. Continuing costs or savings: There are no continuing costs or savings, as current claiming procedures would be used.

3. Additional factors increasing or decreasing costs: Track personnel currently handle the claiming of horses and this amendment would not require additional work for them.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements would not change.

(3) Assessment of anticipated effect on state and local revenues: This amendment would not affect state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative

methods were considered, as it is the intent of this amendment to prevent an owner from entering a horse in a claim race and scratching it to prevent it from being claimed and then coming back in a subsequent race and raising the claiming price. The restriction would apply for thirty days from the date of the race in which the horse was scratched.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This amendment does not conflict, overlap, or duplicate any other statutes or administrative regulations.

(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

PUBLIC PROTECTION & REGULATION CABINET Harness Racing Commission (Proposed Amendment)

811 KAR 1:055. Declaration to start; drawing horses.

RELATES TO: KRS 230.630(1), (3), 230.640

STATUTORY AUTHORITY: KRS 230.630(3), (4), (7)

NECESSITY AND FUNCTION: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this regulation is to regulate declarations to start; drawing horses.

Section 1. Declaration. (1) At extended pari-mutuel meetings. Unless otherwise specified in the conditions, or approved in writing by the commission three (3) days prior to the day of the race omitting Sundays, the declaration time shall be 9 a.m.

(2) Declaration time at other meetings. At all other meetings starters must be declared in at 10 a.m. unless another time is specified in the conditions.

(3) No horse shall be declared to start in more than one (1) race on any one (1) racing day.

(4) Timed used. In order to avoid confusion and misunderstanding, the time when declarations close will be considered to be standard time, except the time in use at an extended pari-mutuel meeting shall govern that meeting.

(5) Declaration box. The management shall provide a locked box with an aperture through which declarations shall be deposited.

(6) Responsibility for declaration box. The presiding judge shall be in charge of the declaration box.

(7) Search for declarations by presiding judge before opening box. Just prior to opening of the box at extended pari-mutuel meetings where futurities, stakes, early closing or late closing events are on the program, the presiding judge shall check with the race secretary to ascertain if any declarations by mail, telegraph, or otherwise, are in the office and not deposited in the entry box, and he shall see that they are declared and drawn in the proper event.

(8) Opening of declaration box. At the time specified the presiding judge shall unlock the box, assort the declarations found therein and immediately draw the positions in the presence

of such owners or their representatives, as may appear.

(9) Entry box and drawing of horses at extended pari-mutuel meetings. The entry box shall be opened by the presiding judge at the advertised time and the presiding judge will be responsible to see that at least one (1) horseman or an official representative of the horsemen is present. No owner or agent for a horse with a declaration in the entry box shall be denied the privilege of being present. Under the supervision of the presiding judge, all entries shall be listed, the eligibility verified, preference ascertained, starters selected and post positions drawn. If it is necessary to reopen any race, public announcement shall be made at least twice and the box reopened to a definite time.

(10) Drawing of post positions for second heat in races of more than one (1) dash or heat at pari-mutuel meetings. In races of a duration of more than one (1) dash or heat at pari-mutuel meetings, the judges may draw post positions from the stand for succeeding dashes or heats.

(11) Declarations by mail, telegraph or telephone. Declarations by mail, telegraph, or telephone actually received and evidence of which is deposited in the box before the time specified to declare in, shall be drawn in the same manner as the others. Such drawings shall be final. Mail, telephone and telegraph declarations must state the name and address of the owner or lessee; the name, color, sex, sire and dam of the horse; the name of the driver and his colors; the date and place of last start; a current summary, including the number of starts, first, seconds, thirds, earnings and best winning time for the current year; and the event or events in which the horse is to be entered.

(12) Effect of failure to declare on time. When a track requires a horse to be declared at a stated time, failure to declare as required shall be considered a withdrawal from the event.

(13) Drawings of horses after declaration. After declaration to start has been made no horse shall be drawn except by permission of the judges. Any horse eligible to start in a second, third, or fourth heat of a race shall not be drawn without the permission of the judges. A fine, not to exceed \$500, or suspension, may be imposed for drawing a horse without permission, the penalty to apply to both the horse and the party who violates the regulation.

(14) Horses omitted through error. Such drawings shall be final unless there is conclusive evidence that a horse properly declared, other than by telephone, was omitted from the race through error of a track or its agent or employee in which event the horse may be added to this race but given the outside post position. This shall not apply at pari-mutuel meetings unless the error is discovered prior to the publication of the official program.

Section 2. Qualifying Races. At all extended pari-mutuel meetings declarations for overnight events shall be governed by the following:

(1) Within two (2) weeks of being declared in, a horse that has not raced previously at the gait chosen must go a qualifying race under the supervision of a judge holding a presiding or associate judge's license for pari-mutuel meetings and acquire at least one (1) charted line by a licensed charter. In order to provide complete and accurate chart information on time

and beaten lengths a standard photo finish shall be in use.

(2) A horse that does not show a charted line for the previous season, or a charted line within its last six (6) starts, must go a qualifying race as set forth in subsection (1) of this section. Uncharted races contested in heats or more than one (1) dash and consolidated according to subsection (4) of this section will be considered one (1) start.

(3) When a horse has raced at a charted meeting during the current season, then gone to meetings where the races are not charted, the information from the uncharted races may be summarized, including each start, and consolidated in favor of charted lines and the requirements of subsection (2) of this section would then not apply.

(4) The consolidated line shall carry date, place, time, driver, finish, track condition and distance if race is not at one (1) mile.

(5) The judges may require any horse that has been on the steward's list to go a qualifying race. If a horse has raced in individual time not meeting the qualifying standards for that class of horse, he may be required to go a qualifying race.

(6) The judges may permit a fast horse to qualify by means of a timed workout consistent with the time of the races in which he will compete in the event adequate competition is not available for a qualifying race. However, a horse that is on the steward's list for breaks or refusing to come to the gate must qualify in a qualifying race.

(7) To enable a horse to qualify, qualifying races should be held at least one (1) full week prior to the opening of any meeting of ten (10) days or more and shall be scheduled at least twice a week. Qualifying races shall also be scheduled twice a week during the meeting and through the last week of the meeting.

(8) Where a race is conducted for the purpose of qualifying drivers and not horses, the race need not be charted, timed or recorded. This subsection is not applicable to races qualifying both drivers and horses.

(9) If a horse takes a win race record in a qualifying race, such record must be prefaced with the letter "Q" wherever it appears, except in a case where, immediately prior to or following the race, the horse taking the record has been submitted to an approved urine, saliva or blood test. It will be the responsibility of the presiding judge to report the test on the judges' sheet.

(10) Any horse that fails to race at a charted meeting within thirty (30) days after having started, shall start in a charted race or a qualifying race and meet the standards of the meeting before being allowed to start in a race with pari-mutuel wagering.

Section 3. Coupled Entries. (1) When the starters in a race include two (2) or more horses owned or trained by the same person, or trained in the same stable or by the same management, they shall be coupled as an "entry" and a wager on one (1) horse in the "entry" shall be a wager on all horses in the "entry." Provided, however, that when a trainer enters two (2) or more horses in a stake, early closing, futurity, free-for-all or other special event under bona fide separate ownerships, the said horses may, at the request of the

association and with the approval of the commission, be permitted to race as separate betting entries. The fact that such horses are trained by the same person shall be indicated prominently in the program. If the race is split in two (2) or more divisions, horses in an "entry" shall be seeded insofar as possible, first by owners, then by trainers, then by stables; but the divisions in which they compete and their post positions shall be drawn by lot. The above provision shall also apply to elimination heats.

(2) The presiding judge shall be responsible for coupling horses. In addition to the foregoing, horses separately owned or trained may be coupled as an entry where it is necessary to do so to protect the public interest for the purpose of pari-mutuel wagering only. However, where this is done, entries may not be rejected.

(3) If an owner, lessor, or lessee has a vested interest in another horse in the same race, it shall constitute an entry.

Section 4. Also Eligibles. Not more than two (2) horses may be drawn as also eligibles for a race and their positions shall be drawn along with the starters in the race. In the event one (1) or more horses are excused by the judges, the also eligible horse or horses shall race and take the post position drawn by the horse that it replaces, except in handicap races. In handicap races the also eligible horse shall take the place of the horse that it replaces in the event that the handicap is the same. In the event the handicap is different, the also eligible horse shall take the position on the outside of horses with a similar handicap. No horse may be added to a race as an also eligible unless the horse was drawn as such at the time declarations closed. No horse may be barred from a race to which it is otherwise eligible by reason of its preference due to the fact that it has been drawn as an also eligible. A horse moved into the race from the also eligible list cannot be drawn except by permission of the judges, but the owner or trainer of such a horse shall be notified that the horse is to race and it shall be posted at the race secretary's office. All horses on the also eligible list and not moved into race by 9 a.m. on the day of the race shall be released.

Section 5. Preference. (1) Preference shall be given in all overnight events according to a horse's last previous purse race during the current year. The preference date on a horse that has drawn to race and been scratched is the date of the race from which he was scratched.

(2) When a horse is racing for the first time in the current year, the date of the first declaration shall be considered its last race date, and preference applied accordingly.

(3) If an error has been made in determining or posting a preference date and said error deprives an eligible horse of an opportunity to race, the trainer involved shall report the error to the racing secretary within one (1) hour of the announcement of the draw. If in fact a preference date error has occurred, the race will be redrawn.

Section 6. Steward's List. (1) A horse that is unfit to race because he is dangerous, unmanageable, sick, lame, unable to show a performance to qualify for races at the meeting,

or otherwise unfit to race at the meeting may be placed on a "steward's list" by the presiding judge, and declarations on said horse shall be refused, but the owner or trainer shall be notified in writing of such action and the reason as set forth above shall be clearly stated on the notice. When any horse is placed on the steward's list, the clerk of the course shall make a note on the eligibility certificate of such horse, showing the date the horse was put on the steward's list, the reason therefor and the date of removal if the horse has been removed.

(2) No presiding judge or other official at a nonextended meeting shall have the power to remove from the steward's list and accept as an entry any horse which has been placed on a steward's list and not subsequently removed therefrom for the reason that he is a dangerous or unmanageable horse. Such meetings may refuse declarations on any horse that has been placed on the steward's list and has not been removed therefrom.

(3) A horse scratched from a race because of lameness or sickness may not enter another race for at least three (3) days from the date of the race from which the horse was scratched [scratch].

Section 7. Driver. Declarations shall state who shall drive the horse and give the driver's colors. Drivers may be changed until 9 a.m. of the day preceding the race, after which no driver may be changed without permission of the judges and for good cause. When a nominator starts two (2) or more horses, the judges shall approve or disapprove the second and third drivers.

Section 8. (1) It shall be the duty of the presiding judge to call a meeting of all horsemen on the grounds before the opening of an extended pari-mutuel meeting for the purpose of their electing a member and an alternate to represent them on matters relating to the withdrawal of horses due to bad track or weather conditions.

(2) In case of questionable track conditions due to weather, the presiding judge shall call a meeting consisting of an agent of the track member, the duly elected representative of the horsemen and himself.

(3) Upon unanimous decision by this committee of three (3) that track conditions are safe for racing, no unpermitted withdrawals may be made.

(4) Any decision other than unanimous by this committee will allow any entrant to scratch his horse or horses after posting ten (10) percent of the purse to be raced for. In the event sufficient withdrawals are received to cause the field to be less than six (6), then the track member shall have the right of postponement of an early closing event or stake and cancellation of an overnight event.

(5) Said money posted shall be forwarded to the commission and shall be retained as a fine, or refunded to the individual upon the decision of the commission as to whether the withdrawal was for good cause.

(6) The above procedure applies only to the withdrawal of horses that have been properly declared in and does not relate to postponement which is covered in 811 KAR 1:060.

CARL B. LARSEN, Executive Director
THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: July 29, 1988

FILED WITH LRC: August 15, 1988 at 10 a.m.

PUBLIC HEARING: A public hearing has been scheduled on this regulation on September 26, 1988, at 10 a.m. at the office of the Kentucky Harness Racing Commission. Anyone interested in attending this hearing, shall notify in writing Carl B. Larsen, Executive Director, Kentucky Harness Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky, 40511, at least five days before the hearing.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carl B. Larsen

(1) Type and number of entities affected: Owners of standardbred race horses licensed to race in Kentucky - 1987-2184; 1988 licenses still being issued.

(a) Direct and indirect costs or savings to those affected: There is no direct or indirect costs or savings to those owners.

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 paperwork or reporting is required as the licensed racing association currently maintains these records.

(2) Effects on the promulgating administrative body: The Kentucky Harness Racing Commission is not affected by this amendment.

(a) Direct and indirect costs or savings: There would be no direct or indirect cost or savings to the Commission as the licensed association is responsible for maintaining records on horses that have been scratched.

1. First year:

2. Continuing costs or savings: This amendment would not affect the Kentucky Harness Racing Commission at any time in the future.

3. Additional factors increasing or decreasing costs: Licensed track personnel are currently responsible for maintaining a horse's race record and reporting accordingly.

(b) Reporting and paperwork requirements: No additional reporting would be required.

(3) Assessment of anticipated effect on state and local revenues: This amendment would have no impact on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. This amendment was written in an effort to clarify the existing language in 811 KAR 1:055.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap, or duplication of statute, administrative regulation or government policy.

(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 amendment is proposed to clarify existing language in the administrative regulations.

TIERING: Was tiering applied? Yes

PUBLIC PROTECTION AND REGULATION CABINET Harness Racing Commission (Proposed Amendment)

811 KAR 1:180. Personnel to be licensed; fees.

RELATES TO: KRS 230.630(1), (3), 230.640, 230.700, 230.710

PURSUANT TO: KRS 230.630(3), (4), (7)

NECESSITY AND FUNCTION: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this regulation is to provide for the licensing of personnel and the fees to be charged for licensing.

Section 1. Every person holding a permit to conduct pari-mutuel wagering in this state and every person who is a member of an association holding such a permit and every person who is an officer of a corporation which holds such a permit, and every employee of the holder of such permit in any capacity connected to any extent with the pari-mutuel wagering business in this state, and all owners, trainers, drivers, grooms, managers, agents, blacksmiths, veterinarians, and like persons who actively participate in the racing activities of any such permit holders, shall furnish the commission, on demand, for its files, his fingerprints and photograph, which fingerprints and photograph shall be furnished at the time application is made for license from this commission.

Section 2. No one shall be permitted to enter in or about the grounds, stables or stable enclosures who does not have in his possession a license issued by the commission as owner, trainer, driver, apprentice, agent, stable foreman, groom, veterinarian, or proper credentials issued by the association, and a full record of these credentials shall be compiled and open to inspection at all times.

Section 3. At all pari-mutuel racing meetings all persons in the appended list shall procure a license from the commission. The annual fee for such licenses shall be paid at the time of the filing of the application and shall be as follows:

(1) Ownership fees:

Corporation or Limited Partnership with 1,001 or more shareholders or limited partners.....	\$500
Corporation or Limited Partnership with 201-1000 shareholders or limited partners.....	200
Corporation or Limited Partnership with 21-200 shareholders or limited partners.....	100
Corporation or Limited Partnership with 1-20 shareholders or limited partners.....	25
Each officer, director, and shareholder or limited partner owning five (5) percent or more interest in the corporation.....	10
Individual Owner.....	10

(2) Participant fees:

Stable License	\$50	Announcer	\$25
	[25]		[10]
Owner-driver	25	Assistant race	
	[15]	secretary	10
Owner-driver-trainer	25	Assistant starting	
	[15]	judge/gate driver	10
Driver	25	Charter	25
	[10]		[10]
Driver-trainer	25	Clerk of course	25
	[10]		[10]

Owner-trainer	25	Farrier	25
	[10]		[10]
Trainer	25	Mutuel employees	10
	[10]		
Judges-associate	25	Program director	25
	[15]		[10]
Judges-paddock	25	Timer	10
	[15]		
Judges-patrol	15	Veterinarian	25
			[15]
Judges-presiding	15	Miscellaneous	10
	25		
Judges-starting	25	Groom	5
	[15]		[4]
Race secretary	25	Vendor	25
	[15]		
Security guard	10	Mutuel Manager	25
Director of Security	25		

Section 4. Should a licensee lose a permit or should a permit in some manner be destroyed, such licensee may apply for a duplicate permit for a fee of five (5) dollars, except a groom's license shall be duplicated for one (1) dollar.

Section 5. If the commission, in its discretion, shall find that the experience, character and general fitness of the applicant are such that the participation of such person in harness horse race meets will not be consistent with the public interest, convenience and necessity and with the best interests of racing generally in conformity with the purposes of the harness racing act, it may there upon deny a license.

Section 6. If a license has previously been issued by the United States Trotting Association then upon payment of the license fee set out in Section 3 of this regulation, said license may be approved by an official stamp of the commission without the requirement on the part of said applicant to submit data required by Section 1 of this regulation.

CARL B. LARSEN, Executive Director

THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: July 29, 1988

FILED WITH LRC: August 15, 1988 at 10 a.m.

PUBLIC HEARING: A public hearing has been scheduled on this regulation on September 26, 1988, at 10 a.m. at the office of the Kentucky Harness Racing Commission. Anyone interested in attending this hearing, shall notify in writing Carl B. Larsen, Executive Director, Kentucky Harness Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky, 40511, at least five days before the hearing.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carl B. Larsen

(1) Type and number of entities affected: Persons licensed to race at horse racing tracks under the jurisdiction of the KY Harness Racing Commission - 4,687 (87).

(a) Direct and indirect costs or savings to those affected: Direct cost to licensees beginning January 1, 1989 would be \$49,445.

1. First year: \$49,445.

2. Continuing costs or savings: 49,445 for all years thereafter depending upon the number of people licensed.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There

would be no other factors to increase or decrease cost. This license fee increase for certain licensees of the KY Harness Racing Commission brings license fees in line with license fees already being charged to persons racing at quarterhorse tracks in Kentucky and said tracks are also under the jurisdiction of the Kentucky Harness Racing Commission. The fee increases are also representative of license fees charged in contiguous states.

(b) Reporting and paperwork requirements: There would be no additional reporting or paperwork requirements of licensees.

(2) Effects on the promulgating administrative body: This amendment would have no effect upon the promulgating administrative body which currently handles licensing; however, a fee increase would help to balance the commission budget. License fees for harness participants have not increased for fourteen years.

(a) Direct and indirect costs or savings: There would be no direct or indirect cost or savings.

1. First year: Commission personnel are currently licensing all licensees affected by this amendment and there would be no continuing costs or savings.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: The time needed for personnel to process licenses and process fees would not be affected.

(b) Reporting and paperwork requirements: No additional reporting would be required.

(3) Assessment of anticipated effect on state and local revenues: This amendment would increase state revenue by \$49,445 annually.

(4) Assessment of alternative methods; reasons why alternatives were rejected: It is felt that a license fee increase is needed to bring harness racing fees in line with other types of racing in the state and other states.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There would be no conflict, overlap, or duplication of current statutes, regulations or policies.

(a) Necessity of proposed regulation if in conflict: There is no known conflict with this proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: This amendment brings harness racing license fees in line with other license fees charged by this commission.

TIERING: Was tiering applied? Yes

CABINET FOR HUMAN RESOURCES Department for Mental Health/Mental Retardation Services (Proposed Amendment)

902 KAR 12:020. Patient's rights.

RELATES TO: KRS Chapters 202A, 202B
STATUTORY AUTHORITY: KRS 194.050, 202A.191, 202A.196, 202B.060

NECESSITY AND FUNCTION: KRS Chapters 202A and 202B, relating to the hospitalization of mentally ill and mentally retarded persons, direct that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations which insure proper administration

and enforcement of these chapters. The function of this regulation is to describe the rights of mentally ill and mentally retarded patients and to establish rules for the use of seclusion, restraint, and treatment under emergency situations, in the treatment of such patients.

Section 1. Title. This regulation may be cited as the "Kentucky Mental Patients' Bill of Rights."

Section 2. Right to be Adequately Informed.

(1) Each patient shall be adequately informed as to his individual treatment plan.

(a) A written individual treatment plan shall be prepared and entered into the medical record of each patient. Such treatment plan shall be subject to periodic review and shall be modified in the event of substantive changes;

(b) Each patient and his or her authorized representative shall have access to a written copy of his individual treatment plan;

(c) Upon written request, each patient and his or her authorized representative shall also be provided access to his entire medical record. In the event that full access to the medical record is refused, the patient shall be given a response in writing documenting the reasons for such refusal;

(d) In the case of minors or other persons who appear incapable of reading or understanding a written treatment plan, a summary of pertinent features of the treatment plan may be presented orally, and the responses of parents, guardians or other members of the immediate family shall be entered into the medical record if such persons can be located.

(2) For purposes of this regulation, the following definitions shall apply:

(a) "Individual treatment plan" means a written document which is a part of each patient's medical record and which must contain, but is not limited to:

1. A statement of the diagnosis of the patient;
2. The short and long-range objectives of care and treatment;
3. The methods of treatment to be employed;
4. The names of persons responsible for preparing and implementing the plan.

(b) "Substantive changes" means those changes which reflect distinct changes in goals of treatment, methods to be employed and the names of persons primarily responsible for overall review or implementation of the individual treatment plan:

1. Changes in the amount, frequency of administration, or specific type of medication shall not be considered substantive changes unless such changes involve introduction of new classes of medication including antipsychotic or anticonvulsant drugs;

2. Changes in the frequency, duration, place or supervision of daily activities shall not be considered substantive changes unless such changes exclude participation in the activities previously identified in the treatment plan or initiation of new activities which could not be reasonably anticipated on the basis of short and long-term treatment goals.

(c) "Emergency situation" means the presence of a situation in which a patient's behavior in his present environment is such that it presents an immediate and substantial danger or threat of immediate or substantial danger to that person or to others.

1. Behavior included in this definition extends to verbal threats or abuse toward other patients which creates a substantial risk that such other patients may react in a manner which poses an immediate substantial danger or threat of immediate substantial danger to themselves or others, or which will interfere in a substantial manner with the realistic opportunity of other patients to improve their own level of functioning through care and treatments in a hospital or residential treatment center;

2. Substantial deviation from an individual treatment plan which is formulated with the mutual consent of the staff and the patient or which is approved pursuant to a court hearing, or the overt or repetitious violation of rules and procedures of the hospital or residential treatment center by the patient may also be considered as an emergency situation, provided the patient has previously been fully informed as to the content of his individual treatment plan and as to the rules and procedures which may be applicable to his behavior.

(d) "Restraint" means the application of any physical device, the application of physical body pressure by another person in such a way as to control or limit physical activity, or the intravenous, intramuscular, or subcutaneous administration of any pharmacologic or chemical agent to a mentally ill patient or mentally retarded resident with the sole or primary purpose of controlling or limiting the physical activities of the patient or resident.

(e) "Seclusion" means the confinement of a mentally ill or mentally retarded patient alone in a locked room.

(f) "Authorized representative" means the patient's attorney, guardian of a disabled adult, parent or guardian of a juvenile, or an individual authorized in writing by the patient to act in the patient's behalf.

Section 3. Right to Assist in Treatment Plan. Each patient shall have the right to assist in the planning of his treatment program.

(1) Each patient shall be informed of the contents of his individual treatment plan and his verbal, written or behavioral responses to this information shall be entered in the medical records. Whenever possible, the responses of a patient to his treatment plan shall be used to review and modify its contents including, but not limited to, the objectives and methods of treatment to be employed;

(2) In the cases of minors and other patients who appear incapable of reading or understanding their treatment plans, the responses of parents, guardians, or other members of the immediate family shall be entered into the medical records if such persons can be located.

Section 4. Right to Refuse Treatment. (1) Patients may, under certain conditions, refuse treatment offered to them by the hospital. Such refusal shall be clearly documented in the medical records.

(a) In the case of voluntary patients and patients who are minors admitted with the consent of their parents or guardian, treatment plans may be implemented or continued until such time as the patient or his parents or guardian request the discharge of the patient or [requests the] review of the treatment plan.

(b) Involuntary patients, whether committed as the result of a hearing pursuant to KRS 202A.026

or 202B.040 or committed by a guardian pursuant to his powers under KRS 387.660(1), have the right to refuse treatment. A patient who refuses treatment may only be forcibly treated pursuant to a court order, after a de novo review, with a determination that such treatment is appropriate and in the best interests of the patient. [In the case of mentally ill or mentally retarded patients involuntarily admitted without a court order, or pursuant to a hearing, treatment in accordance with the initial or revised treatment plan may be implemented or continued until such time as a formal application for further hospitalization is submitted and a hearing held on the matter. In the event that a hearing for further hospitalization is requested, the attorney for the respondent and the judge shall be informed prior to the time of the hearing of the current individual treatment plan and recent use of medication which might affect the ability of the respondent to communicate with his attorney or the judge;]

(c) If no court findings exist to support the implementation of a specific treatment plan which is unacceptable to the patient, such treatment may be implemented or continued only in the event of an emergency situation documented in the medical records of the patient.

(2) Refusal to participate in the treatment plan shall be clearly documented in the medical record and shall be honored unless an emergency situation exists or the activity has been reviewed and approved in a court hearing.

(3) In the absence of an emergency situation, the patient shall not be subjected to loss of any other privileges which he has at the time of his refusal unless such privileges are clearly documented in the individual treatment plan as being contingent upon his participation in that area where participation has been refused.

(4) If the emergency situation persists for a period of more than seventy-two (72) hours, the treatment team shall evaluate the treatment plan and make changes necessary to meet the needs of the patient. If the patient refuses the revised treatment program, emergency treatment may continue as long as the emergency continues to be documented in the patient's record and the treatment review committee shall be informed and [the committee] shall proceed according to law.

Section 5. Right to Personal Effects. (1) Each patient shall have the right to maintain, keep, and use personal effects, items or money except in the following instances:

(a) Retention of the item would be contrary to the patient's individual treatment plan;

(b) Retention of the item poses a threat of subjecting the patient or others to substantial physical harm;

(c) Retention of the item would subject it to a substantial risk of loss, theft or destruction by the patient or other persons;

(d) Retention of the item would substantially impair the opportunity of the patient or other patients to benefit from care and treatment in the hospital; or

(e) Retention of the item is contrary to rules and regulations of the hospital which are reasonably related to the health and safety of the patient or other patients, except that such rules and regulations shall be waived when possession of such item is a part of the patient's individual written treatment plan.

(2) After written notice to a discharged

patient, hospitals and residential treatment centers may dispose of all unclaimed personal items 180 days after discharge. Any proceeds from the sale of such items shall be used for the benefit of persons residing at the hospital or residential treatment center.

Section 6. Right to Receive Visitors. (1) All patients shall have the right to meet with friends and relatives. This right shall not be waived except in the following instances:

(a) Exercise of the right would be inconsistent with the written provisions of the individual treatment plan, or

(b) An emergency situation exists.

(2) Each hospital or residential treatment center shall establish and post conspicuously rules governing visitors and visiting hours.

(3) All patients shall also have the right to refuse to meet with friends or relatives except that such right may be waived if such meetings are prescribed in the patient's individual treatment plan.

(4) Patients shall have the right to meet their authorized representative during nonvisitation hours, if suitable arrangements are made in advance with the hospital or residential treatment centers.

Section 7. Right to Receive Compensation for Work Done. Each patient shall have the right to receive payment for work performed on behalf of the hospital.

(1) All patients shall be provided compensation as designated by appropriate federal and state statutes and regulations for work performed at a hospital or residential treatment center where such work is of consequential economic benefit to the hospital or residential treatment center, any person, agency, or organization outside the hospital or the Commonwealth of Kentucky.

(2) The patient shall have the absolute right to refuse to perform any and all work except activities of immediate and direct benefit to the patient and his personal comfort.

Section 8. Right to Refuse Intrusive Treatment. All patients shall have the right to refuse intrusive treatments. Involuntarily committed patients [including electroshock therapy or psychosurgery, subject to the following limitation. Any patients committed on an involuntary basis or who are minors, or who have been declared disabled pursuant to KRS Chapter 387.] may only be provided electroshock therapy or psychosurgery pursuant to a court order with a determination that such treatment is in the best interest of the patient as providing him the optimal opportunity to reasonably benefit from care and treatment in the hospital or residential treatment center.

Section 9. Use of Seclusion and Restraint. The use of seclusion and other mechanical restraints in hospitals or residential treatment facilities shall be limited and shall be carried out only with appropriate precautions.

(1) Seclusion and other mechanical restraints used for the sole or principal purpose of controlling behavior which is the result of mental illness shall be instituted only when part of an individual treatment plan or in the event of an emergency situation.

(2) If use of seclusion or restraints is

warranted under this section, the following rules shall apply:

(a) The medical records shall document the conditions which prevail at the time of the use of such treatments and shall include the order of a licensed physician prescribing or justifying such treatment;

(b) Mentally ill persons placed in seclusion or subjected to the use of mechanical restraints other than to prevent or treat self-inflicted injury or to treat a concomitant medical or surgical disorder shall be individually observed and the need for continuing restraints or seclusion determined by a hospital or residential treatment facility employee at least every fifteen (15) minutes. In addition, the patient shall be seen daily by a physician and the reasons for continued use of this treatment procedure shall be documented in the medical records;

(c) The patients shall be permitted access to toilet facilities at least every two (2) hours and to bathing facilities every forty-eight (48) hours;

(3) No order by a licensed physician for seclusion or use of mechanical restraints shall be effective longer than twenty-four (24) hours after such treatment is implemented, and must be renewed if such treatment continues to be necessary, except where such treatment is prescribed to prevent or treat self-inflicted injury or a concomitant medical or surgical disorder; provided that any renewal order shall state the necessity for such continued treatment.

(4) In no circumstances shall restraints or seclusion be used principally or solely for the treatment of mental illness except as part of the documented individual treatment plan or in response to a documented emergency unless such treatment has received a review and approval by the court.

DENNIS D. BOYD, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: August 8, 1988

FILED WITH LRC: August 10, 1988 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 22, 1988 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by September 17, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Linda Knopf

(1) Type and number of entities affected: The

group of persons who could be affected are 50,000 who have severe mental illness and 28,000 with mental retardation.

(a) Direct and indirect costs or savings to those affected: None. This regulation deals with rights of patients concerning their treatment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: There will be very little change in procedures.

(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:

(3) Assessment of anticipated effect on state and local revenues:

(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? Yes

CABINET FOR HUMAN RESOURCES Department for Health Services (Proposed Amendment)

902 KAR 55:015. Schedule I substances.

RELATES TO: KRS Chapter 218A

STATUTORY AUTHORITY: KRS 194.050, 218A.020, 218A.040, 218A.250

NECESSITY AND FUNCTION: KRS 218A.020 authorizes the Cabinet for Human Resources to add substances to or delete or reschedule substances enumerated in KRS Chapter 218A. After considering the criteria set forth in KRS 218A.020 and 218A.040 and applicable federal regulations, the Cabinet for Human Resources designates the substances set forth in this regulation as Schedule I controlled substances.

Section 1. Opiates. The Cabinet for Human Resources hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any of the following opiates, including their isomers, optical isomers, esters, ethers, salts, salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetyl-alpha-methylfentanyl, N-[1-(1-methyl-2-phenyl) ethyl-4-piperidyl]-N-phenylacetamide;

(2) Alpha-methylfentanyl, N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide;

(3) Alpha-methylthiofentanyl, N-[1-(1-methyl-2-(2-thienyl) ethyl-4-piperidyl]-N-phenylpropanamide;

(4) Benzylfentanyl, N-[1-benzyl-4-piperidyl]-N-phenylpropanamide;

- (5) Beta-hydroxyfentanyl, N-[1-(2-hydroxy-2-phenyl)ethyl-4-piperidyl]-N-phenyl-propanamide;
- (6) Beta-hydroxy-3-methylfentanyl, N-[3-methyl-1-(2-hydroxy-2-phenyl)ethyl-4-piperidyl]-N-phenylpropanamide;
- (7) Difenoxy;
- (8) 3-Methylfentanyl, N-[3-methyl-1-(2-phenyl)ethyl-4-piperidyl]-N-phenylpropanamide;
- (9) 3-methylthiofentanyl, N-[3-methyl-1-(2-2-thienyl)ethyl-4-piperidyl]-N-phenyl-propanamide;
- (10) Para-fluorofentanyl;
- (11) Thienylfentanyl, N-[1-(2-thienyl) methyl-4-piperidyl]-N-phenylpropanamide; and
- (12) Thiofentanyl, N-[1-(2-(2-thienyl)ethyl-4-piperidyl]-N-phenylpropanamide; and
- (13) Tilidine.

Section 2. Opium Derivatives. The Cabinet for Human Resources hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any of the following opium derivatives, their salts, optical isomers, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, optical isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Drotebanol;
- (2) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP);
- (3) 1-(2-phenylethyl)-4-phenyl-4-acetyloxyperidine (PEPAP).

Section 3. Hallucinogenic Substances. The Cabinet for Human Resources hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purpose of this paragraph only, the term "isomer" includes the optical position and geometric isomers):

- (1) 4-bromo-2, 5-dimethoxy-amphetamine;
- (2) 2, 5-dimethoxyamphetamine (2, 5 DMA);
- (3) Ethylamine analog of phencyclidine (N-ethyl-1-phenylcyclohexylamine, cyclohexamine, PCE);
- (4) 4-methoxyamphetamine (PMA);
- (5) 3,4-methylenedioxy-N-ethylamphetamine (N-ethyl-alpha-methyl-3,4-(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA);
- (6) N-hydroxy-3,4-methylenedioxyamphetamine (N-hydroxy-alpha-methyl-3,4-(methylenedioxy)phenethylamine, N-hydroxy MDA);
- (7) [(5)] Parahexyl (Synhexyl);
- (8) [(6)] Pyrrolidine analog of phencyclidine (1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP); and
- (9) [(7)] Thiophene analog of phencyclidine (1-(1-(2-thienyl) cyclohexyl) piperidine, TCP, TCPy).

Section 4. Depressants. The Cabinet for Human Resources hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of such

salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Mecloqualone; and
- (2) Methaqualone (2-methyl-3-o-tolyl-4(3H)-quinazolinone).

Section 5. Stimulants. The Cabinet for Human Resources hereby designates as Schedule I controlled substances, in addition to those specified by KRS 218A.050, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) N,N-dimethylamphetamine (N,N.alpha-trimethylbenzene-ethaneamine, N,N.alpha-trimethylphenethylamine), its salts, optical isomers and salts of optical isomers;
- (2) [(1)] Fenethylamine;
- (3) [(2)] N-ethylamphetamine; [and]
- (4) 4-methylaminorex (2-amino-4-methyl-5-phenyl-2-oxazoline); and
- (5) [(3)] 3,4-methylenedioxymethamphetamine (MDMA).

C. HERNANDEZ, M.D., Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: August 4, 1988

FILED WITH LRC: August 10, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 22, 1988, at 9:30 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 September 17, 1988, 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: Edward Crews

(1) Type and number of entities affected: This regulation potentially affects all citizens of the Commonwealth.

(a) Direct and indirect costs or savings to those affected: There is no cost or savings involved. The regulation updates the list of controlled substances in Schedule I.

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: There is no reporting or paperwork.

(2) Effects on the promulgating administrative body: There is no significant effect on the administrative body. The regulation merely updates the list of controlled substances in Schedule I.

(a) Direct and indirect costs or savings: There is no additional cost or saving generated by this regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no additional reporting or paperwork required by this regulation.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative is an out of date list. This was rejected since the state list would not conform to the federal list.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this regulation.

(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 because KRS Chapter 218A applies to all persons without regard to sex, race, age, profession, or other differentiation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal law and regulations are 84 Stat. 1242; 21 U.S.C. 801 and 21 CFR 1308.11.

2. State compliance standards. The criteria for substances in Schedule I are set forth in KRS 218A.040.

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances in Schedule I are set forth in 21 U.S.C. 812.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The state regulation imposes no requirements or responsibilities different than federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HUMAN RESOURCES Department for Health Services (Proposed Amendment)

902 KAR 55:025. Schedule III substances.

RELATES TO: KRS Chapter 218A

STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.080, 218A.250

NECESSITY AND FUNCTION: KRS 218A.080 provides that the Cabinet for Human Resources shall place a substance in Schedule III under the Kentucky Controlled Substances Act if: (1) the substance has a potential for abuse less than the substances listed in Schedules I and II; (2) the substance has currently accepted medical use in treatment in the United States; and (3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence. The Cabinet for Human Resources hereby finds that the substances in this regulation meet this criteria.

Section 1. Amphetamine and Methamphetamine

Combination Products. The Cabinet for Human Resources hereby designates the following amphetamine and methamphetamine combination products as "Schedule III Controlled Substances" and any other drug of the quantitative composition shown below or which is the same except that it contains a lesser quantity of controlled substances, to wit:

[(1) Edrisal; Tablet: Amphetamine sulfate 2.5 mg.; aspirin 162 mg.; phenacetin 162 mg.]

[(2) Genegesis Capsules; Capsule: Methamphetamine hydrochloride 1.2 mg.; chlorpheniramine maleate 3.8 mg.; phenacetin 120.0 mg.; salicylamide 180.0 mg.; caffeine 30.0 mg.; ascorbic acid 50.0 mg.]

[(3) Hovizyme; Tablet: Methamphetamine hydrochloride 0.5 mg.; conjugated estrogens-equine 0.125 mg.; methyl testosterone 1.25 mg.; amylase 10.0 mg.; protease 5.0 mg.; cellulase 2.0 mg.; nicotinyl alcohol tartrate 7.5 mg.; dehydrochloric acid 50.0 mg.; ferrous fumarate 6.0 mg.]

[(1) [(4)] Mediatric; Tablet or capsule: Methamphetamine hydrochloride 1 mg.; conjugated estrogens-equine 0.25 mg.; methyl testosterone 2.5 mg.; and

[(2) [(5)] Mediatric Liquid; Solution (15 cc.): Methamphetamine hydrochloride 1 mg.; conjugated estrogens-equine 0.25 mg.; methyl testosterone 2.5 mg.

[(6) Special Formula 711; Tablet: d-Amphetamine sulfate 2.5 mg.; mephenesin 500 mg.; salicylamine 300 mg.]

[(7) Thora-Dex No. 1; Tablet: Dextroamphetamine sulfate 2 mg.; chlorpromazine hydrochloride 10 mg.]

[(8) Thora-Dex No. 2; Tablet: Dextroamphetamine sulfate 5 mg.; Chlorpromazine hydrochloride 25 mg.]

Section 2. Stimulants. The Cabinet for Human Resources hereby designates as "Schedule III" controlled substances any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers (whether optical position or geometric), and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Benzphetamine;
- (2) Chlorphentermine;
- (3) Chlortermine; and
- [(4) Mazindol; and
- [(4) [(5)] Phendimetrazine.

Section 3. Depressants. The Cabinet for Human Resources hereby designates as "Schedule III" controlled substances the following:

(1) Any material, compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof and one (1) or more other active medicinal ingredients which is not a controlled substance.

(2) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt thereof which has been approved by the United States Food and Drug Administration for marketing only as a suppository.

(3) Tiletamine and zolazepam or any salt thereof. Trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-

(3,4-e) (1,4)-dizepin-7 (1H)-one, flupyrzapon.

Section 4. Pentazocine Drug Products. The Cabinet for Human Resources hereby designates, in addition to the parenteral or injectable form of Pentazocine which is designated as a "Schedule III" controlled substance by KRS 218A.090(3), all other dosage forms of Pentazocine as "Schedule III" controlled substances. Any material, compound, mixture, or preparation which contains any quantity of Pentazocine, including its salts, is hereby designated as a "Schedule III" controlled substance.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: August 4, 1988

FILED WITH LRC: August 10, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 22, 1988, at 9:30 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 September 17, 1988, 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: Edward Crews

(1) Type and number of entities affected: This regulation potentially affects all citizens of the Commonwealth.

(a) Direct and indirect costs or savings to those affected: There is no cost or savings involved. The regulation updates the list of controlled substances in Schedule III.

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: There is no reporting or paperwork involved.

(2) Effects on the promulgating administrative body: There is no significant effect on the administrative body. The regulation merely updates the list of controlled substances in Schedule III.

(a) Direct and indirect costs or savings: There is no additional cost or savings generated by this regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no additional reporting or paperwork required by this regulation.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative is an out of date list. This was rejected since the state list would not conform to the federal list.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this regulation.

(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 because KRS Chapter 218A applies to all persons without regard to sex, race, age, profession, or other differentiation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal law and regulations are 84 Stat. 1242; 21 U.S.C. 801 and 21 CFR 1308.13.

2. State compliance standards. The criteria for substances in Schedule III are set forth in KRS 218A.080.

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances in Schedule III are set forth in 21 U.S.C. 812.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendments to the regulation impose no requirements or responsibilities more stringent than federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HUMAN RESOURCES Department for Health Services (Proposed Amendment)

902 KAR 55:030. Schedule IV substances.

RELATES TO: KRS Chapter 218A

STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.100, 218A.250

NECESSITY AND FUNCTION: KRS 218A.100 authorizes the Cabinet for Human Resources to place a substance in Schedule IV if it finds that: (1) the substance has a low potential for abuse relative to substances in Schedule III; (2) the substance has currently accepted medical use in treatment in the United States; and (3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III. In addition, KRS 218A.020(3) provides that if any substance is designated, rescheduled, or deleted as a controlled substance under a federal law and notice thereof is given to the cabinet, the cabinet may similarly control the substance by regulation. The Cabinet for Human Resources, after considering such criteria, hereby designates the substances set forth in this regulation as Schedule IV controlled substances.

Section 1. Stimulants. The Cabinet for Human Resources hereby designates as "Schedule IV" controlled substances, in addition to those specified by KRS 218A.110, any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers (whether optical

position or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

- (1) Cathine ((+)-norpseudoephedrine)
 [Fenfluramine];
 (2) Diethylpropion;
 (3) Fencamfamin;
 (4) Fenfluramine;
 (5) Fenproporex;
 (6) Mazindol;
 (7) Mefenorex;
 (8) [(3)] Pemoline;
 (9) [(4)] Phentermine;
 (10) [(5)] Pipradrol; and
 (11) [(6)] SPA ((-)-1-dimethylamino-1,2-diphenyl ethane).

Section 2. Depressants. The Cabinet for Human Resources hereby designates as "Schedule IV" controlled substances, in addition to those specified by KRS 218A.110, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Alprazolam;
- (2) Bromazepam;
- (3) Camazepam;
- (4) Chlordiazepoxide;
- (5) Clobazam;
- (6) Clonazepam;
- (7) Clorazepate;
- (8) Clotiazepam;
- (9) Cloxazolam;
- (10) Delorazepam;
- (11) Diazepam;
- (12) Estazolam;
- (13) Ethyl loflazepate;
- (14) Fludiazepam;
- (15) Flunitrazepam;
- (16) Flurazepam;
- (17) Halazepam;
- (18) Haloxazolam;
- (19) Ketazolam;
- (20) Loprazolam;
- (21) Lorazepam;
- (22) Lormetazepam;
- (23) Mebutamate;
- (24) Medazepam;
- (25) Methohexital;
- (26) Midazolam;
- (27) Nimetazepam;
- (28) Nitrazepam;
- (29) Nordiazepam;
- (30) Oxazepam;
- (31) Oxazolam;
- (32) Pinazepam;
- (33) Prazepam;
- (34) Quazepam;
- (35) Temazepam;
- (36) Tetrazepam; and
- (37) Triazolam.

Section 3. Analgesics, Nonnarcotics. The Cabinet for Human Resources hereby designates as "Schedule IV" controlled substances, in addition to those specified by KRS 218A.110, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts: Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

C. HERNANDEZ, M.D., Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: August 4, 1988

FILED WITH LRC: August 10, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 22, 1988, at 9:30 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 September 17, 1988, 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: Edward Crews

(1) Type and number of entities affected: This regulation potentially affects all citizens of the Commonwealth.

(a) Direct and indirect costs or savings to those affected: There is no cost or savings involved. The regulation updates the list of controlled substances in Schedule IV.

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: There is no reporting or paperwork.

(2) Effects on the promulgating administrative body: There is no significant effect on the administrative body. The regulation merely updates the list of controlled substances in Schedule IV.

(a) Direct and indirect costs or savings: There is no additional cost or savings generated by this regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no additional reporting or paperwork required by this regulation.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative is an out of date list. This was rejected since the state list would not conform to the federal list.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this regulation.

(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 because KRS Chapter 218A applies to all persons without regard to sex, race, age, profession, or other differentiation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal law

and regulations are 84 Stat. 1242; 21 U.S.C. 801 and 21 CFR 1308.14.

2. State compliance standards. The criteria for Schedule IV substances are set forth in KRS 218A.100.

3. Minimum or uniform standards contained in the federal mandate. The criteria for Schedule IV substances are set forth in 21 U.S.C. 812.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The state regulation imposes no requirements or responsibilities different than federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 55:035. Schedule V substances.

RELATES TO: KRS Chapter 218A

STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.120, 218A.250

NECESSITY AND FUNCTION: KRS 218A.120 authorizes the Cabinet for Human Resources to place a substance in Schedule V under the Kentucky Controlled Substances Act if it finds that: (1) The substance has low potential for abuse relative to the controlled substances listed in Schedule IV; (2) the substance has currently accepted medical use in treatment in the United States; and (3) the substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

Section 1. Schedule V Controlled Substances. The Cabinet for Human Resources hereby designates as "Schedule V" controlled substances, in addition to those specified by KRS 218A.130, the following:

(1) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one (1) or more nonnarcotic active ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(a) Not more than two and five-tenths (2.5) milligrams of diphenoxylate hydrochloride and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit; and

(b) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(2) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts: Buprenorphine.

Section 2. Dispensing Without Prescription. A

controlled substance listed in Schedule V which is not a prescription drug under the Federal Food, Drug, and Cosmetic Act, may be dispensed by a pharmacist without a prescription to a purchaser at retail, provided that:

(1) The medicinal preparation shall contain in addition to the controlled substances, some drug or drugs conferring upon it medicinal qualities other than those possessed by the controlled substances alone;

(2) Not more than 240cc (eight (8) ounces) nor more than forty-eight (48) dosage units of any such controlled substance containing opium, may be dispensed at retail to the same purchaser in any given forty-eight (48) hour period;

(3) The labeling and packaging shall be in accordance with the requirements of the federal and state Food, Drug, and Cosmetic Act and the United States Pharmacopeia;

(4) The preparation shall be dispensed or sold in good faith as a medicine, and not for the purpose of evading the provisions of KRS Chapter 218A;

(5) The preparation shall not be displayed in areas open to the public;

(6) The dispensing is made only by a pharmacist, and not by a nonpharmacist employee even if under the supervision of a pharmacist, although after the pharmacist has fulfilled his professional and legal responsibilities set forth in this section, the actual cash, credit transaction, or delivery, may be completed by a nonpharmacist;

(7) The purchaser is at least eighteen (18) years of age;

(8) The pharmacist requires every purchaser of a controlled substance under this section, not known to him to furnish suitable identification, including proof of age where appropriate; and

(9) The dispensing of exempt controlled substances under this regulation is recorded in a bound book, maintained by the pharmacist, which shall contain the name and address of the purchaser, the name and quantity of controlled substance purchased, the date of each purchase, and the name or initials of the pharmacist who dispensed the substance to the purchaser. The book shall be maintained in accordance with the recordkeeping requirements of KRS 218A.200.

C. HERNANDEZ, M.D., Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: August 4, 1988

FILED WITH LRC: August 10, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for September 22, 1988, at 9:30 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 September 17, 1988, 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: Edward Crews

(1) Type and number of entities affected: This regulation potentially affects all citizens of the Commonwealth.

(a) Direct and indirect costs or savings to those affected: There is no cost or savings involved in the amendments in Section 1. This

updates the list of substance in Schedule V. Section 2 represents a potential savings to any person needing certain controlled substances listed in Schedule V. This regulation would permit these drugs to be sold without a prescription.

1. First year: Impossible to determine. Would depend on whether an individual needed a substance permitted to be sold without prescription and how much physician's visit would have cost. Will result in savings to some consumers.

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

3. Additional factors increasing or decreasing costs (note any effects upon competition): Section 2 of this regulation will allow pharmacies in border areas of the state to compete with pharmacies in other states. All states surrounding Kentucky allow the sale of these products without a prescription.

(b) Reporting and paperwork requirements: The regulation requires that records be maintained when sales are made pursuant to this regulation. The records are the same as those required by federal law. No reports are to be filed.

(2) Effects on the promulgating administrative body: There is no significant effect on the administrative body. The regulation merely updates the list of controlled substances in Schedule IV.

(a) Direct and indirect costs or savings: There is no additional cost or savings generated by this regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no additional reporting or paperwork required by this regulation.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative is an out of date list. This was rejected since the state list would not conform to the federal list.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this regulation.

(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 because KRS Chapter 218A applies to all persons without regard to sex, race, age, profession, or other differentiation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal law for Section 1 of this regulation is 84 Stat. 1242; 21 U.S.C. 801 and 21 CFR 1308.15 is amended. Section 2 is comparable to 84 Stat. 1242; 21 U.S.C. 801 and 21 CFR 1306.32.

2. State compliance standards. The criteria

for substances in Schedule V are set forth in KRS 218A.120.

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances in Schedule V are set forth in 21 U.S.C. 812. The requirements for sales of controlled substances are set forth in 21 CFR 1306.32.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The regulation imposes no requirements or responsibilities which are more stringent than federal law. Wording in Section 2 which is not found in 21 CFR 1306.32 is consistent with KRS 218A.190 which governs sales of schedule V codeine preparations without a prescription.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HUMAN RESOURCES Department for Social Insurance Division of Management & Development (Proposed Amendment)

904 KAR 2:016. Standards for need and amount; AFDC.

RELATES TO: KRS 205.200(2), 205.210(1), 42 CFR 435.831, 45 CFR 233

STATUTORY AUTHORITY: KRS 205.200(2)

NECESSITY AND FUNCTION: The Cabinet for Human Resources is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, [hereinafter] referred to as AFDC, in accordance with federal regulations and Title IV-A of the Social Security Act. This regulation sets forth the standards by which the need for and the amount of an AFDC assistance payment is established.

Section 1. Definitions. (1) "Assistance group" is composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 3. The assistance group shall include the dependent child, child's eligible parent(s), and all eligible siblings living in the home with the needy child. Additionally, if the dependent child's parent is a minor living in the home with his[her] eligible parent(s), the minor's parent(s) shall also be included in the assistance group if the minor's parent applied for assistance. The incapacitated natural or adoptive parent of the child(ren) who is living in the home shall be included as second parent if the technical eligibility factors are met.

(2) "Minor" means any person who is under the age of eighteen (18) or under the age of nineteen (19) in accordance with 45 CFR 233.90(b)(3). EXCEPTION: For the purpose of deeming income, a minor parent/legal guardian is considered any person under the age of eighteen (18).

(3) "Sanctioned individual" means any person who is required to be included in the assistance group but who is excluded from the assistance

group due to failure to fulfill an eligibility requirement.

(4) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(5) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(6) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in a General Educational Development (GED) program; or

(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or

(c) The number of hours required by the individual high school/vocational school to fulfill their definition of full time; or

(d) Eight (8) clock hours per month in a literacy program.

(7) "Part-time school attendance" means a workload of anything less than "full-time school attendance."

(8) "Gross income limitation standard" means 185 percent of the sum of the assistance standard, as set forth in Section 8 of this regulation, and any educational allowance as set forth in Section 9 of this regulation.

(9) "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(10) "Recoupment" means recovery of overpayments of assistance payments.

(11) "Retrospective budgeting" means computing amount of assistance based on actual income and circumstances which existed in the second month prior to the payment month.

(12) "Lump sum income" means income that [is not earned,] does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum.

Section 2. Resource Limitations. Real and personal property owned in whole or in part by an applicant or recipient including sanctioned individual(s) and his[/her] parent(s), even if the parent(s) is not an applicant or recipient, if the applicant/recipient is a dependent child living in the home of said parent, shall be considered. The amount that can be reserved by each assistance group shall not be in excess of \$1,000 equity value excluding those items specifically listed in subsection (1) of this section as follows:

(1) Excluded resources. The following resources shall be excluded from consideration:

(a) One (1) owner-occupied home;

(b) Home furnishings, including all appliances;

(c) Clothing;

(d) One (1) motor vehicle, not to exceed \$1,500 equity value;

(e) Farm machinery, livestock or other inventory, and tools and equipment other than farm, used in a self-employment enterprise;

(f) Items valued at less than fifty (50) dollars each;

(g) One (1) burial plot/space per family member;

(h) Funeral agreements not to exceed maximum equity of \$1,500 per family member;

(i) Real property which the assistance group is making a good faith effort to sell. This exemption shall not exceed a period of nine (9) months and is contingent upon the assistance group agreeing to repay AFDC benefits received beginning with the first month of the exemption. Any amount of AFDC paid during that period that would not have been paid if the disposal of property had occurred at the beginning of the period is considered an overpayment. The amount of the repayment shall not exceed the net proceeds of the sale. If the property has not been sold within the nine (9) months, or if eligibility stops for any other reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;

(j) Other items/benefits mandated by federal regulations.

(2) Disposition of resources. An applicant/recipient shall [must] not have transferred or otherwise divested himself/herself of property without fair compensation in order to qualify for assistance. If the transfer was made expressly for the purpose of qualifying for assistance and if the uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limitation, the household's application shall be denied, or assistance discontinued. The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer. If the amount of excess transferred resources does not exceed \$500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every \$500 increment up to a maximum of twenty-four (24) months.

Section 3. Income Limitations. In determining eligibility for AFDC the following will apply:

(1) Gross income test. The total gross non-AFDC income of the assistance group, as well as income of parent(s), sanctioned individuals and[/or] amount deemed available from the parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with such assistance group, and[/or] amount deemed available from a stepparent(s) living in the home, and[/or] amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor, shall not exceed the gross income limitation standard. Disregards specified in Section 4(1) of this regulation shall apply. If total gross income exceeds the gross income limitation standard, the assistance group is ineligible.

(2) Applicant eligibility test. If the gross income is below the gross income limitation standard and the assistance group has not received assistance during the four (4) months prior to the month of application, the applicant eligibility test shall be applied. The total gross income after application of exclusions/disregards set forth in Section 4(1) and (2) of this regulation shall be compared to the assistance standard set forth in Section 8 of this regulation. If income exceeds this standard, the assistance group is ineligible. For assistance groups who meet the gross income test but who have received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation. If the assistance group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by applying disregards in Section 4(1), (2), and (3) of this regulation. If the assistance group's income, after application of appropriate disregards, exceeds the assistance standard, the assistance group is ineligible. Amount of assistance for the initial two (2) months of eligibility shall be determined prospectively in accordance with 45 CFR 233.34 and for subsequent months retrospectively, in accordance with 45 CFR 233.35.

(4) A period of ineligibility shall be established in accordance with 45 CFR 233.20(a)(3)(ii)(F), for applicants/recipients whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsections (2) or (3) of this section due to receipt of lump sum income. The ineligibility period shall be recalculated if any of the following circumstances occur:

(a) The standard of need increases and the amount of grant the assistance group would have received also changes.

(b) The income received has become unavailable to the assistance group for reasons beyond their control.

(c) The assistance group incurs and pays medical expenses in accordance with 42 CFR 435.831(C).

Section 4. Excluded/Disregarded Income. All gross non-AFDC income received or anticipated to be received by the assistance group, natural parent(s) and/or parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with such assistance group and/or stepparent(s) living in the home, shall be considered with the applicable exclusions/disregards as set forth below:

(1) Gross income test. All incomes listed below shall be excluded/disregarded:

(a) Disregards applicable to stepparent income and/or income of the parent(s)/legal guardian(s) of a minor parent/legal guardian living in the home with the assistance unit, as set forth in Section 5 of this regulation;

(b) Disregards applicable to alien sponsor's income, as set forth in Section 6 of this regulation;

(c) Disregards applicable to self-employment income, as set forth in 45 CFR 233.20(a)(6)(v)(B) and 45 CFR 233.20(a)(11)(i)(b)(1)(i);

(d) Work Incentive Program (WIN) incentive payments;

(e) Earnings received by a dependent child from participation in the Summer Youth Program, Work Experience Program, Limited Work Experience Program, and Tryout Employment Program under the Job Training Partnership Act (JTPA) for a period not to exceed six (6) months within a given calendar year, effective March 1, 1988;

(f) Unearned income received by a dependent child from participation in a JTPA program;

(g) Reimbursement for training-related expenses made by a manpower agency to applicants or recipients in institutional and work experience training programs under the WIN program;

(h) Value of the monthly allotment of food stamp coupons or value of United States

Department of Agriculture (USDA) donated foods;

(i) Nonemergency medical transportation payments;

(j) Payments from complementary programs if no duplication exists between the other assistance and the assistance provided by the AFDC program [Principal of loans];

(k) Educational grants, loans, scholarships, including payments for actual educational costs made under the GI Bill, obtained and used under conditions that preclude their use for current living costs and all education grants and loans to any undergraduate made or insured under any program administered by the United States Commissioner of Education;

(l) Highway relocation assistance;

(m) Urban renewal assistance;

(n) Federal disaster assistance and state disaster grants;

(o) Home produce utilized for household consumption;

(p) Housing subsidies received from federal, state or local governments;

(q) Receipts distributed to members of certain Indian tribes which are referred to in Section 5 of Public Law 94-114 that became effective October 17, 1975;

(r) Funds distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254, Public Law 93-134 or Public Law 94-540;

(s) Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended;

(t) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other programs under Titles II and III, pursuant to Section 418 of Public Law 93-113;

(u) Payments to volunteers under Title I of Public Law 93-113 pursuant to Section 404(g) of Public Law 93-113 except when the value of such payments when adjusted to reflect the number of hours volunteers are serving is the same as or greater than the minimum wage under state or federal law, whichever is greater;

(v) The value of supplemental food assistance received under the Child Nutrition Act of 1966, as amended, and the special food service program for children under the National School Lunch Act, as amended;

(w) Payments from the Cabinet for Human Resources, Department for Social Services, for child foster care, adult foster care, or subsidized adoption;

(x) Payments made under the Low Income Home Energy Assistance Act (LIHEAP) and other energy assistance payments which are permitted to be excluded pursuant to 45 CFR 233.53 (c)(5)(i);

(y) The first fifty (50) dollars of child support payments collected in a month which represents the current month's support obligation and is returned to the assistance group;

(z) For a period not to exceed six (6) months within a given year, earnings of a dependent child in full-time school attendance; and

(aa) Nonrecurring gifts of [The first] thirty (30) dollars or less [of small nonrecurring gifts] received per calendar quarter for each individual included in the assistance group.

(bb) Income from a loan if the loan is not for the purpose of meeting current living expenses.

(2) Applicant eligibility test. The exclusions/disregards set forth in subsection (1) of this section and those listed below shall be applied:

(a) Earnings received from participation in the Job Corps Program under JTPA by an AFDC child;

(b) Earnings of a dependent child in full-time school attendance for a period not to exceed six (6) months within a given year;

(c) Standard work expense deduction of seventy-five (75) dollars for full-time and part-time employment; and

(d) Child care, for a child(ren) or incapacitated adult living in the home and receiving AFDC, is allowed as a work expense is allowed not to exceed \$160 per month per individual for full-time employment or \$110 per month per individual for part-time employment.

(3) Benefit calculation. After eligibility is established, exclude/disregard all incomes listed in subsections (1) and (2) of this section as well as:

(a) Child support payments assigned and actually forwarded or paid to the department; and

(b) First thirty (30) dollars and one-third (1/3) of the remainder of each individual's earned income not already disregarded, if that individual's needs are considered in determining the benefit amount. The one-third (1/3) portion of this disregard shall not be applied to an individual after the fourth consecutive month it has been applied to his[/her] earned income. The thirty (30) dollar portion of this disregard shall be applied concurrently with the one-third (1/3) disregard, however, it shall be extended for an additional eight (8) months following the four (4) months referenced in the preceding sentence. These disregards shall be applied in accordance with 45 CFR 233.20(a)(11)(i)(D) and 45 CFR 233.20(a)(11)(ii)(B) and shall not be available to the individual until he/she has not been a recipient for twelve (12) consecutive months; and

(c) Earnings of a child in full-time school attendance or earnings of a child in part-time school attendance, if not working full-time.

(4) Exceptions. Disregards from earnings in subsections (2)(c) and (d) and (3)(b) of this section shall not apply for any month in which the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists as follows:

1. The individual is unable to engage in such employment or training for mental or physical reasons; or

2. The individual has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours per day; or

3. Working conditions at such job or training would be a risk to the individual's health or safety; or

4. A bona fide offer of employment at a minimum wage customary for such work in the community was not made; or

5. Effective February 1, 1988, the child care arrangement is terminated through no fault of the client; or

6. Effective February 1, 1988, the available child care does not meet the needs of the

child(ren), e.g., handicapped or retarded children.

(b) Fails to make a timely report of earnings unless good cause exists as follows:

1. The assistance group moved and reported the move timely, however, the move resulted in a delay in receiving or failure to receive the mandatory monthly report form; or

2. An immediate family member living in the home was institutionalized or died during the filing period; or

3. The specified relative was out of town during the entire filing period; or

4. The assistance group has been directly affected by a natural disaster (i.e., fire, flood, storm, earthquake).

(c) Requests assistance be terminated for the primary purpose of evading the four (4) month limitation on the deduction in subsection (3)(b) of this section.

(5) Sanction exception. The earned income of sanctioned individuals shall be counted without providing the exclusion/disregards in either subsections (2) and (3) of this section.

Section 5. Income and Resources. Income and resources of a stepparent living in the home with a dependent child and[/or] parent(s)/legal guardian(s) living in the home with a minor parent/legal guardian but whose needs are not included in the grant are considered as follows:

(1) Income. The gross income is considered available to the assistance group, subject to the following exclusions/disregards:

(a) The first seventy-five (75) dollars of the gross earned income;

(b) An amount equal to the AFDC assistance standard for the appropriate family size, for the support of the stepparent or parent(s)/legal guardian(s) of a minor parent/legal guardian and any other individuals living in the home but whose needs are not taken into consideration in the AFDC eligibility determination and are or may [could] be claimed by the stepparent or parent(s)/legal guardian(s) of a minor parent/legal guardian as dependents for purposes of determining his[/her] federal personal income tax liability;

(c) Any amount actually paid by the stepparent or parent(s)/legal guardian(s) of a minor parent/legal guardian to individuals not living in the home who are or may [could] be claimed by him[/her] as dependents for purposes of determining his/her personal income tax liability;

(d) Payments by the stepparent and[/or] parent(s)/legal guardian(s) of a minor parent/legal guardian for alimony or child support with respect to individuals not living in the household; and

(e) Income of a stepparent and[/or] parent(s)/legal guardian(s) of a minor parent/legal guardian receiving Supplemental Security Income (SSI) under Title XVI.

(2) Sanction exception. The needs of any sanctioned individual are not eligible for the exclusion(s) listed in this section.

(3) Resources. Resources which belong solely to the stepparent and[/or] parent(s)/legal guardian(s) of a minor parent/legal guardian are not considered in determining eligibility of the parent or the assistance group.

Section 6. Alien Income and Resources. For the purposes of this section the alien's sponsor and

sponsor's spouse (if living with the sponsor) shall be referred to as sponsor. The gross non-AFDC income and resources of an alien's sponsor [and sponsor's spouse (if living with the sponsor) hereinafter referred to as sponsor] shall be deemed available to the alien(s), subject to disregards as set forth below, for a period of three (3) years following entry into the United States. If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens. A sponsored alien is ineligible for any month in which adequate information on the sponsor/sponsor's spouse is not provided. If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization is no longer in existence or does not have the financial ability to meet the alien's needs. The provisions of this section shall not apply to those aliens identified in 45 CFR 233.51(e).

(1) Income. The gross income of the sponsor is considered available to the assistance group subject to the following disregards:

(a) Twenty (20) percent of the total monthly gross earned income, not to exceed \$175;

(b) An amount equal to the AFDC assistance standard for the appropriate family size of the sponsor and other persons living in the household who are or may [could] be claimed by the sponsor as dependents in determining his[/her] federal personal income tax liability, and whose needs are not considered in making a determination of eligibility for AFDC;

(c) Amounts paid by the sponsor to nonhousehold members who are or may [could] be claimed as dependents in determining his[/her] federal personal tax liability;

(d) Actual payments of alimony or child support paid to nonhousehold members; and

(e) Income of a sponsor receiving SSI or AFDC.

(2) Resources. Resources deemed available to the alien(s) shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he[/she] were an AFDC applicant in this state, less \$1,500.

Section 7. Earned Income Tax Credit (EITC). In the case of an applicant or recipient of AFDC, EITC payments shall be considered as earned income when received.

Section 8. Assistance Standard. The AFDC assistance standard, including amounts for food, clothing, shelter, and utilities from which countable income is deducted in determining eligibility for and the amount of the AFDC assistance payment, is as follows:

Effective July 1, 1988

Number of Eligible Persons	Monthly Standard
1 child	\$155 [147]
2 persons	\$188 [179]
3 persons	\$218 [207]
4 persons	\$272 [259]
5 persons	\$319 [303]
6 persons	\$360 [342]
7 or more persons	\$401 [381]

Section 9. Educational Allowance. An

educational allowance for child care shall be included in the assistance standard each month at the request of the caretaker relative, if the criteria in subsection (1) of this section are met and verified for those [said] month(s) and funds are available. Households receiving the educational allowance shall be subject to time frames, procedures, and penalties established for households required to report monthly. In addition, effective August 1, 1988 a transportation allowance shall be included in the assistance standard if the criteria in subsection (1)(a) and (b) of this section are met.

(1) Technical requirements. The following requirements shall [must] be met during any month for which an education allowance is paid.

(a) The caretaker relative shall [must] be included in the assistance grant;

(b) The caretaker relative shall [must] be enrolled full time, as defined in Section 1 of this regulation, in a literacy program, high school (including primary and secondary), vocational school, or a General Educational Development (GED) program for which no wage or child care allowance is received. If attending college, the caretaker relative shall [must] be enrolled either full or part-time, as defined in Section 1 of this regulation;

(c) A cost shall [must] have been incurred for the care of a child(ren) who is/are under the age of thirteen (13) or a child(ren) who is/are under the age of eighteen (18), if a physician determines the [said] child is unable to attend school due to a physical or mental disability, and is/are included in the assistance grant; and

(d) The payment for child care is made to a provider who is not a household member.

(2) Educational allowance payment standards. The amount of the monthly transportation allowance shall be twenty (20) dollars. The amount of monthly educational allowance payment shall be based on the number of eligible children for whom care is being provided and whether or not enrollment is full or part-time. Effective August 1, 1988 the payment standards are as follows:

	1 Child		2 or More Children	
	Full-Time	Part-Time	Full-Time	Part-Time
Literacy	\$ 20	-	\$ 36 [25]	-
GED	\$ 94	-	169 [117]	-
Elementary School/Junior High	\$174	-	313 [218]	-
High School	\$174	-	313 [218]	-
Vocational School	\$174	-	313 [218]	-
College/University	\$174	\$103	313 [218]	\$185 [129]
Kenan Project	\$143	= 257	=	=

(3) Limitations. The number of months a child care [an] educational allowance payment is made shall be limited according to the type of program in which the student enrolls and shall not be provided beyond completion of one (1) program at each level.

(a) Literacy: Type of Program Maximum
Literacy 24 months

(b) High school level.

1. A student may change programs within this level, however, the cumulative number of months payment is made shall not exceed the maximum for the program in which the student last enrolls as follows:

Type of Program	Maximums
General Educational Development (GED)	16 months
High School (includes primary and secondary)	27 months

2. A student wishing to continue his[/her] education past the high school level may be eligible for additional payments not to exceed the maximums for the posthigh school level.

(c) Posthigh school level. A student may change programs within this level, however, the cumulative number of months payment is made shall not exceed the maximum for the program in which the student last enrolls as follows:

Type of Program	Maximums
Vocational School	24 months
College/University	50 months

Section 10. Recoupment. The following provisions are effective for all overpayments discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup any overpayments.

(2) Overpayments, including assistance paid pending hearing decisions, shall be recovered:

(a) The overpaid assistance unit;

(b) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or

(c) Any individual member of the overpaid assistance unit whether or not currently a recipient.

(3) Overpayments shall be recovered through:

(a) Repayment by the individual to the cabinet; [and/]or

(b) Reduction of future AFDC benefits, which shall result in the assistance group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income in accordance with Section 8; [and/]or

(c) Civil action in the court of appropriate jurisdiction.

(4) Overpayments may be waived for inactive nonfraud cases involving less than thirty-five (35) dollars in overpayment.

(5) In cases which have both an overpayment and an underpayment, the cabinet shall offset one against the other in correcting the payment to current recipients.

(6) Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing is given and the administrative and judicial remedies have been exhausted or abandoned in accordance with Title 904, Chapter 2.

Section 11. Provisions contained in this regulation shall become effective October [April] 1, 1988 unless otherwise specified.

MIKE ROBINSON, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: July 28, 1988

FILED WITH LRC: August 9, 1988 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 22, 1988 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by September 17, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, Telephone: (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall, Director

(1) Type and number of entities affected: Approximately 1500 AFDC recipients receiving the educational allowance for child care and additional recipients who will be eligible to receive an educational allowance for transportation only.

(a) Direct and indirect costs or savings to those affected:

1. First year: Approximately 1500 AFDC recipients receiving the educational allowance for child care will receive an additional \$20 per month (\$240 per year) for transportation. Additional AFDC recipients not receiving the child care allowance will be eligible for the \$20 transportation allowance if they attend school. Approximately 650 AFDC recipients with two or more children will receive an increase in their child-care allowance.

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

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Insignificant

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Direct costs.

1. First year: \$1,833,500 total cost for SFY 89 (approximately \$500,000 state funds). The estimated cost of the transportation allowance is \$833,500. The estimated cost of the increased child care allowance is \$1,000,000.

2. Continuing costs or savings: \$1,864,300 total cost for SFY 90 (approximately \$508,000 state funds). The estimated cost of the transportation allowance is \$864,300. The estimated cost of the child-care allowance is \$1,000,000.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Insignificant

(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. Eligibility condition for AFDC must be applied on a consistent and equitable basis throughout the state in accordance with federal regulations at 45 CFR 233.10(a)(1).

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:022. Kentucky administrative process for child support.

RELATES TO: KRS Chapters 205, 405, 45 CFR Parts 301-307 [405.400 to 405.530]

STATUTORY AUTHORITY: KRS 405.520

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility for administering the child support program in accordance with Title IV-D of the Social Security Act, Title 45 CFR Sections 301, 302, 303, 304, 305, 306, and 307 and KRS 205.710 to 205.800. In addition, KRS 405.400 to 405.530, the Kentucky Administrative Process for Child Support Act, provides for the establishment and enforcement of child support obligations through administrative process when paternity is not in question. The administrative process supplements existing judicial remedies for nonsupport. Administrative process may [can] be used to establish and enforce support obligations for children receiving Aid to Families with Dependent Children (AFDC) benefits[, hereinafter referred to as AFDC,] as well as for non-AFDC children. This regulation sets forth the procedures the cabinet shall [will] employ in administratively establishing and enforcing child support obligations.

Section 1. Definitions. In addition to the terms defined in KRS 205.710 [405.420], the following terms shall be defined as set forth below.

(1) "Administrative process" [shall] means a method for establishing and enforcing child support obligations pursuant to KRS 405.400 to 405.530 and the provisions of this regulation.

(2) "Appointment letter" [shall] means the cabinet's notification to the obligor [parent] that his [the parent's] liability for support of the child is being determined. A financial statement for the parent's completion will be included with the appointment letter.

(3) "Default" [shall] means the obligor's [parent's] failure to return the financial statement [and/or] to keep an appointment to determine a support obligation under administrative process.

(4) "Notice of minimum monthly support obligation" [shall] means an administrative order issued by the cabinet pursuant to KRS 405.440 notifying the obligor [parent] of the amount of the child support obligation and of the obligor's [parent's] rights to request a hearing.

(5) "Dispute hearing" [shall] means the process whereby the obligor's [parent's] objections to a notice of minimum monthly support obligation are heard by an impartial hearing officer upon a timely request.

(6) "Person in possession or control" [shall] means the person who has custody of the earnings or property.

(7) "Order to withhold" [shall] means an administrative order issued by the cabinet to a person in possession or control of the obligor's [parent's] earnings or property to withhold an amount equal to a stated arrearage to satisfy a delinquent child support obligation.

(8) "Order to deliver" [shall] means an administrative order issued by the cabinet to have earnings or property, belonging to the obligor [parent], forwarded by the person in possession or control of the earnings or property to the cabinet to satisfy delinquent child support.

(9) "Delinquent support" [shall] means past due and unpaid installments on an obligation determined under a court order or a Cabinet for Human Resources administrative order (KRS 405.430) for support of a dependent child, which is owed to or on behalf of the child, or for maintenance to the spouse (or former spouse) with whom the child is living, only if a maintenance obligation has been established with respect to the spouse and the support obligation established with respect to the child is being enforced under the state's IV-D plan.

(10) "Order to release withholding" [shall] means an order to the person in possession or control of an obligor's [a parent's] earnings or property notifying that person that the cabinet is releasing any claim to the designated earnings or property.

(11) "Order to withhold earnings" [shall] means an administrative order issued by the cabinet to an obligor's [a parent's] employer to withhold an amount equal to the current obligation plus an amount to be applied toward liquidation of the delinquent support.

[(12) "Secretary" shall mean Secretary of the Cabinet for Human Resources or his designee.]

Section 2. Administrative Establishment. The cabinet may administratively establish a child support obligation when paternity is not in question, there is no existing order for support of the child and the parent resides or is employed in Kentucky. The cabinet shall send an appointment letter and a financial statement to the parent to assure the parent's right to participate in the establishment of the support obligation. Additionally, the cabinet may administratively establish the debt which accumulated during the first ninety (90) days of AFDC eligibility as an arrearage due the cabinet. Pursuant to KRS 205.792, the ninety (90) days may be extended.

(1) The cabinet shall determine the minimum monthly support obligation in accordance with KRS 405.430. In default cases, the cabinet shall set the obligation at the minimum cost basis on the scale for the number of children in the case.

(a) The following steps shall be used in applying the scale:

1. The gross income, less allowable deductions, of the noncustodial parent shall be added to the gross income, less allowable deductions, of the custodial parent to determine the "Annual Family Gross Income."

2. At the annual family gross income level in

the left hand column, the lower of the "income cap" or "cost basis" shall be selected for the number of children in the case.

3. The noncustodial parent's gross income shall be divided by the annual family gross income to obtain the percentage of support to be

apportioned to the noncustodial parent.

4. The figure selected in subparagraph 2 of this paragraph shall be multiplied by the percentage from subparagraph 3 of this paragraph to obtain the minimum monthly support obligation.

(b) The scale is set forth below:

Annual Family Gross Income	One (1) Child		Two (2) Children		Three (3) Children		Four (4) Children	
	Cost Basis	(20%) Income Cap	Cost Basis	(25%) Income Cap	Cost Basis	(30%) Income Cap	Cost Basis	(35%) Income Cap
\$ 0-\$ 1,000	\$207	\$ 60	\$325	\$ 60	\$ 436	\$ 60	\$ 542	\$ 60
\$ 1,000-\$ 1,250	\$207	\$ 60	\$325	\$ 60	\$ 436	\$ 60	\$ 542	\$ 60
\$ 1,251-\$ 1,500	\$207	\$ 60	\$325	\$ 60	\$ 436	\$ 60	\$ 542	\$ 60
\$ 1,501-\$ 1,750	\$207	\$ 60	\$325	\$ 60	\$ 436	\$ 60	\$ 542	\$ 60
\$ 1,751-\$ 2,000	\$207	\$ 60	\$325	\$ 60	\$ 436	\$ 60	\$ 542	\$ 60
\$ 2,001-\$ 2,250	\$207	\$ 60	\$325	\$ 60	\$ 436	\$ 60	\$ 542	\$ 62
\$ 2,251-\$ 2,500	\$207	\$ 60	\$325	\$ 60	\$ 436	\$ 60	\$ 542	\$ 69
\$ 2,501-\$ 2,750	\$207	\$ 60	\$325	\$ 60	\$ 436	\$ 66	\$ 542	\$ 77
\$ 2,751-\$ 3,000	\$207	\$ 60	\$325	\$ 60	\$ 436	\$ 72	\$ 542	\$ 84
\$ 3,001-\$ 3,250	\$207	\$ 60	\$325	\$ 65	\$ 436	\$ 78	\$ 542	\$ 91
\$ 3,251-\$ 3,500	\$207	\$ 60	\$325	\$ 70	\$ 436	\$ 84	\$ 542	\$ 98
\$ 3,501-\$ 3,750	\$207	\$ 60	\$325	\$ 76	\$ 436	\$ 91	\$ 542	\$ 106
\$ 3,751-\$ 4,000	\$207	\$ 65	\$325	\$ 81	\$ 436	\$ 97	\$ 542	\$ 113
\$ 4,001-\$ 4,250	\$207	\$ 69	\$325	\$ 86	\$ 436	\$ 103	\$ 542	\$ 120
\$ 4,251-\$ 4,500	\$207	\$ 73	\$325	\$ 91	\$ 436	\$ 109	\$ 542	\$ 128
\$ 4,501-\$ 4,750	\$207	\$ 77	\$325	\$ 96	\$ 436	\$ 116	\$ 542	\$ 135
\$ 4,751-\$ 5,000	\$207	\$ 81	\$325	\$ 102	\$ 436	\$ 122	\$ 542	\$ 142
\$ 5,001-\$ 5,250	\$207	\$ 85	\$325	\$ 107	\$ 436	\$ 128	\$ 542	\$ 149
\$ 5,251-\$ 5,500	\$207	\$ 90	\$325	\$ 112	\$ 436	\$ 134	\$ 542	\$ 157
\$ 5,501-\$ 5,750	\$209	\$ 94	\$325	\$ 117	\$ 436	\$ 141	\$ 542	\$ 164
\$ 5,751-\$ 6,000	\$211	\$ 98	\$325	\$ 122	\$ 436	\$ 147	\$ 542	\$ 171
\$ 6,001-\$ 6,250	\$213	\$102	\$325	\$ 128	\$ 436	\$ 153	\$ 542	\$ 179
\$ 6,251-\$ 6,500	\$215	\$106	\$325	\$ 133	\$ 436	\$ 159	\$ 542	\$ 186
\$ 6,501-\$ 6,750	\$217	\$110	\$325	\$ 138	\$ 436	\$ 166	\$ 542	\$ 193
\$ 6,751-\$ 7,000	\$219	\$115	\$325	\$ 143	\$ 436	\$ 172	\$ 542	\$ 201
\$ 7,001-\$ 7,250	\$221	\$119	\$325	\$ 148	\$ 436	\$ 178	\$ 542	\$ 208
\$ 7,251-\$ 7,500	\$223	\$123	\$325	\$ 154	\$ 436	\$ 184	\$ 542	\$ 215
\$ 7,501-\$ 7,750	\$225	\$127	\$325	\$ 159	\$ 436	\$ 191	\$ 542	\$ 222
\$ 7,751-\$ 8,000	\$227	\$131	\$325	\$ 164	\$ 436	\$ 197	\$ 542	\$ 230
\$ 8,001-\$ 8,250	\$229	\$135	\$325	\$ 169	\$ 436	\$ 203	\$ 542	\$ 237
\$ 8,251-\$ 8,500	\$232	\$140	\$325	\$ 174	\$ 436	\$ 209	\$ 542	\$ 244
\$ 8,501-\$ 8,750	\$234	\$144	\$325	\$ 180	\$ 436	\$ 216	\$ 542	\$ 252
\$ 8,751-\$ 9,000	\$236	\$148	\$325	\$ 185	\$ 436	\$ 222	\$ 542	\$ 259
\$ 9,001-\$ 9,250	\$238	\$152	\$325	\$ 190	\$ 436	\$ 228	\$ 542	\$ 266
\$ 9,251-\$ 9,500	\$240	\$156	\$325	\$ 195	\$ 436	\$ 234	\$ 542	\$ 273
\$ 9,501-\$ 9,750	\$242	\$160	\$325	\$ 201	\$ 436	\$ 241	\$ 542	\$ 281
\$ 9,751-\$10,000	\$244	\$165	\$325	\$ 206	\$ 436	\$ 247	\$ 542	\$ 288
\$10,001-\$10,250	\$246	\$169	\$325	\$ 211	\$ 436	\$ 253	\$ 542	\$ 295
\$10,251-\$10,500	\$248	\$173	\$325	\$ 216	\$ 436	\$ 259	\$ 542	\$ 303
\$10,501-\$10,750	\$250	\$177	\$325	\$ 221	\$ 436	\$ 266	\$ 542	\$ 310
\$10,751-\$11,000	\$252	\$181	\$325	\$ 227	\$ 436	\$ 272	\$ 542	\$ 317
\$11,001-\$11,500	\$258	\$188	\$340	\$ 234	\$ 448	\$ 281	\$ 542	\$ 328
\$11,501-\$12,000	\$263	\$196	\$360	\$ 245	\$ 459	\$ 294	\$ 542	\$ 343
\$12,001-\$12,500	\$269	\$204	\$377	\$ 255	\$ 471	\$ 306	\$ 542	\$ 357
\$12,501-\$13,000	\$274	\$213	\$395	\$ 266	\$ 483	\$ 319	\$ 542	\$ 372
\$13,001-\$13,500	\$280	\$221	\$412	\$ 276	\$ 495	\$ 331	\$ 542	\$ 386
\$13,501-\$14,000	\$286	\$229	\$430	\$ 287	\$ 506	\$ 344	\$ 542	\$ 401
\$14,001-\$14,500	\$291	\$238	\$447	\$ 297	\$ 518	\$ 356	\$ 544	\$ 416
\$14,501-\$15,000	\$297	\$246	\$465	\$ 307	\$ 530	\$ 369	\$ 556	\$ 430
\$15,001-\$15,500	\$302	\$254	\$482	\$ 318	\$ 542	\$ 381	\$ 569	\$ 445
\$15,501-\$16,000	\$308	\$263	\$500	\$ 328	\$ 553	\$ 394	\$ 581	\$ 459
\$16,001-\$16,500	\$313	\$271	\$517	\$ 339	\$ 565	\$ 406	\$ 593	\$ 474
\$16,501-\$17,000	\$319	\$279	\$521	\$ 349	\$ 577	\$ 419	\$ 606	\$ 489
\$17,001-\$17,500	\$325	\$288	\$524	\$ 359	\$ 589	\$ 431	\$ 618	\$ 503
\$17,501-\$18,000	\$330	\$296	\$528	\$ 370	\$ 600	\$ 444	\$ 630	\$ 518
\$18,001-\$18,500	\$336	\$304	\$531	\$ 380	\$ 612	\$ 456	\$ 643	\$ 532
\$18,501-\$19,000	\$341	\$313	\$535	\$ 391	\$ 624	\$ 469	\$ 655	\$ 547
\$19,001-\$19,500	\$347	\$321	\$538	\$ 401	\$ 636	\$ 481	\$ 668	\$ 561
\$19,501-\$20,000	\$353	\$329	\$542	\$ 411	\$ 648	\$ 494	\$ 680	\$ 576
\$20,001-\$20,500	\$358	\$338	\$545	\$ 422	\$ 660	\$ 506	\$ 693	\$ 591
\$20,501-\$21,000	\$364	\$346	\$549	\$ 432	\$ 671	\$ 519	\$ 705	\$ 605
\$21,001-\$21,500	\$369	\$354	\$552	\$ 443	\$ 683	\$ 531	\$ 717	\$ 620
\$21,501-\$22,000	\$375	\$363	\$556	\$ 453	\$ 695	\$ 544	\$ 730	\$ 634

\$22,001-\$22,500	\$384	\$371	\$559	\$ 464	\$ 702	\$ 556	\$ 737	\$ 649
\$22,501-\$23,000	\$393	\$379	\$563	\$ 474	\$ 709	\$ 569	\$ 744	\$ 664
\$23,001-\$23,500	\$402	\$388	\$566	\$ 484	\$ 716	\$ 581	\$ 751	\$ 678
\$23,501-\$24,000	\$410	\$396	\$570	\$ 495	\$ 722	\$ 594	\$ 759	\$ 693
\$24,001-\$24,500	\$419	\$404	\$573	\$ 505	\$ 729	\$ 606	\$ 766	\$ 707
\$24,501-\$25,000	\$428	\$413	\$577	\$ 516	\$ 736	\$ 619	\$ 773	\$ 722
\$25,001-\$25,500	\$437	\$421	\$580	\$ 526	\$ 743	\$ 631	\$ 780	\$ 736
\$25,501-\$26,000	\$446	\$429	\$584	\$ 536	\$ 750	\$ 644	\$ 787	\$ 751
\$26,001-\$26,500	\$455	\$438	\$587	\$ 547	\$ 757	\$ 656	\$ 795	\$ 766
\$26,501-\$27,000	\$464	\$446	\$591	\$ 557	\$ 764	\$ 669	\$ 802	\$ 780
\$27,001-\$27,500	\$472	\$454	\$594	\$ 568	\$ 771	\$ 681	\$ 809	\$ 795
\$27,501-\$28,000	\$481	\$463	\$598	\$ 578	\$ 777	\$ 694	\$ 816	\$ 809
\$28,001-\$28,500	\$490	\$471	\$601	\$ 589	\$ 784	\$ 706	\$ 823	\$ 824
\$28,501-\$29,000	\$499	\$479	\$605	\$ 599	\$ 791	\$ 719	\$ 831	\$ 839
\$29,001-\$29,500	\$508	\$488	\$608	\$ 609	\$ 798	\$ 731	\$ 838	\$ 853
\$29,501-\$30,000	\$517	\$496	\$612	\$ 620	\$ 805	\$ 744	\$ 845	\$ 868
\$30,001-\$30,500	\$526	\$504	\$615	\$ 630	\$ 812	\$ 756	\$ 852	\$ 882
\$30,501-\$31,000	\$535	\$513	\$619	\$ 641	\$ 819	\$ 769	\$ 859	\$ 897
\$31,001-\$31,500	\$543	\$521	\$622	\$ 651	\$ 825	\$ 781	\$ 867	\$ 911
\$31,501-\$32,000	\$552	\$529	\$626	\$ 661	\$ 832	\$ 794	\$ 874	\$ 926
\$32,001-\$32,500	\$561	\$538	\$629	\$ 672	\$ 839	\$ 806	\$ 881	\$ 941
\$32,501-\$33,000	\$570	\$546	\$633	\$ 682	\$ 846	\$ 819	\$ 888	\$ 955
\$33,001-\$34,000	\$575	\$558	\$647	\$ 698	\$ 860	\$ 838	\$ 903	\$ 977
\$34,001-\$35,000	\$581	\$575	\$661	\$ 719	\$ 873	\$ 863	\$ 917	\$1,006
\$35,001-\$36,000	\$586	\$592	\$675	\$ 740	\$ 887	\$ 888	\$ 932	\$1,035
\$36,001-\$37,000	\$591	\$608	\$690	\$ 760	\$ 901	\$ 913	\$ 946	\$1,065
\$37,001-\$38,000	\$597	\$625	\$704	\$ 781	\$ 915	\$ 938	\$ 960	\$1,094
\$38,001-\$39,000	\$602	\$642	\$718	\$ 802	\$ 928	\$ 963	\$ 975	\$1,123
\$39,001-\$40,000	\$607	\$658	\$732	\$ 823	\$ 942	\$ 988	\$ 989	\$1,152
\$40,001-\$41,000	\$613	\$675	\$746	\$ 844	\$ 956	\$1,013	\$1,004	\$1,181
\$41,001-\$42,000	\$618	\$692	\$760	\$ 865	\$ 970	\$1,038	\$1,018	\$1,210
\$42,001-\$43,000	\$623	\$708	\$774	\$ 885	\$ 983	\$1,063	\$1,032	\$1,240
\$43,001-\$44,000	\$629	\$725	\$788	\$ 906	\$ 997	\$1,088	\$1,047	\$1,269
\$44,001-\$45,000	\$634	\$742	\$803	\$ 927	\$1,020	\$1,113	\$1,071	\$1,298
\$45,001-\$46,000	\$639	\$758	\$817	\$ 948	\$1,044	\$1,138	\$1,096	\$1,327
\$46,001-\$47,000	\$644	\$775	\$831	\$ 969	\$1,067	\$1,163	\$1,121	\$1,356
\$47,001-\$48,000	\$650	\$792	\$845	\$ 990	\$1,091	\$1,188	\$1,145	\$1,385
\$48,001-\$49,000	\$655	\$808	\$859	\$1,010	\$1,114	\$1,213	\$1,170	\$1,415
\$49,001-\$50,000	\$660	\$825	\$873	\$1,031	\$1,138	\$1,238	\$1,196	\$1,444
\$50,001-\$51,000	\$666	\$842	\$987	\$1,052	\$1,161	\$1,263	\$1,219	\$1,473
\$51,001-\$52,000	\$671	\$858	\$902	\$1,073	\$1,185	\$1,288	\$1,244	\$1,502
\$52,001-\$53,000	\$676	\$875	\$916	\$1,094	\$1,208	\$1,313	\$1,268	\$1,531
\$53,001-\$54,000	\$682	\$892	\$930	\$1,115	\$1,232	\$1,338	\$1,293	\$1,560
\$54,001-\$55,000	\$687	\$908	\$944	\$1,135	\$1,255	\$1,363	\$1,318	\$1,590
\$55,001 Plus	\$676		\$944		\$1,255		\$1,318	

(2) After the minimum monthly support obligation and arrearage due the cabinet have been determined, the cabinet shall serve the notice of minimum monthly support obligation upon the obligor [parent] either in person or by certified mail, return receipt requested, in accordance with KRS 405.440.

(a) The effective date of the obligation shall be [is] the first day of the month following the month the parent receives the notice of minimum monthly support obligation.

(b) In accordance with KRS 405.430(2), the cabinet may modify the minimum monthly support obligation as established by the cabinet.

1. If, while verifying the income information, the cabinet finds that the obligor's [parent's] earnings are greater than what was previously reported, the cabinet may increase the support obligation. The cabinet may recover additional support which should have been paid under the correct obligation.

2. The cabinet shall not modify any obligation which was established by a court of competent jurisdiction.

Section 3. Appeal Procedures. The obligor [parent] may request a dispute hearing in accordance with KRS 405.440. An impartial hearing officer shall conduct the dispute hearing in the county of the child's or

obligor's [parent's] residence. The hearing shall be scheduled within sixty (60) days of the [parent's] request. The obligor [parent] may request a hearing pursuant to the instructions in the notice of minimum monthly support obligation.

(1) The request for a dispute hearing shall [will] be considered timely if:

(a) Made within twenty (20) days of receipt of a notice of minimum monthly support obligation;

(b) Made within twenty (20) days after the obligor [parent] is notified that a request for modification of the obligation will not be honored; or

(c) Made after thirty (30) days but before fifty (50) days have passed since the obligor [parent] requested a modification of the obligation, but the cabinet has not acted upon the request.

(2) If the request is not made within the time period specified in subsection (1) of this section, the obligor [parent] must show good cause for the late request. Good cause reasons may include, but are not limited to:

(a) The obligor's [parent's] being away from home during the entire filing period;

(b) The obligor's [parent's] inability to read the notice of minimum monthly support obligation; or

(c) The obligor's [parent's] incapacity due to

a serious illness during the entire filing period.

(3) The obligor [parent] or his[/her] authorized representative may review case material pertinent to the reason for the dispute and may present witnesses at the hearing.

(4) If the objection is being filed on an original notice of minimum monthly support obligations, the obligation shall be stayed pursuant to KRS 405.450(2).

(5) If the objection is being filed on a request for modification of obligation, the amount on the prior notice is enforceable and that amount must be paid while the hearing is pending.

(a) If the obligor [parent] prevails, the cabinet shall promptly return to the obligor [parent] any overpayments made since the hearing was requested.

(b) If the cabinet prevails, the obligation will be retroactive to the effective date on the notice of minimum monthly support obligation.

(6) The obligor [parent] may withdraw the hearing request by writing to the local IV-D office or the Hearing Branch in the Department for Social Insurance's Division of Administrative Review.

(7) The obligor [parent] or the cabinet may file an appeal to the circuit court within twenty (20) days after receipt of the hearing officer's decision pursuant to KRS 405.450.

Section 4. Mandatory Withholding of Earnings. The cabinet shall initiate withholding of earnings procedures when a delinquency equal to the amount of support payable for one (1) month is identified for cases in which order was entered prior to July 15, 1988. The cabinet shall [will] issue advance notice to the obligor [parent] prior to the implementation of the withholding.

(1) The advance notice to the obligor [parent], to be sent by certified mail, return receipt requested, shall contain at a minimum the following information:

(a) The amount of the delinquent support and the amount to be withheld, including the amount to be applied toward the liquidation of overdue support;

(b) Notification that the order to withhold earnings applies to the obligor's [parent's] current and any subsequent employers;

(c) That only mistakes of fact, i.e., wrong person identified or incorrect amount of overdue or current support, may be contested;

(d) Procedures for contesting the order; and

(e) Notification that the obligor shall [parent must] contact the cabinet within ten (10) days from the date the notice was received to contest the order. Failure to contact the cabinet in a timely fashion shall [will] result in the implementation of the withholding.

(2) If the obligor [parent] contests the withholding of earnings, he shall [/she must] be given an opportunity to state and defend his case, including the right to present to the cabinet copies of subsequent support orders [and/]or payment records.

(a) Within forty-five (45) days of the date of the advance notice, the cabinet shall [must] determine whether withholding of earnings is appropriate and notify the obligor [parent] of the results of the case review.

(b) If withholding is to begin, a copy of the order to withhold earnings shall be sent to the obligor [parent].

(3) The order to withhold earnings shall be served on the employer by certified mail, return receipt requested. It shall include at a minimum the following information:

(a) The obligor's [parent's] Social Security number;

(b) The amount to be withheld, including amounts to be applied toward delinquent support;

(c) Notification that the total withheld cannot exceed the maximum permissible under the Consumer Credit Protection Act;

(d) Notification that withholding shall [must] begin no later than the first pay period that occurs after fourteen (14) days following the date the order to withhold earnings was mailed;

(e) That the employer shall [must] send the remittance to the agency designated by the cabinet within ten (10) days of date the obligor [employee] is paid;

(f) That the employer may combine amounts due the agency designated by the cabinet into one (1) transmittal if [provided that] the employer identifies by IV-D account number [and/]or Social Security number the amount attributable to each obligor [parent];

1. If more than one (1) order against the obligor [parent] exists, the cabinet shall [will] allocate the payments among the obligor's [parent's] cases;

2. Payments shall [will] first be applied toward the current month's support obligation(s);

3. In cases where there are multiple orders being enforced by the cabinet against the obligor [parent], payments shall [will] be credited first to the account of the case containing the oldest order to withhold earnings;

(g) That the order to withhold earnings is binding until further notice and that the employer shall [will] be liable for the accumulated amount if he fails to abide by the order;

(h) That pursuant to KRS 405.991 [Chapter 405], the employer shall [will] be subject to a fine [and/]or a jail sentence for discharging, refusing to employ, or taking disciplinary action against the obligor [parent] because of the withholding of earnings; [and]

(i) That the employer shall [must] notify the cabinet when the obligor's [parent's] employment is terminated, giving the cabinet the new employer's name and address and the obligor's [parent's] last known address, if known; and

(j) That the employer may deduct an additional sum of one (1) dollar for each payment made pursuant to the order to cover his administrative costs.

(4) The order to withhold earnings may be terminated as deemed appropriate by the secretary; however, payment of the delinquent support shall not constitute the sole basis for the prevention or termination of the order to withhold earnings.

(5) Withholding shall take effect immediately for cases in which the order is entered on or after July 15, 1988 unless the obligor shows good cause. [The cabinet may initiate withholding of earnings procedures prior to the accumulation of one (1) month's arrearage upon the request of the parent obligated to pay the support.]

(a) Good cause shall be determined to exist if:
1. The obligor is threatened with the immediate loss of his primary source of earnings; or

2. Payment records indicate the obligor has voluntarily contributed support in an amount

equal to at least seventy-five (75) percent of the newly established obligation.

(b) If good cause is shown, withholding shall take effect when an arrearage accrues that is equal to the amount of support payable for one (1) month.

Section 5. Additional Administrative Enforcement Remedies. When[ever] the cabinet determines that the obligor [parent] owes delinquent support, the cabinet may implement administrative enforcement remedies to collect the delinquent support amounts. Personal property shall be exempted from attachment as specified in KRS 427.060 [Chapter 427].

(1) Order to withhold. When a delinquency equal to the amount of support payable for one (1) month is identified, the cabinet shall determine the total amount of support owed. The cabinet shall serve an order to withhold to the person(s) in possession or control of the obligor's [parent's] earnings or property. A copy of the order to withhold shall be provided to the obligor [parent]. The order shall state the basis for and the amount of the delinquent support and shall state that the obligor [parent] may offer a bond satisfactory to the cabinet to avoid losing possession of the property.

(a) When one (1) or more person(s) in possession or control of the obligor's [parent's] earnings or property is identified, the cabinet may issue and serve an order to withhold for each person in possession or control. When more than one (1) person in possession or control answers the order to withhold and the combined assets exceed the amount of the delinquent support, the cabinet shall:

1. Decide which person in possession or control to serve with an order to deliver. The cabinet may take into consideration the obligor's [parent's] request as to which source to withhold.

2. Send an order to release withholding to any person in possession or control not being served with an order to deliver.

3. Request only a portion of an asset to satisfy the delinquent support when the total asset exceeds the amount of delinquent support.

(b) The obligor [parent] may contact the cabinet for an explanation of administrative enforcement. The cabinet may accept partial payment sufficient to release the order to withhold when deemed appropriate by the secretary.

(2) Order to deliver. When the employer or the person in possession or control of the earnings or property responds to the order to withhold, the cabinet may complete and serve on the person in possession or control an order to deliver the earnings [and/]or property to the cabinet. Earnings or property delivered to the cabinet in accordance with an order to deliver shall be applied to the amount of delinquent support pursuant to federal law.

(3) Order to release withholding. The cabinet shall issue and serve an order to release withholding on its claim on the obligor's [parent's] earnings or property when the stated delinquent support is satisfied.

MIKE ROBINSON, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: July 18, 1988

FILED WITH LRC: July 21, 1988 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 22, 1988 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by September 17, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall

(1) Type and number of entities affected: 8,000 IV-D cases.

(a) Direct and indirect costs or savings to those affected:

1. First year: Average obligation is \$121 per month in AFDC cases and \$162 in non-AFDC cases.

2. Continuing costs or savings: Ongoing payment until child reaches majority or is emancipated.

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: Increase in child support collections and incentives.

1. First year: \$3.9 million state share collections, in addition to \$700,000 in incentives.

2. Continuing costs or savings: Incentives will increase as collections increase.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: Local revenues will increase as additional incentives are returned to the local jurisdiction.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method assessed; set forth in 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. Federal regulations and state statutes mandate that withholding procedures be implemented in a like manner statewide, thereby prohibiting tiering.

PROPOSED REGULATIONS RECEIVED THROUGH NOON, AUGUST 15, 1988

FINANCE & ADMINISTRATION CABINET
Higher Education Assistance Authority
Program Administration

11 KAR 3:060. Loan insurance program.

RELATES TO: KRS 164.740 to 164.766, Higher Education Act of 1965 as amended by P.L. 99-498, 100-50, P.L. 100-297, P.L. 100-369 (20 U.S.C. §1071 through §1087-2 and 20 U.S.C. §1087kk through §1099), 34 CFR Part 668 Subparts A, C, and G and Part 682 Subparts A through G and Appendices A and C

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4), 164.753(2) Higher Education Act of 1965 as amended by P.L. 99-498, 100-50, P.L. 100-297, P.L. 100-369 and 100-50 (20 U.S.C. §1071 through §1087-2 and 20 U.S.C. §1087kk through §1099), 34 CFR Part 668 Subparts A, C, and G and Part 682 Subparts A through G and Appendices A and C

NECESSITY AND FUNCTION: KRS 164.744 and 164.766 provide that the Kentucky Higher Education Assistance Authority ("authority") may insure loans for students and parents of dependent students. KRS 164.744 authorizes the authority to insure student loans, but requires that the insured loans meet the criteria of the federal act. KRS 164.744 further requires the authority to enter into agreements with the U.S. Secretary of Education providing for interest payments, reimbursements, reinsurance and other benefits. This regulation is necessary due to numerous changes in applicable sections of the federal Higher Education Act of 1965 and federal regulations. Additionally, House Bill 76, enacted by the 1988 regular session of the General Assembly, amended KRS 164.740 by deleting restrictions on insured student loans pertaining to residency and program of study. This regulation also repeals existing regulations, 11 KAR 3:020 through 11 KAR 3:050, to preclude the possibility of error, duplication, or conflict in program requirements.

Section 1. Federal Regulations. (1) 34 CFR Part 682 Subparts A through D, sections 682.502 through 682.505, 682.508, 682.509, and 682.511 through 682.514 of Subpart E, Subparts F through G, and Appendices A and C; and 34 CFR Part 668 Subparts A, C and G are adopted with changes and are incorporated herein. These regulations contain general provisions pertaining to eligibility and assessment of need, reinsurance and other benefits. The cited federal regulations, as amended herein, shall be applicable and binding in all respects upon all parties to any transaction involving a loan insured pursuant to this regulation and KRS 164.740 to 164.766. These regulations are available to the public at any federal depository library and at the authority. They may be inspected and copied at the offices of the authority located at 1050 U.S. 127 South, Frankfort, Kentucky 40601 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

(2) Public Law 99-498, enacted October 17, 1986, Public Law 100-50 enacted June 3, 1987, Public Law 100-297, enacted April 28, 1988, and Public Law 100-369, enacted July 18, 1988, supersede certain provisions of 34 CFR Part 682 and 34 CFR Part 668. These regulations have not yet been amended by the U.S. Department of Education. Where applicable, these federal

regulations have been amended by the authority to conform to the superseding federal statutes.

Section 2. 11 KAR 3:020, Loan insurance program, 11 KAR 3:030, Eligible program of study, 11 KAR 3:040, Lender participation requirements, and 11 KAR 3:050, Student eligibility, are repealed.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: July 26, 1988

FILED WITH LRC: August 15, 1988 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 29, 1988 at 9:30 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 24, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: The Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden

(1) Type and number of entities affected: There are currently 340 financial institutions participating in the authority's insured educational loan program. Loans have cumulatively been insured for 137,040 borrowers as of June 30, 1988. During the 1986-87 academic year (the last period for which figures are available), the authority insured loans for students attending 162 Kentucky educational institutions and 1,000 out-of-state institutions. Nationally, there are approximately 14,000 educational institutions eligible under the federal law. It is anticipated that the number of participants in each category will substantially increase due to the enactment of House Bill 76 which deleted restrictions on insured loans pertaining to residency and program of study. The extent of that increase is unknown.

(a) Direct and indirect costs or savings to those affected: In nearly all respects, the proposed regulation adopts the minimum federal requirements imposed on participating lenders, schools, and borrowers; and the proposed regulation adopts the maximum loan amounts and charges permitted by federal law. For this reason the cost of voluntary participation in the authority's insured educational loan program will not vary from the cost of participation under the federal regulations. The administrative costs for lenders and schools, relating to the processing and servicing of loans, varies from institution to institution

depending on volume, economies of scale, and degree of automation and has not been quantified. However, document preparation (i.e., promissory note generation, disclosure generation, and enrollment verification) by the authority and the availability of a secondary market through the Kentucky Higher Education Student Loan Corporation is designed to minimize the administrative cost to all participating lenders.

The costs to the borrowers are generally the costs of interest, insurance premium, origination fee, late fees, and collection costs. Late charges are assessed at the federal maximum of 6 cents per dollar of a late payment. The origination fee is charged for GSL and Stafford loans only, at the federal maximum of 5% of the principal loan amount. Interest is charged at the maximum federal limit as follows:

INTEREST RATES:

GSL- 7% loans covering periods of instruction beginning before January 1, 1981.

9% loans covering periods of instruction beginning on or after January 1, 1981, but before September 13, 1983.

8% loans covering periods of instruction beginning on or after September 13, 1983, but before July 1, 1988.

(GRADUATED) - 8% for first 4 years of repayment period and 10% for remainder of repayment period for loans covering periods of enrollment beginning on or after July 1, 1988.

SLS- 9% for a loan made on or after January 1, 1981 but before October 1, 1981.

14% for a loan made on or after October 1, 1981 but before November 1, 1982.

12% for a loan made on or after November 1, 1982 but before July, 1987.

VARIABLE RATE - not to exceed 12% for loans disbursed on or after July 1, 1988 or refinanced after January 1, 1988. Computed based on the equivalent rate of 52-week Treasury bills auctioned at the final auction held prior to such June 1, plus 3.25%.

PLUS- 9% for a loan made on or after January 1, 1981 but before October 1, 1981.

14% for a loan made on or after October 1, 1981 but before November 1, 1982.

12% for a loan made on or after November 1, 1982 but before July, 1987.

VARIABLE RATE - not to exceed 12% for loans disbursed on or after July 1, 1988 or refinanced after January 1, 1988. Computed based on the equivalent rate of 52-week Treasury bills auctioned at the final auction held prior to such June 1, plus 3.25%.

CONSOLIDATED LOANS

Weighted average of insurance rate of loans consolidated but not less than 9%.

The only significant difference between the proposed regulation and the federal standards is in the charge for insurance premium. The amount authorized under federal law is

INSURANCE PREMIUMS:

A. GSL - not to exceed 3% of the unpaid principal balance.

B. SLS - not to exceed 3% of the unpaid principal balance.

C. PLUS - not to exceed 3% of the unpaid principal balance.

D. CONSOLIDATION LOANS - no insurance premium.

The authority proposes to charge an insurance

premium at the rate of 2%, which would result in an aggregate savings to lenders and borrowers of \$553,469 based on the annual loan insurance volume as of June 30, 1988.

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: The reporting and paperwork requirements are the minimum mandated by federal law and regulations.

(2) Effects on the promulgating administrative body: The net effect on the administrative agency in adopting this proposed regulation are expected to be negligible. The proposed regulation does not deviate from past practice by the agency, except for expansion of student eligibility resulting from enactment of House Bill 76 by the 1988 General Assembly. The effect of that legislation is to remove the limitation on insurance of loans for out-of-state residents attending non-Kentucky institutions, which is likely to increase the volume of loans insured.

(a) Direct and indirect costs or savings: Currently, the cost of insuring new loans is approximately \$20 per loan. The cost of paying claims on those insured loans is approximately \$42 per claim. Variable costs associated with operating the loan insurance program would cause total operating costs to increase when new loans are insured. However, more than half of the costs associated with operating the loan insurance program are "fixed" costs. Therefore, as loan insurance volume increases, the cost to the agency, per loan is likely to decrease. It is unknown at this time what change in loan volume, if any, may be expected under the more liberal eligibility rules.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no change in reporting and paperwork requirements upon the agency. Federal standards govern reporting and recordkeeping by the authority.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives, in the exercise of agency discretion, to adopting anything other than the various federal minimum and maximum standards were rejected because of their potential adverse effect upon program participants (i.e., more burdensome administration, reduced eligibility, etc.) and upon the agency (i.e., a less favorable competitive environment).

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no other laws in conflict with the proposed regulation.

(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 because the concept of tiering would require the establishment of different classifications among program participants. The

proposed regulation adopts the minimum requirements and maximum benefits permitted by federal law and regulation. In this context, it appears that to adopt different standards for various classifications of program participants would be to the detriment of those participants.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title IV, Part B, Higher Education Act of 1965, as amended, by P.L. 99-498, P.L. 100-50, P.L. 100-297, and P.L. 100-369 (20 U.S.C. Sec. 1071 et seq.), 34 CFR Part 682.

2. State compliance standards. See Attachment A.

3. Minimum or uniform standards contained in the federal mandate. See Attachment A and Attachment B.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes, in the following two areas: 1) insurance premium and 2) eligibility of correspondence schools.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. 1) Insurance premium: The authority, in its discretion, has determined to charge a 2% insurance premium. This is 1% less than the maximum allowed by federal law. The justification for this difference is a cost savings to participating lenders and students and the necessity to be competitive with other guarantee agencies from other states. 2) Correspondence school eligibility: Federal law permits, but does not require, the eligibility of nonresidential correspondence schools (i.e., schools having no component of resident training as part of the correspondence program of study). The authority has chosen to exclude such schools from participation. The justification for this difference is the historically high default rates of such schools in the private sector.

ATTACHMENT A SUMMARY AND DISCRETIONARY STANDARDS

Federal statutes and regulations cited in Section 1 of 11 KAR 3:010 permit discretion to the authority in the administration of its insured student loan program. The following standards shall denote the exercise of that discretion.

(1)(a) In order to receive an authority insured student loan, pursuant to 34 CFR §682.102, §682.206(a) and (d), and §682.401(b)(10)(E)(ii) and (d)(3) an applicant must fully and accurately complete an appropriate authority approved loan application. Applications are obtainable directly from participating educational institutions, participating lenders and the authority.

(b) The authority shall accept only loan applications received by the authority prior to the expiration date of the loan period specified on the application, except that an application, signed by the borrower prior to the earlier of the expiration of the loan period or the date on which the borrower or student on whose behalf the loan is borrowed ceases to be enrolled on at least a half-time basis at the participating educational institution shall be accepted by the

authority after the expiration of the loan period or the less than half-time date, if

1. The delay in submitting the application to the authority is caused by inadvertent error of the participating educational institution or lender; and

2. The party responsible for the delay submits a letter to the authority, not later than sixty days after the earlier of the expiration of the loan period or the less than half-time date, attesting to the inadvertent error and setting forth the amount of educational costs owed by the borrower.

(c) Loans shall be insured, based on an application received late, only for an amount authorized to be disbursed pursuant to subsection 2(16) of this regulation.

(d) The applicant and any required endorser shall sign an authority approved promissory note setting forth, subject to modification by applicable state and federal laws and regulations, the terms and conditions of the loan and the rights and obligations of the borrower.

(2) Pursuant to 34 CFR §682.201(a)(1), §682.201(e)(2), and §682.401(b)(2)(ii), to qualify as eligible to receive a student loan insured by the authority, the applicant, or the student on whose behalf a parent is seeking a loan, shall:

(a) Unless applying for a consolidation loan pursuant to 20 U.S.C. §1078-3, be enrolled or accepted for enrollment at a participating educational institution on at least a half-time basis (as determined by the institution) in an eligible program of study; and

(b) Be determined by the educational institution not to be in default on any loan made or insured under Title IV of the federal Higher Education Act of 1965, as amended, (20 U.S.C. §1071 through §1099) unless such loan has been paid in full or the loan has been paid up to date in accordance with its original repayment terms and terms for repayment have been approved by the holder of the loan; and

(3) Pursuant to 20 U.S.C. §1078(b)(1)(C), (I) and (T); 34 CFR §682.401(b)(3) and (10); and 34 CFR §682.405(e)(4) the authority shall insure loans to eligible borrowers for enrollment, in any year of study, for at least six academic years, at a participating educational institution in any program of study, other than a program composed entirely of mandatory correspondence study, which meets the minimum criteria of 20 U.S.C. §1085 (qualifying the institution as an eligible institution).

(4) Pursuant to 34 CFR 682.401(b)(1) and (2) and 34 CFR §682.405(e), the maximum annual and aggregate loan which shall be insured by the authority shall be that maximum authorized by Title IV, Part B of the Higher Education Act of 1965, as amended (20 U.S.C. §1078(b)(1)(a) and (b), 1078-1, 1078-2, or 1078-3) and implementing regulations (34 CFR Part 682.204) to the extent applicable to the particular type of loan.

(5) Pursuant to 34 CFR 682.401(b)(2)(iii) the loan maximums set forth in subsection (4) of this section shall apply to an academic year which corresponds to July 1 of one calendar year through June 30 of the succeeding calendar year, except where eight months have elapsed from the beginning date of the loan period specified on a preceding loan application.

(6) Pursuant to 34 CFR 682.401(b)(6) and 20 U.S.C. §1078(b)(1)(H), the premium required to

be paid by the lender, which may be deducted from the proceeds of the loan disbursed to the borrower (other than a consolidation loan pursuant to 20 U.S.C. §1078-3), shall be two percent of the principal amount of the loan.

(7) Pursuant to 20 U.S.C. §1078(b)(1)(F), 1078(d), 1087-1(c), and 34 CFR §682.202, a borrower of an authority insured student loan shall be liable for payment of the following costs to the holder of the loan.

(a) An origination fee at the maximum rate authorized in 20 U.S.C. §1087-1(c); and

(b) Interest at the maximum applicable rate per annum authorized in 20 U.S.C. §1077a or 1078-3(c), as applicable; and

(c) Late charges at the maximum rate authorized in 34 CFR §682.202(e), to the extent such charges are assessed by the holder of the loan; and

(d) Costs of collection to the extent such costs are documented and assessed by the holder of the loan and authorized in 34 CFR §682.202(f).

(8) Pursuant to 34 CFR §682.202(b)(1), the holder of an authority insured student loan may only capitalize interest (add accrued interest to the balance of unpaid principal) under circumstances specified in 34 CFR §682.202(b)(2) and (3).

(9) Pursuant to KRS 164.748(1) and 34 CFR §682.206(e), a participating lender may require the signature of an endorser on a loan, other than a consolidation loan under 20 U.S.C. §1078-3, pursuant to a consistently applied lending policy established and applied in conformity with applicable state and federal laws and regulations.

(10) Pursuant to 34 CFR §682.401(b)(10)(ii) and §682.401(d)(3), in order to qualify for any benefits under the loan; including deferment of payment pursuant to 20 U.S.C. §1078(b)(1)(M) and 34 CFR §682.210, forbearance of payment pursuant to 20 U.S.C. §1078(c)(3) and 34 CFR §682.211, and loan cancellation pursuant to 20 U.S.C. §1087 and 34 CFR §682.402, the borrower shall fully and accurately complete and deliver to the holder of the loan an appropriate, authority approved form requesting such benefit and any additional documentation as may be specified in the foregoing statutes and regulations. The holder of the loan may grant the requested benefit only upon the conditions specified in those statutes and regulations.

(11) Pursuant to 34 CFR §682.401(b)(10), 20 U.S.C. §1078(b)(1)(U), and KRS 164.748(5) and (17), loan guarantees shall be issued by the authority only to organizations which have in force a contract of insurance with the authority. The authority will execute a contract of insurance with any organization which:

(a) Qualifies as an eligible lender in accordance with 20 U.S.C. §1085 and KRS 164.740(7);

(b) Certifies to the authority that it possesses all licenses to lend money required by state and federal statutes and regulations;

(c) Agrees to comply with 34 CFR Part 682, Subparts B, C, D, G, and H;

(d) Certifies to the authority that it is aware of, and is financially and administratively capable of complying with, state and federal statutes and regulations applicable to the making, servicing, and collection of authority insured student loans.

(12) Pursuant to 34 CFR §682.401(b)(9), nothing in this regulation shall be interpreted

so as to restrict the eligibility of the Student Loan Marketing Association, or other eligible lenders pursuant to 20 U.S.C. section 1085, from holding loans insured by the authority when loans are transferred to the holder with the approval of the authority, except that no loan transfer approval shall be granted by the authority:

(a) If the transfer would result in multiple authority insured student loans for any one borrower being held by more than one holder; or

(b) Prior to completion of all disbursements of a single loan required to be disbursed in multiple installments; or

(c) Until the transferee contracts with the authority as a holder of authority insured educational loans and allows the authority reasonable access to inspect the transferee's operating loan servicing system, policies, procedures, and any automated loan servicing system documentation sufficient to assure the authority of the transferee's capability to comply with state and federal statutes and regulations applicable to the servicing and collection of authority insured student loans.

(13) Pursuant to 20 U.S.C. §1078(b)(1)(U), 34 CFR §682.401(b)(10), and KRS 164.748(13), and subject to 11 KAR 4:020, the provisions of 34 CFR Part 682, Subpart G shall govern the limitation, suspension or termination of the participation of any lender in the authority's insured student loan program, except that the terms "secretary" and "designated departmental official" shall mean respectively the board of directors of the authority and a delegated officer of the authority.

(14) Pursuant to 20 U.S.C. §1078(b)(1)(T), 34 CFR §682.401(b)(10), and KRS 164.748(13), and subject to 11 KAR 4:020, the provisions of 34 CFR §668.81 through §668.83, and §668.85 through §668.91, and §668.93 through §668.97 shall govern the limitation, suspension, or termination of the participation of an educational institution in the authority's insured student loan program, except that the terms "secretary," "designated departmental official" and "administrative law judge" shall mean respectively the board of directors of the authority, a delegated officer of the authority, and a hearing officer or a hearing committee appointed by the board.

(15) Pursuant to 34 CFR §682.207(b)(1), the authority shall not approve the disbursement of an insured student loan prior to the date that the authority's commitment of insurance is evidenced to the lender either on the promissory note or by issuance of a loan guarantee and disbursement notification. The lender may disburse an authority insured student loan either by electronic fund transfer or by a check, which shall not be made jointly payable to the borrower and the participating educational institution.

(16) Pursuant to 34 CFR §682.207(d), the lender may:

(a) Disburse the entire amount of an authority insured student loan, which the lender approved, no later than thirty days after the expiration of the period specified in the loan application (exclusive of the last day of the loan period), if the borrower or student on whose behalf the loan is borrowed remained enrolled on at least a half-time basis at the participating educational institution during the entire loan period; or

(b) Disburse only the amount of an authority

insured student loan, which does not exceed the documented amount of tuition, cost of room and board, cost of books and supplies, and fees (exclusive of disciplinary fines) which the borrower owes to the participating institution, no later than thirty days after the date on which, prior to the expiration of the loan period, the borrower or student on whose behalf the loan is borrowed ceases to be enrolled on at least a half-time basis at the participating educational institution; or

(c) Disburse only the amount of an authority insured student loan, which does not exceed the documented amount of enrollment related indebtedness owed by the borrower to any person other than the borrower's relative, no later than thirty days after the date the authority approves the disbursement, if the borrower or student on whose behalf the loan is borrowed ceases to be enrolled on at least a half-time basis at the participating educational institution prior to the expiration of the loan period and the borrower, within sixty days following the less than half-time date, submits to the authority written evidence substantiating the indebtedness.

ATTACHMENT B FEDERAL MAXIMUM LIMITS

1. AGGREGATE LOAN LIMITS:

A. GSL - \$17,250 for undergraduate study not including SLS/PLUS Loans.

\$54,500 for graduate or professional students including loans for undergraduate study, but excluding SLS/PLUS Loans.

B. SLS - \$20,000.

C. PLUS - \$20,000.

D. CONSOLIDATION LOANS - Sum of consolidation loans.

2. ANNUAL LOAN LIMITS:

A. GSL - \$2,625 first two years of undergraduate study.

\$4,000 remainder of undergraduate study.

\$7,500 graduate or professional study.

B. SLS - \$4,000.

C. PLUS - \$4,000.

D. CONSOLIDATION LOANS - N/A.

3. INTEREST RATES:

A. GSL - 7% loans covering periods of instruction beginning before January 1, 1981.

9% loans covering periods of instruction beginning on or after January 1, 1981, but before September 13, 1983.

8% loans covering periods of instruction beginning on or after September 13, 1983, but before July 1, 1988.

(GRADUATED) - 8% for first 4 years of repayment period and 10% for remainder of repayment period for loans covering periods of enrollment beginning on or after July 1, 1988.

B. SLS - 9% for a loan made on or after January 1, 1981 but before October 1, 1981.

14% for a loan made on or after October 1, 1981 but before November 1, 1982.

12% for a loan made on or after November 1, 1982 but before July, 1987.

VARIABLE RATE - not to exceed 12% for loans disbursed on or after July 1, 1988 or refinanced after January 1, 1988. Computed based on the equivalent rate of 52-week Treasury bills auctioned at the final auction held prior to such June 1, plus 3.25%.

C. PLUS- 9% for a loan made on or after January 1, 1981 but before October 1, 1981.

14% for a loan made on or after October 1, 1981 but before November 1, 1982.

12% for a loan made on or after November 1, 1982 but before July, 1987.

VARIABLE RATE - not to exceed 12% for loans disbursed on or after July 1, 1988 or refinanced after January 1, 1988. Computed based on the equivalent rate of 52-week Treasury bills auctioned at the final auction held prior to such June 1, plus 3.25%.

D. CONSOLIDATED LOANS -

Weighted average of insurance rate of loans consolidated but not less than 9%.

4. INSURANCE PREMIUMS:

A. GSL - not to exceed 3% of the unpaid principal balance.

B. SLS - not to exceed 3% of the unpaid principal balance.

C. PLUS- not to exceed 3% of the unpaid principal balance.

D. CONSOLIDATION LOANS - no insurance premium.

FINANCE & ADMINISTRATION CABINET Higher Education Assistance Authority Program Administration

11 KAR 5:110. Dual enrollment under consortium agreement.

RELATES TO: KRS 164.740 to 164.766

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4), 164.753(4)

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers the state student incentive grant program pursuant to KRS 164.740 to 164.766. This regulation sets the conditions for grant eligibility of a student simultaneously enrolled in two (2) or more participating educational institutions.

Section 1. For purposes of the state student incentive grant program, a student who is otherwise eligible pursuant to 11 KAR 5:030, except that the student is enrolled simultaneously in two (2) or more educational institutions pursuing an eligible program of study jointly offered by those institutions, is eligible under this section if the program of study is covered by a consortium agreement between the educational institutions and if the student is carrying a combined academic workload at all educational institutions in the consortium equal to full-time enrollment at the primary institution.

Section 2. Consortium Agreement. Two (2) or more educational institutions participating in the KHEAA state student incentive grant program may, for purposes of Section 1 of this regulation, execute a consortium agreement which meets the following terms and conditions:

(1) The agreement must be written and signed by authorized representatives of each participating educational institution;

(2) The agreement must designate which educational institution will serve as the "primary" institution;

(3) The agreement must specify:

(a) The tuition, fees, room and board cost, and all other costs assessed to the student by each institution;

(b) That the primary institution will perform the duties set forth in Section 3 of this regulation.

Section 3. Duties of Primary Institution. For purposes of Section 2 of this regulation, the primary institution designated in a consortium agreement must assume the following duties and responsibilities:

(1) Counsel students, who are enrolled or accepted for enrollment in programs of study covered by the consortium agreement, concerning student eligibility, rights, and responsibilities under the state student incentive grant program;

(2) Maintain all records, including information from all participating institutions about the student's grades, institutional costs incurred, financial aid received, enrollment, and all other information related to the student's eligibility as is required to be maintained on any other state student incentive grant recipient enrolled only in the primary institution;

(3) Disburse the state student incentive grant;

(4) Confer academic credit to the student for all courses completed at other educational institutions under the consortium agreement as if the courses had been provided by the primary institution;

(5) Monitor the student's enrollment status at all educational institutions in the consortium and indicate the student's enrollment at the primary institution as the equivalent of the combined enrollment at all educational institutions in the consortium;

(6) Calculate any refund or repayment and make any such refund based on the primary institution's refund policy, based upon any change in enrollment at any of the educational institutions in the consortium, as if the student were enrolled only at the primary institution;

(7) Provide to the authority, on behalf of all educational institutions in the consortium, all reports and notifications required by law or regulation as if the student were enrolled only at the primary institution.

Section 4. The consortium agreement may contain any other terms and conditions, not inconsistent with this regulation, as may be deemed necessary or appropriate by the participating educational institutions.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: July 26, 1988

FILED WITH LRC: August 15, 1988 at noon

PUBLIC HEARING: A public hearing on this

administrative regulation shall be held on September 29, 1988 at 9:30 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by September 24, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: The Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden

(1) Type and number of entities affected: Any educational institution participating in the Kentucky state student incentive grant program could effect a consortium agreement with one or more other participating institutions. There are currently 56 eligible Kentucky institutions participating in the SSIG program. Qualifying students would be those who simultaneously enroll at two or more consortium institutions and maintain an overall full-time academic load even though they would be less than full-time at any one institution. In academic year 1987-88, 13,224 students received SSIG awards. These students were all enrolled full time at a single institution. However, they are all potentially affected by this regulation in so far as it expands the opportunity to remain eligible while enrolling at more than one participating institution. In academic year 1987-88, 151 students were enrolled in more than one public institution. They did not receive SSIG awards under current regulations, but could be eligible under this proposal.

(a) Direct and indirect costs or savings to those affected: There will likely be insubstantial additional indirect costs for the primary institution in a consortium arrangement associated with monitoring a student's enrollment status and financial aid at both consortium institutions. The amount of additional cost would be indirect cost and indeterminable at this time. There are no anticipated savings to educational institutions. No additional cost or savings to consortium students; we believe they would receive the state student incentive grant for attendance at one institution in the absence of the consortium.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors discerned.

(b) Reporting and paperwork requirements: The primary institution in any consortium is responsible for recordkeeping and monitoring the enrollment status and financial aid of students at both consortium institutions. We envision no significant increase in reporting, but some

additional paperwork burden associated with the responsibilities of the primary institution.

(2) Effects on the promulgating administrative body: The promulgating administrative body will not be affected by the consortium agreements. There will be no change in funding for the state student incentive grant program, and there will be no change in reporting and paperwork requirements.

(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: Consortium agreements will neither increase or decrease reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues; level of funding for the state student incentive grant program will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternative methods were devised.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No current statute, administrative regulation, or government policy addresses the matter of availability of state student incentive grants for dually-enrolled students.

(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 regulation is perceived as an opportunity for students to simultaneously avail themselves of the curricular advantages of two or more participating institutions without forfeiting their eligibility for state student incentive grants.

TIERING: Was tiering applied? No. Concept of tiering is not applicable to the operation of consortium agreements. All educational institutions which are eligible for state student incentive grants may enter consortium agreements with other eligible institutions. The terms of the consortium and its coverage remain essentially a matter of institutional discretion. Only minimum responsibilities are imposed upon a primary institution under this regulation necessary to facilitate the consortium.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 600.9

2. State compliance standards. This regulation authorizes an eligible institution to enter into a written agreement with another eligible institution to provide all or part of the educational program of students enrolled at the other institution while maintaining their eligibility for state student grants, one requirement for which is enrollment as a full-time student.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate permits an eligible institution to enter into a written

agreement, for purposes of maintaining eligibility for student financial assistance, with one or more institutions which, on their own, may or may not be eligible.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation imposes no additional or different responsibilities or requirements than those required by the federal mandate except that all institutions participating in a consortium agreement must be eligible institutions.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Justification for the imposition of the more strict standard is that KRS 164.744(2) and 164.753(4)(d) restrict grants to students enrolled or accepted for enrollment at participating institutions. All educational institutions, to participate in any student financial assistance program administered by the Kentucky Higher Education Assistance Authority, must meet eligibility and certification requirements established by the United States Department of Education.

DEPARTMENT OF PERSONNEL

101 KAR 2:140. Workers compensation fund and program.

RELATES TO: KRS 18A.110, 342.640

STATUTORY AUTHORITY: 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, to implement programs to provide for the safety, health and welfare of state employees. This regulation is necessary to comply with these statutory provisions.

Section 1. Workers Compensation Fund. A self-insured workers compensation fund and program shall be established and administered by the Division of Employee Benefits, Department of Personnel, to cover all eligible employees.

Section 2. Eligibles. (1) The following state agencies and their employees are eligible to participate: all agencies within the judicial, legislative and executive branches of state government except for the Transportation Cabinet, which is self-insured with its own fund and administers its own program; volunteer fireman, volunteer ambulance, Daviess County Court Clerk, Daviess County Sheriff, Campbell County Court Clerk, Campbell County Sheriff, Fayette County Court Clerk, Fayette County Sheriff, Jefferson County Court Clerk, Jefferson County Sheriff, Kenton County Court Clerk, Kenton County Sheriff, Pike County Court Clerk, Pike County Sheriff, Lexington Fayette County Health Department, Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Northern Kentucky University, University of Louisville, and Western Kentucky University.

(2) Other state related groups may also be

included upon written agreement with the Department of Personnel.

Section 3. Assessments. Assessments for individual agencies shall be based on the claims history for the past three (3) years and on the number of employees in the agency. Premiums shall be assessed at the beginning of each fiscal year.

(1) Biennial actuarial studies shall be carried out to insure the fund's fiscal soundness.

(2) Fund deficits will be recouped through interim billings or additional assessments if deemed necessary by actuarial studies.

Section 4. Benefits. (1) Required medical expenses for services rendered by hospitals, doctors, and for prescribed medications are paid subject to approval of the claim. A percentage of the employee's average weekly wage shall be paid when he is unable to work for an extended period due to a job-related injury or illness. No compensation shall be payable for the first seven (7) days of disability unless disability continues over two (2) weeks in which case compensation shall be allowed from the first day of disability.

(2) In cases of absences due to illness or injury for which workers compensation benefits are received, accumulated sick leave may be used in order to maintain regular full salary. If paid sick leave is used, workers compensation pay benefits shall be assigned back to the state for whatever period of time an employee received paid sick leave. An employee shall not receive paid sick leave and workers compensation pay for the same period of time.

Section 5. Notification Procedures. (1) Employee requirements. An employee shall inform his supervisor of any injury as soon as physically able to do so.

(2) Supervisor requirements. The supervisor shall complete the employer's first report of injury, SF-1, and shall submit the form to the designated office in his agency. This shall occur as soon as possible after an injury to insure timely payments to injured employees. SF-1 forms shall be completed, giving specific information about the injury, and shall be submitted in triplicate.

(a) A return-to-work form, WCF-1, shall be submitted when an employee has returned to work. The supervisor shall notify his personnel unit when an employee returns so that a WCF-1 form may be submitted to the Department of Personnel.

(b) Any medical bills, or medical information regarding treatment of job-related injuries or illness of the employee, shall be submitted in the same manner as injury reports. Injury reports shall not be held, until medical bills are received, but shall be forwarded as soon as possible.

(c) Safety representatives in each agency shall be notified of all accidents so that they may review accident causes and provide safety training. Supervisors shall promote safety with employees.

THOMAS C. GREENWELL, Commissioner

APPROVED BY AGENCY: August 15, 1988

FILED WITH LRC: August 15, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on

September 28, 1988, at 10 a.m. in Room 381, Capitol Annex. Individuals interested in attending this hearing shall notify this agency in writing by September 23, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Thomas C. Greenwell, Commissioner, Department of Personnel, Capitol Annex, Room 373, Frankfort, Kentucky 40601, (502) 564-4460.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Anne Keating

(1) Type and number of entities affected: Agencies and employees who are eligible and participating in the workers' compensation program.

(a) Direct and indirect costs or savings to those affected: None. This regulation confirms the program that is already in operation and gives public notice of how it operates. No change in costs or 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: Nothing additional.

(2) Effects on the promulgating administrative body: Regulation explains the role of the Department of Personnel in workers' compensation.

(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: Nothing additional.

(3) Assessment of anticipated effect on state and local revenues: No change.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Regulation confirms practice.

(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: Regulation only applies to participants in Department of Personnel's Workers' Compensation Program.

TIERING: Was tiering applied? Yes.

DEPARTMENT OF PERSONNEL

101 KAR 2:150. State safety program.

RELATES TO: KRS 18A.030, 18A.110

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110

NECESSITY AND FUNCTION: KRS 18A.110(k) and (l) requires the Commissioner of Personnel to promulgate comprehensive administrative regulations, consistent with KRS Chapters 13A and 18A and proper and necessary for development and operation and enforcement of programs to improve work effectiveness of employees in the state service in the area of safety. This regulation is necessary to comply with these statutory requirements.

Section 1. Definitions. (1) State safety program means a program established and administered through the Division of Employee Benefits, Department of Personnel, for the purpose of enhancing and monitoring work conditions for state employees in the executive branch who are covered by the state self-insured workers compensation plan.

(2) State safety director means the administrator of the state safety program, designated by the Commissioner of Personnel.

(3) Agency safety representative means the coordinator designated by an appointing authority for each site location to work with the Department of Personnel in implementing the state safety program.

Section 2. Establishment of State Safety Program. (1) A state safety program shall be established and administered through the Division of Employee Benefits, Department of Personnel, and headed by a state safety director.

(2) Appointing authorities shall designate an agency safety representative for each site location.

Section 3. Duties of Agency Safety Responsibilities. (1) Each agency safety representative shall implement and supervise a safety program, shall attend safety meetings sponsored by the Department of Personnel, shall conduct safety meetings and training sessions for agency employees, shall document preventive safety measures and shall otherwise promote safety of employees.

(2) The agency safety representative may establish agency safety committees, to meet on a regular basis for review of causes of accidents, for inspection of facilities, for development of hazard abatement methods and to assess safety training needs.

Section 4. Duties of Supervisors. (1) Supervisors shall review the safety program with new employees, shall adhere to general safety regulations and procedures, shall maintain safe working conditions, and shall require employees to follow safety regulations and procedures.

(2) Supervisors or designees shall investigate all accidents and shall forward a report on the findings to the state safety director in the Department of Personnel.

(3) Supervisors shall require employees to attend regular safety meetings and training sessions at times to be determined in coordination with the agency safety representative.

THOMAS C. GREENWELL, Commissioner

APPROVED BY AGENCY: August 15, 1988

FILED WITH LRC: August 15, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 28, 1988, at 10 a.m. in Room 381, Capitol Annex. Individuals interested in attending this hearing shall notify this agency in writing by September 23, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Thomas C. Greenwell, Commissioner, Department of Personnel, Capitol Annex, Room 373, Frankfort, Kentucky 40601, (502) 564-4460.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Anne Keating

(1) Type and number of entities affected: Appointing authorities and employees in the executive branch.

(a) Direct and indirect costs or savings to those affected: Purpose of safety program is to decrease and eliminate sources of injury or illness on the job. Costs: Department of Personnel and appointing authorities have responsibility to develop programs, train employees and require safe work habits. This regulation is to confirm a program already under implementation by Department of Personnel. Most agencies already have designated individuals to address this area.

1. First year: Costs: no change; savings: studies show 10% savings in workers' compensation when safety program is in operation.

2. Continuing costs or savings: Savings: 10% decrease in workers' compensation payments.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Appointing authorities are to report to Department of Personnel on accidents and to document safety measures, and conduct training. To some extent this is required by our workers' compensation program as well.

(2) Effects on the promulgating administrative body: Gives public notice of Department of Personnel program in effect.

(a) Direct and indirect costs or savings:

1. First year: Costs: none; program is in effect. Savings: 10% decrease should follow in workers' compensation payments.

2. Continuing costs or savings: If Department of Personnel adds a position and increases training and inspection around the state, the position and services could require \$65,000.

3. Additional factors increasing or decreasing costs: Savings: 10% decrease in workers' compensation payments.

(b) Reporting and paperwork requirements: Department of Personnel will provide training materials.

(3) Assessment of anticipated effect on state and local revenues: A 10% decrease in workers' compensation claims.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Coordination is needed in this area, although each agency needs flexibility to develop a program tailored to its needs.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None to our knowledge.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. This applies only to appointing authority and employees covered by KRS Chapter 18A.

DEPARTMENT OF PERSONNEL

101 KAR 2:160. Kentucky employee assistance program.

RELATES TO: KRS 18A.025, 18A.030, 18A.110
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.025, 18A.030, 18A.110(5)(k), (l)

NECESSITY AND FUNCTION: KRS 18A.030 and KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations consistent with KRS Chapter 18A, which govern development, operation and enforcement of programs to improve the work effectiveness of employees in the state service including health, welfare, counseling and employee relations. This regulation is necessary to comply with these statutory requirements.

Section 1. Establishment of Kentucky Employee Assistance Program. (1) The Department of Personnel shall establish and administer through the Division of Employee Benefits the Kentucky employee assistance program to coordinate among employee assistance programs that exist in state agencies and to supplement them with additional services. Kentucky employee assistance program shall be available to assist employees whose agencies do not have employee assistance programs or to provide alternative services.

(2) Any employee whose job performance is or may be adversely affected by personal problems is eligible to initiate a request for service for himself and family or to receive services for himself and family upon referral to the Kentucky employee assistance program.

(3) Employees shall be entitled to obtain Kentucky employee assistance program services without discrimination or reprisals.

(4) Participation of the employee in Kentucky employee assistance program shall not preclude supervisors from taking disciplinary or corrective action as deemed in dealing with job performance problems.

(5) Each appointing authority shall designate an employee assistance program liaison for disseminating information.

Section 2. Referrals. (1) Supervisors may extend to an employee an offer of assistance through Kentucky employee assistance program when the employee's job performance is

inadequate.

(2) Employees shall be allowed up to five (5) contacts for assessment or referral on state time to be confirmed by the employee assistance program when referred by a supervisor or on self-referral with supervisor's approval.

(3) Employees shall participate in counseling or treatment on their own time, or take leave as provided by law.

(4) Employee involvement in Kentucky employee assistance program shall remain confidential as permitted by state and federal law, unless the employee authorizes release of specific information to specifically identified persons.

(5) Kentucky employee assistance program services shall be free of charge to employees and their families for information, assessment and referral. The Commonwealth shall not be liable for any treatment costs incurred except as provided through health benefits.

THOMAS C. GREENWELL, Commissioner

APPROVED BY AGENCY: August 15, 1988

FILED WITH LRC: August 15, 1988 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on September 28, 1988, at 10 a.m. in Room 381, Capitol Annex. Individuals interested in attending this hearing shall notify this agency in writing by September 23, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Thomas C. Greenwell, Commissioner, Department of Personnel, Capitol Annex, Room 373, Frankfort, Kentucky 40601, (502) 564-4460.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Anne Keating

(1) Type and number of entities affected: Appointing authorities and employees of the executive branch.

(a) Direct and indirect costs or savings to those affected: Kentucky employee assistance program seeks to coordinate and supplement programs to provide assistance to employees whose work performance is impaired by personal problems. This confirms an existing Department of Personnel program in effect and should require no additional staff or funding.

1. First year: No change in cost.

2. Continuing costs or savings: No change in cost. Savings: studies show that for each dollar spent on Employee Assistance at least \$7-8 are saved.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Each appointing authority shall select a liaison to disseminate information.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: Program is in operation.

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: Studies show that employee assistance programs save \$7-8 for each \$1 spent.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Coordination is needed in this area.

(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? Yes. This benefit applies only to employees covered by KRS Chapter 18A.

REVENUE CABINET

Department of Professional & Support Services

103 KAR 43:270. Export of special fuels used in commercial ships and vessels.

RELATES TO: KRS 138.226, 138.240, 138.270

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: This regulation interprets the statutes related to exports of nontaxpaid motor fuels from Kentucky and prescribes the documentation that licensed gasoline and special fuels dealers must retain to support export deductions claimed.

Section 1. Gasoline and special fuel exported or sold for export from Kentucky in transport truck, tank car or cargo lots shall include gasoline or special fuel delivered upon a river or stream which is an exterior legal boundary of the Commonwealth of Kentucky, including deliveries beginning or ending upon a tributary thereof if made within two (2) miles from the tributary's confluence with such border river or stream, provided:

(1) Such gasoline or special fuel is or will be delivered into the fuel supply tank of a commercial ship or vessel which has a valid certificate of documentation issued by the United States Coast Guard; and

(2) All such fuel will be used exclusively in the operation of a commercial ship or vessel.

Section 2. The Kentucky licensed dealer exporting gasoline or special fuels pursuant to Section 1 of this regulation shall, on a monthly basis, submit documentary evidence to the Revenue Cabinet verifying such exports of gasoline or special fuel. A detailed schedule on a form and containing such information as the Revenue Cabinet may require shall be attached to the delivering dealer's monthly report required by KRS 138.240.

Section 3. Any person not licensed as a dealer in Kentucky who acquires gasoline or special fuel pursuant to Section 1 of this regulation

without payment of the tax levied by KRS 138.220 shall certify to the Kentucky licensed dealer from whom such fuels are acquired that the fuel will be used or delivered for use only as provided in Section 1 of this regulation. Such person shall make available to the Revenue Cabinet such records and evidence as the cabinet may require to verify the ultimate use of the fuel.

Section 4. No person acquiring special fuel without payment of Kentucky special fuels tax pursuant to Section 1 of this regulation shall use any of the special fuel so acquired for any purpose other than for the operation of a commercial ship or vessel. Any other use of special fuel acquired pursuant to this regulation shall be deemed cause for imposition of civil and criminal penalties as provided by law.

C. EMMETT CALVERT, Secretary

APPROVED BY AGENCY: August 18, 1988

FILED WITH LRC: August 15, 1988 at 11:30 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on September 26, 1988, at 11:00 a.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. If no written notice of intent to attend the public hearing is received within 5 days before the scheduled hearing, the hearing will be cancelled. Those interested in attending shall notify in writing: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: The entities affected are 15 special fuel retailers who pump fuel on border rivers directly into fuel tanks of commercial ships and vessels holding valid certificates of documentation issued by the United States Coast Guard and which are engaged in transporting goods or passengers in interstate commerce. There are also licensed special fuel dealers who distribute fuel to the retailers.

(a) Direct and indirect costs or savings to those affected: The affected dealers will save administrative costs involved in charging the tax to the retailers selling to commercial vessels and reporting such sales to the Revenue Cabinet through the preparation of special fuels tax returns. The entities will suffer a reduction in income because they will not receive the 2 1/4 percent compensation authorized by KRS 138.270 nor will they have use of such funds between the sale and the required filing date of the tax returns.

1. First year: The savings and costs discussed in (a) above will apply to the first year.

2. Continuing costs or savings: The savings and costs discussed in (a) above will apply to each subsequent year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no known additional factors increasing and decreasing costs of the affected special fuel retailers or dealers. Since the proposed regulation applies equally to all such persons, there is also no known competitive effect within this class of special fuel sellers.

(b) Reporting and paperwork requirements: The

administrative effect of the proposed regulation on the affected special fuels dealers will be a reduction in paperwork requirements and associated costs with the amount depending upon what portion of total special fuels sales are covered by the proposed regulation. Specific savings include personnel time recording tax collected, filing required tax returns, keeping associated records, paying tax collected to the Revenue Cabinet, and other return maintenance costs including audits. Other savings could include bank charges, postage, and other routine office expenses. Essentially there will be a nominal savings in paperwork costs.

(2) Effects on the promulgating administrative body: The Revenue Cabinet will save administrative costs associated with receipt of special fuels tax from the dealers and subsequent refunds to the owner of vessels engaged in interstate commerce. The Revenue Cabinet will also save the 2 1/4% compensation allowed the dealer. While not a cost to the Revenue Cabinet, the Commonwealth will lose the use of this money between receipt from the dealers and its refund to the qualifying retailers supplying the ships and vessels.

(a) Direct and indirect costs or savings:

1. First year: The savings and costs discussed in (2) will apply to the first year.

2. Continuing costs or savings: The savings and costs discussed in (2) will continue.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Slight savings in personnel time, processing costs, postage and other office costs are anticipated.

(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: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(6) Any additional information or comments: This proposed regulation is a practical solution for a potential problem facing certain special fuel retailers and their interstate commerce customers. Since fuel placed in fuel tanks of such documented vessels is clearly exported in interstate commerce, the special fuels tax does not apply. (These sales of special fuels are not subject to tax which is later refunded - they are entirely tax exempt.) The vessel operators have stated that payment of tax with subsequent refund is not compatible with their business practices and - if the Commonwealth insists upon such procedures - they will buy all fuel prior to reaching Kentucky waters and after reaching the jurisdiction of other states. Thus, the alternative to the procedure outlined in the regulation is loss of both income to Kentucky business and revenue from other taxes.

TIERING: Was tiering applied? Yes

GENERAL GOVERNMENT CABINET Board of Medical Licensure

201 KAR 9:175. Physician assistants; certification and supervision.

RELATES TO: KRS 311.530 to 311.620, 311.990

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: It is the purpose of this regulation to promote the efficient and effective utilization of the skills of physicians by allowing them to delegate health care tasks to qualified physician assistants and in so doing, promote, sustain and enhance the health and welfare of the people of the Commonwealth.

Section 1. Definitions. As used in this regulation:

(1) "Physician assistant" means a person who has successfully completed an approved program and an approved examination, and who is certified by the board to assist a registered physician in the provision of medical care under the physician's supervision; the physician assistant is not an independent practitioner of the healing arts but only an adjunct to his or her supervising physician;

(2) "Anesthesia (or anesthesiology) assistant" means a physician assistant who assists in the provision of general or regional anesthesia;

(3) "Board" means the Kentucky Board of Medical Licensure;

(4) "Supervising physician" means a physician currently licensed to practice medicine in the Commonwealth who has been approved by the board to supervise physician assistants for whom the supervising physician takes responsibility;

(5) "Advisory committee" means the committee appointed by the board to advise the board on all matters related to physician assistants;

(6) "Approved program" means a program for the education and training of physician assistants which meets standards acceptable to the board;

(7) "Supervision" means control and direction of the services of physician assistants by their supervising physicians;

(8) "Approved examination" means an examination to test the knowledge and skills of physician assistants which meets standards acceptable to the board;

(9) "Certificate" means the board's official documentary authorization allowing a physician assistant to practice in the Commonwealth for the time specified; and

(10) "Trainee" means a person who is currently enrolled in an approved program for the training of physician assistants.

Section 2. Certification of Physician Assistants. (1) To be certified by the board as a physician assistant, a person must:

(a) Submit a completed application with the required fee;

(b) Be of good character and reputation;

(c) Be a graduate of an approved program;

(d) Have passed an examination approved by the board within three (3) attempts.

(2) If grounds for denial of certification do not exist, a temporary certificate may be issued to a physician assistant after graduation from an approved program. The holder of a temporary certificate shall take the first available approved examination after graduation. If the holder receives a passing score on this

examination, the temporary certificate shall be effective until the board approves the holder for permanent certification. If the holder receives a failing score, the temporary certificate shall automatically expire.

(3) Physician assistants duly authorized to practice in other states and in good standing may apply for certification by endorsement from the state of their original certification if the endorsing state has standards substantially equivalent to those of the Commonwealth.

(4) Certification shall be renewed on or before July 1, 1989, and thereafter biennially according to the procedure established by the executive director. In conjunction with the renewal of his/her certification, the physician assistant shall provide evidence of having completed in the previous two (2) years a minimum of 100 hours of continuing education accepted by the National Commission on Certification of Physician Assistants or the American Medical Association.

Section 3. Approved Examination. The following examinations are approved by the board:

(1) The examination of the National Commission on Certification of Physician Assistants.

(2) The official certification examination of any state if the board determines the examination to be an adequate measure of physician assistant competency.

(3) Any other formally administered examination if the board determines, upon review of proof provided by the applicant, that the examination is substantially equivalent to the examination of the National Commission on Certification of Physician Assistants.

Section 4. Approved Programs. (1) The following programs are approved by the board:

(a) Programs that are accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association (CAHEA) and that provide interdisciplinary training in at least the following areas: family medicine, internal medicine, surgery, pediatrics, psychiatry, and obstetrics/gynecology; and

(b) Any other training program if the board determines, upon review of proof submitted by the applicant, that the training received was substantially equivalent to that received in a program as described in paragraph (a) of this subsection.

(2) Programs specifically designed to train the individual to assist in the provision of general or regional anesthesia must be accredited by CAHEA.

(3) Trainees enrolled in approved programs shall be under the supervision of the program which shall be responsible for their services. Trainees shall be bound by the same practice limitations imposed upon physician assistants generally, but will not be considered to be practicing without authorization while enrolled in the program.

Section 5. Physician Assistant Scope of Practice. (1) A physician assistant may perform any and all medical services that are within the scope of training received in an approved program and which are also within the scope of the supervising physician's practice as designated by the specialty code in the most current revision of the Kentucky Medical

Directory. The physician assistant shall not make a definitive diagnosis or prescribe or employ any treatment modality independent of the supervising physician. However, a physician assistant may, without specific approval, initiate evaluation and treatment in emergency situations.

(2) A physician assistant shall not administer or monitor general or regional anesthesia unless such individual satisfies the applicable requirements of Section 6 of this regulation.

(3) A physician assistant may render services in the offices or clinics of the supervising physician, or in hospitals and other licensed health care facilities. However, physician assistants shall not render services in these facilities without the express written permission of the respective facility's governing body. The facility may restrict the physician assistant's scope of practice within the facility as the facility deems appropriate.

(4) Neither the physician assistant nor the supervising physician shall require any individual or entity to perform any act relative to the provision of services by the physician assistant that the individual or entity is specifically forbidden to perform pursuant to duly promulgated law.

Section 6. Physician Assistants Practicing as Anesthesia (or Anesthesiology) Assistants. (1) Any physician assistant practicing as an anesthesia (or anesthesiology) assistant in Kentucky prior to July 15, 1986 may continue to so practice provided:

(a) That such individual has complied with all the practice requirements and conditions of Sections 2, 3, 4(2), and 5 of this regulation;

(b) That such individual is a graduate of a program specifically designed to train the individual to administer general or regional anesthesia which is accredited by CAHEA;

(c) That such individual is only employed by a supervising physician who has postgraduate training in anesthesiology from an anesthesiology program accredited by the Accreditation Council for Graduate Medical Education (ACGME); and

(d) Notwithstanding Section 9 of this regulation, such individual shall not administer or monitor general or regional anesthesia unless his or her supervising physician is physically present in the operating room during induction, and thereafter physically present in the operating suite and not concurrently performing any other anesthesia procedure which would prevent the supervising physician's immediate physical presence in the operating room where the anesthesia procedure is being performed.

(2) Any physician assistant not already practicing as an anesthesia (or anesthesiology) assistant in Kentucky prior to July 15, 1986 must meet the following requirements:

(a) Such individual shall be a graduate of an approved program as defined in Section 4(1)(a) of this regulation which is of four (4) years duration, and, in addition to such training, be a graduate of a two (2) year program specifically designed to train the individual to assist in the provision of general and regional anesthesia, which consists of specialized academic and clinical training in anesthesia, and which is accredited by CAHEA;

(b) Such individual shall have complied with all of the practice requirements and conditions

of Sections 2, 3, 4, and 5 of this regulation;

(c) Such individual shall only be employed by a supervising physician who is a board certified anesthesiologist; and

(d) Notwithstanding Section 9 of this regulation, such individual shall not administer or monitor general or regional anesthesia unless his or her supervising physician, who must be a board certified anesthesiologist, is physically present in the operating room during induction and emergence, and thereafter physically present in the operating suite and not concurrently performing any other clinical procedure.

Section 7. Approval of Supervising Physicians.

(1) To seek approval by the board as a supervising physician, a physician must:

(a) Be currently licensed in good standing and primarily practicing in the Commonwealth;

(b) Submit a completed application with the required fee.

(2) In addition to other information the board's executive director may deem appropriate, the supervising physician shall, briefly, on the face of the application:

(a) Describe the nature of his/her practice;

(b) Describe the responsibilities the physician wishes the physician assistant to assume;

(c) Describe the means by which the physician will maintain a line of communication with the physician assistant when the two (2) are not in the same location; and

(d) Denote the name, address and area of practice of one (1) or more alternate physicians who agree in writing to accept the responsibility of supervising the physician assistant in the supervising physician's absence.

(3) A physician shall not supervise a physician assistant without being approved by the board. The board may impose restrictions on the scope of practice of a particular physician assistant or on the methods of supervision employed by the supervising physician as it deems appropriate. Physicians must obtain specific approval for each physician assistant they wish to supervise and the board will not approve any physician to supervise more than two (2) physician assistants at any one (1) time.

Section 8. Duties of Supervising Physicians. A supervising physician shall:

(1) Restrict the services provided by the physician assistant the physician supervises to those services within the limitations of the physician assistant's scope of practice as set forth in Section 5 of this regulation and, as applicable, Section 6 of this regulation, and as may be specifically limited by the board;

(2) Prohibit physician assistants from prescribing or dispensing controlled substances or other drugs;

(3) Inform all patients with whom the physician assistant comes in contact of the status of the physician assistant;

(4) Post a notice in all offices or clinics where the physician assistant may practice stating that a physician assistant practices on the premises;

(5) Require physician assistants to wear a name tag or other identification clearly stating that the person is a "physician assistant - certified";

(6) Prohibit the physician assistant from independently billing any patient or other payor

for services rendered by the physician assistant;

(7) Negotiate with the medical staff and/or governing body of any hospital, long-term care facility or institution to establish and limit the scope of practice of the physician assistant;

(8) Not require a physician assistant to perform services or other acts that the physician assistant feels incapable of carrying out safely and properly;

(9) Survey critically and biennially the performance of the physician assistant under the physician's supervision as to reliability, accountability, fund of medical knowledge and recommend to the committee, approval or disapproval of other physician assistant's certification, including evidence of continuing certification by the National Commission on Certification of Physician Assistants. This critical survey process shall be performed by the supervising physician biennially on the date of the physician assistant's original certification in the Commonwealth of Kentucky;

(10) Submit in conjunction with the physician assistant's renewal of certification a statement evidencing the physician assistant's completion of a minimum of 100 hours of continuing education as set forth in Section 2(4) of this regulation;

(11) Maintain adequate, active and continuous supervision of the physician assistant's activities to assure the physician assistant is performing as directed and in compliance with these regulations. The supervising physician shall timely sign all records of services rendered by the physician assistant as certification that the physician assistant carried out the services as delegated;

(12) Notify the board within three (3) business days if the physician assistant ceases to be under the control or in the employ of the supervising physician; and

(13) Notify the board within twenty (20) days if the supervising physician believes in good faith that the physician assistant has violated any disciplinary rule set forth in this regulation.

Section 9. Supervision and Satellite Clinics.

(1) The supervising physician need not be physically present at all times when the physician assistant is providing services in the physician's office or clinic so long as the physician assistant has a reliable means of having direct communication with the supervising physician at all times. Except as may be provided by this regulation or the board, the supervising physician need not be present in a hospital or other licensed health care facility while the physician assistant is providing services so long as the physician assistant has a reliable means of having direct communication with the supervising physician at all times, and the facility has given specific approval for the provision of the given services by the physician assistant without the presence of the supervising physician.

(2) Any supervising physician utilizing the services of a physician assistant in an office or clinic separate and apart from the physician's primary office shall submit a specific written request to the board delineating the services to be provided by the physician assistant, the distance between the primary office and the setting in which the physician assistant is to practice and the

mechanism by which the physician assistant shall have access to direct communication with the supervising physician at all times. The board may approve or disapprove such requests as it deems appropriate and may approve a request with specified limitations. Under no circumstances shall a physician assistant practice in such a setting without first having two (2) continuous years of experience in a nonsatellite setting.

Section 10. Discipline of Physician Assistants. The board may revoke, suspend, deny, decline to renew, limit or restrict the certificate of a physician assistant, or may reprimand or place a physician assistant on probation for no more than five (5) years under conditions the board deems appropriate, upon proof that the physician assistant has:

(1) Knowingly made or presented, or caused to be made or presented, any false, fraudulent or forged statement, writing, certificate, diploma or other document in connection with an application for certification;

(2) Practiced, or aided or abetted in the practice, of fraud, forgery, deception, collusion or conspiracy in connection with an examination for certification;

(3) Been convicted, by any court within or without the Commonwealth of Kentucky, of committing an act which is, or would be, a felony under the laws of the Commonwealth of Kentucky, or of the United States, or of any crime involving moral turpitude which is a misdemeanor under such laws;

(4) Become addicted to or an abuser of alcohol, drugs or any illegal substance;

(5) Developed such physical or mental disability or other condition that continued practice presents a danger to patients, the public or other health care personnel;

(6) Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in connection with the practice of his/her profession;

(7) Practiced as a physician assistant outside the practice of the designated supervising physician;

(8) Aided, assisted, or abetted the unlawful practice of medicine or osteopathy or any other healing art, including the practice of physician assistants;

(9) Willfully violated a confidential communication;

(10) Had a physician assistant certificate of any other state, territory, or foreign nation revoked, suspended, restricted, limited or subject to other disciplinary action;

(11) Performed the services of a physician assistant in an unprofessional, incompetent, grossly negligent or chronically negligent manner;

(12) Exceeded the authority delegated by the supervising physician;

(13) Exceeded the scope of practice duly established by the governing authority of any hospital or other licensed health care facility;

(14) Been removed, suspended, expelled or placed on probation by any health care facility or professional society for what was found to be unprofessional conduct, incompetence, negligence or violation of any provision of this regulation;

(15) Violated any applicable provision of regulations regarding physician assistant practice;

(16) Violated any term of probation or other

discipline imposed by the board;

(17) Failed to complete the required number of hours of approved continuing education; or

(18) Performed any act as a physician assistant without having a designated supervising physician.

Section 11. Discipline of Supervising Physicians. Failure of a physician to obtain approval as a supervising physician, or failure of a supervising physician to observe applicable responsibilities established by regulations promulgated by the board regarding physician assistants, shall be considered unprofessional conduct and the physician may be proceeded against pursuant to the board's rules regarding physician discipline. In addition to other discipline, the board may revoke, suspend, restrict, or place on probation the supervising physician's right to supervise a physician assistant.

Section 12. Physician Assistant Advisory Committee. (1) The board shall establish a physician assistant advisory committee consisting of nine (9) members, four (4) of whom shall be physician assistants from (as practicable) different regions of the Commonwealth, two (2) supervising physicians, one (1) resident of the Commonwealth who is not associated with or financially interested in the health care business, one (1) advanced registered nurse practitioner who shall be selected from a list of three (3) nominees submitted by the Kentucky Board of Nursing and who shall be licensed in good standing in the Commonwealth, and one (1) member of the board. The members of the committee shall hold office for terms of three (3) years and until their successors are appointed and qualified, except that the terms of office of the members first appointed shall be as follows: two (2) members shall be appointed for one (1) year, four (4) members shall be appointed for two (2) years and three (3) members shall be appointed for three (3) years. The terms of all members of the committee shall expire on August 31st of the last year of their respective terms.

(2) The committee shall hold meetings at least semiannually and more often as necessary, to review and make recommendations to the board regarding:

(a) Applications of physician assistants and supervising physicians;

(b) Statutes and regulations; and

(c) Any other matter relating to the practice of physician assistants.

(3) The committee shall review all grievances relating to physician assistants. The board's investigational powers relating to physicians shall apply equally to physician assistants. Upon review of any grievance, the committee shall make a recommendation to the appropriate inquiry panel. Disciplinary proceedings against physician assistants shall be conducted in the same manner as proceedings against physicians and physician assistants shall have the same right to judicial review enjoyed by physicians. The board may temporarily suspend or restrict a physician assistant's certification during the pendency of a proceeding and may order a physician assistant to undergo physical or mental examination in accordance with the procedures set forth in KRS 311.592 and KRS 311.599, respectively.

Section 13. Repealer. 201 KAR 9:083 is repealed.

C. WILLIAM SCHMIDT, Executive Director

APPROVED BY AGENCY: June 16, 1988

FILED WITH LRC: July 26, 1988 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on September 21, 1988, at 10 a.m. EST, at the office of the Kentucky Board of Medical Licensure, 400 Sherburn Lane, Suite 222, Louisville, Kentucky 40207. Those interested in attending this hearing shall contact in writing: C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, 400 Sherburn Lane, Suite 222, Louisville, Kentucky 40207.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt

(1) Type and number of entities affected: Approximately 150 qualified physician assistants presently practicing in the Commonwealth and their supervising physicians.

(a) Direct and indirect costs or savings to those affected:

1. First year: Registration fee will be cost initially. Regulation will permit supervising physicians to obtain Medicare/Medicaid reimbursement for physician assistant services.

2. Continuing costs or savings: Biennial registration fee. Cost for meeting continuing education requirement.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors.

(b) Reporting and paperwork requirements: Supervising physicians required to perform critical review every two (2) years of physician assistants they survey.

(2) Effects on the promulgating administrative body: Cost will be minor to agency. Will add certification and enforcement responsibility.

(a) Direct and indirect costs or savings:

1. First year: Cost of setting up certification mechanism and processing applications.

2. Continuing costs or savings: Small costs to process additional applications, conduct committee meetings and survey general compliance by those regulated.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Processing applications. No reporting requirements for agency.

(3) Assessment of anticipated effect on state and local revenues: Additional revenue generated will be small due to number of individuals to be regulated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods available. Board believes regulation thorough and complete, but not burdensome.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation does not conflict with, overlap or duplicate any statute, regulation or policy.

(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. The regulation was designed to include only those substantive requirements that are necessary to effective and efficient regulation. Basic tiering mechanisms were not employed since they are inappropriately applied to this type of regulation.

TOURISM CABINET

Department of Fish and Wildlife Resources

301 KAR 4:070. Scientific, educational and commercial nuisance wildlife control collecting permits.

RELATES TO: KRS 150.010, 150.025, 150.180, 150.183, 150.275, 150.305, 150.365, 150.460, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: The commissioner, with the concurrence of the commission, finds it necessary to regulate the collecting of wildlife species for scientific, educational and commercial nuisance control purposes while continuing to protect the wildlife resource. The purpose of this regulation is to detail procedures and responsibilities necessary for the prudent collecting of wildlife and for deposition of data collected.

Section 1. Definitions. (1) "Protected wildlife" means all wildlife except woodchuck, coyote, starling, crow, house sparrow and all species of moles, mice, rats, shrews, insects, and other terrestrial invertebrates, unless listed or included by reference in Section 2 of this regulation.

(2) "Scientific wildlife collecting" means the taking by specified means and the subsequent possession of wildlife specimens for the purposes of conducting scientific investigations or evaluations for which a remuneration is received.

(3) "Educational wildlife collecting" means the taking by specified means and subsequent possession of wildlife specimens by an individual or nonprofit organization for the purposes of conducting educational studies, scientific investigations, evaluations, or for use in the bona fide instruction of students.

(4) "Commercial nuisance wildlife control" means the capture, transportation and release of protected wildlife specimens for the purposes of removing problem wildlife from private or public property and for which a remuneration is received.

(5) "Federally protected wildlife" means any federally threatened or endangered species listed by the U.S. Fish and Wildlife Service and included in this regulation by reference, any threatened or endangered species listed in Section 2(2) of this regulation by the U.S. Fish and Wildlife Service, and any native bird species except crow.

Section 2. Items Incorporated by Reference.

(1) "Endangered and Threatened Wildlife and Plants." U.S. Fish and Wildlife Service, Department of the Interior, 1986.

(2) In addition to the species listed in the reference in subsection (1) of this section, the following species are included:

PELECYPODS:		Pygmy shrew	Microsorex hoyi
Little-winged pearly-mussel	Pegias fabula		winnemana
		Southeastern myotis	Myotis austroriparius
		Small-footed myotis	Myotis subulatus leibii
		Eastern wood rat	Neotoma floridana
CRUSTACEANS:			magister
Clifton Cave isopod	Caecidotea barri	Rafinesque's big-eared bat	Plecotus rafinesquii
Crayfish	Cambarus batchi		
Big South Fork crayfish	Cambarus bouchardi	Long-tailed shrew	Sorex dispar
Bousfield's amphipod	Gammarus bousfieldi	New England cottontail	Sylvilagus
Louisville crayfish	Orconectes jeffersoni	transitionalis	
GASTROPODS:		INSECTS:	
Onyx rocksnail	Leptoxis praerosa	Midget snaketail	Ophiogomphus howei
Armored rocksnail	Lithasia armigera	dragonfly	
Ornate rocksnail	Lithasia geniculata	Six-banded longhorn beetle	Dryobius sexnotatus
Rustic rocksnail	Lithasia salebrosa		
Varicose rocksnail	Lithasia verrucosa	American burying beetle	Nicrophorus americanus
PELECYPODS:		Black lordithon rove beetle	Lordithon niger
Cumberland elktoe	Alasmidonta atropurpurea		
Spectacle case	Cumberlandia monodonta	(3) "Endangered, Threatened, and Rare Plants and Animals of Kentucky," Warren, M.L., Jr., W.H. Davis, R.R. Hannan, M. Evans, D.L. Batch, B.D. Anderson, B. Palmer-Ball, Jr., J.R. MacGregor, R.R. Cicerello, R. Athey, B.A. Branson, G.J. Fallo, B.M. Burr, M.E. Medley, and J.M. Baskin, Volume 47, Transactions of the Kentucky Academy of Science, pages 83-98, 1986.	
Fanshell	Cyprogenia stegaria		
Cumberland combshell	Epioblasma brevidens		
Oyster mussel	Epioblasma capsaeformis		
Catspaw	Epioblasma obliquata		
Crackling pearlymussel	Hemistena lata		
Scaleshell	Leptodea leptodon		
Ring pink	Obovaria retusa		
Clubshell	Pleurobema clava		
Tennessee clubshell	Pleurobema oviforme		
Pyramid pigtoe	Pleurobema pyramdatum		
Rabbitsfoot	Quadrula cylindrica		
Winged mapleleaf	Quadrula fragosa		
Salamander mussel	Simpsonaias ambigua		
Bean villosa	Villosa fabalis		
Kentucky creekshell	Villosa ortmanni		
FISHES:			
Blackside dace	Phoxinus cumberlandensis		
Lake sturgeon	Acipenser fulvescens		
Northern cavefish	Amblyopsis spelaea		
Crystal darter	Ammocrypta asprella		
Eastern sand darter	Ammocrypta pellucida		
Blue sucker	Cycleptus elongatus		
Johnny darter	Etheostoma nigrum		
	susanae		
Sturgeon chub	Hybopsis gelida		
Sicklefin chub	Hybopsis meeki		
Palezone shiner	Notropis sp.		
Longhead darter	Percina macrocephala		
Pallid sturgeon	Scaphirhynchus albus		
AMPHIBIANS:			
Green salamander	Aneides aeneus		
Hellbender	Cryptobranchus alleganiensis		
REPTILES:			
Kirtland's snake	Clonophis kirtlandii		
Alligator snapping turtle	Macroclmys temminckii		
Copperbelly water snake	Nerodia erythrogaster neglecta		
BIRDS:			
Bachman's sparrow	Aimophila aestivalis		
American swallow-tailed kite	Elanoides forficatus forficatus		
Migrant loggerhead shrike	Lanius ludovicianus migrans		
Bewick's wren	Thryomanes bewickii		
MAMMALS:			
Gapper's red-backed mouse	Clethrionomys gapperi maurus		
		Section 5. Federal Permit Requirements. No federally protected wildlife, living or dead,	

may be collected unless the collector holds a valid federal permit or a letter designating him as an agent of the department, in addition to a valid Kentucky collecting permit.

Section 6. Reporting Requirements. (1) A written report of the collecting activities carried out during the year for which a scientific or educational collecting permit was issued shall be submitted to the department by no later than January 31 of the following year. Each report shall include the common name, scientific name, date of collection, condition (living or dead), method of disposal or retention, and specific locality of collection for each specimen or series collected. Locality data shall include the county in which the specimens were collected and the location at which the collection was made. Photocopies of county maps (or topographic maps) and field notes may suffice for locality reporting provided that all pertinent information is included. Permittees shall immediately report the discovery or collection of any federally protected or Kentucky threatened or endangered wildlife, that are incorporated by reference in Section 2(3) of this regulation, (whether collected or not) to the department.

(2) Commercial nuisance wildlife control collecting permittees shall report annually by January 31 of the following year on forms provided by the department.

Section 7. Deposition of Specimens, Special Conditions for Taking Specified Wildlife and Disposal of Specimens. (1) Deposition of specimens. If specimens have been retained for verification, the name and address of any museum or recognized collection in which these voucher specimens have been deposited or the names and addresses of those persons or institutions that are maintaining the specimens shall be provided.

(2) Special conditions for taking specified wildlife. Commercial nuisance wildlife control permittees shall not kill protected wildlife unless such protected wildlife is taken during an open season for that species or such taking is otherwise authorized by the commissioner. Applicants for any permit that would allow them to collect bats shall attest by written affidavit that they possess the ability to identify federally protected bat species in the field, in life, so that such species shall not be inadvertently killed. Permittees shall not collect more than two (2) living specimens of any Kentucky endangered or threatened species, that are incorporated by reference in Section 2(3) of this regulation, from any one locality during the permit year without additional authorization from the commissioner. Road kills or specimens found dead of natural causes may be taken in unlimited numbers for study unless they are federally protected wildlife.

(3) Disposal of specimens. All captured protected wildlife not killed shall be immediately released in a rural habitat suitable to that species. All other collected specimens shall either be appropriately preserved, disposed of or released as specified on the permit.

Section 8. Other General Prohibitions. (1) A collecting permit of any type shall not be used in lieu of a standard hunting or fishing license.

(2) Under no circumstances shall toxicants be

used to take bats of any species.

DON R. McCORMICK, Commissioner

MARY RAY OAKEN, Secretary

CHARLES E. PALMER, JR., Chairman

APPROVED BY AGENCY: August 15 1988

FILED WITH LRC: August 15, 1988 at 10 a.m.

PUBLIC HEARING: A public hearing will be held on September 27, 1988 at 2:30 p.m. in the Commission Room of the Department of Fish and Wildlife Resources central offices at Frankfort, Kentucky. Those interested in attending this hearing shall contact: Lauren Schaaf, Director, Wildlife Division, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: Approximately 80 individuals, institutions or organizations shall be regulated by the new rules and fees on collecting permits.

(a) Direct and indirect costs or savings to those affected: None required.

1. First year: Fees for scientific collecting permits are raised \$35 and a new category of collector is added but assessed no fee. Fees for educational collectors are not changed.

2. Continuing costs or savings: Scientific collectors shall continue to be assessed \$35 more than before but educational collectors shall be charged the same fee as before.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors affecting costs.

(b) Reporting and paperwork requirements: Collector regulations require annual reports of activities and species taken. This shall require additional paperwork for permit holders. However, it is assumed that the information collected is kept by the collector in a tabulated form anyway. The only obligation shall be to provide it to the department annually.

(2) Effects on the promulgating administrative body: Slight administrative work increase due to new commercial collecting permit requirement.

(a) Direct and indirect costs or savings: Postage and handling for collector fees shall be \$10-15 per year. Other costs such as secretarial and mail clerk assistance is fixed.

1. First year: Slight administrative work increase due to new commercial nuisance wildlife permit requirement.

2. Continuing costs or savings: Slight administrative work increase due to new commercial nuisance wildlife permit requirement.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: None over and above those now required.

(3) Assessment of anticipated effect on state and local revenues: Changes shall increase revenues to the department by approximately \$700 but will have no impact on general state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Do nothing. Reasons why alternatives were rejected: Wildlife collectors can provide a valuable service to the department by providing information on species collection sites for incorporation into distribution records. Therefore, the change to

require reporting was made.

(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

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes _____ No X

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. There shall be no affect.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to KRS Chapter 150.

4. How does this administrative regulation affect the local government or any service it provides? Distributional information on species of wildlife is occasionally needed by agencies of government requiring information on the impacts of development activity on the wildlife in the vicinity of such development. Information garnered by the reporting requirements of this regulation is kept in an automated database and is provided to such agencies on request. There is presently no fee for this service.

TOURISM CABINET

Department of Fish & Wildlife Resources

301 KAR 4:080. Taxidermy requirements.

RELATES TO: KRS 150.010, 150.025, 150.175, 150.180, 150.183, 150.305, 150.330, 150.370, 150.411, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: The commissioner, with the concurrence of the commission, finds it necessary to regulate the business of taxidermy in order to assure the trade is limited to legally taken animals. The purpose of this regulation is to detail procedures and responsibilities for taxidermists involved in storing, labeling and mounting wildlife, buying and selling inedible wildlife parts and the buying and selling of mounted wildlife specimens.

Section 1. Definitions. (1) "Regular taxidermist" means anyone who prepares, stuffs and mounts the skins or other parts of wildlife and is paid for his services but does not engage in the buying or selling of inedible wildlife parts or mounted specimens.

(2) "Buyer/seller taxidermist" means anyone who, in addition to the activities detailed in subsection (1) of this section, also buys and sells mounted specimens and the inedible parts of wildlife.

(3) "Federally protected wildlife" means any federal threatened or endangered species and any native migratory bird.

(4) "Abandoned mounted specimen" means any specimen that has not been claimed by the owner for a period of twelve (12) months after notification of completion of the mounting process.

(5) A "mounted specimen" means the hide or a portion of the hide of an animal, processed into a permanently preserved state and arranged to resemble the living animal.

Section 2. Licenses Required. (1) A regular taxidermist shall be required to possess a regular taxidermist license. A buyer/seller taxidermist shall possess a buyer/seller taxidermist license. These licenses shall be displayed at the place of business and shall be open, along with all records pertaining to the business and all wildlife specimens or wildlife parts, to inspection by any properly authorized agent of the department.

(2) In addition to the appropriate state license, all taxidermists who mount federally protected species must have a federal taxidermist license. Federal license application information is available by writing: U.S. Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 4839, Atlanta, GA 30302.

Section 3. Labeling Requirements. The name, address and telephone number of the owner shall be written on a tag and affixed to each animal or inedible animal part stored for any purpose by a taxidermist.

Section 4. Selling Wildlife. Legally taken wildlife may be sold to a licensed buyer/seller taxidermist only during the open season for that species or within twenty (20) days after the close of the season. Buyer/seller taxidermists may buy or sell mounted specimens and the inedible parts of wildlife to each other at any time of the year. A licensed fur buyer may sell the inedible parts of wildlife for mounting purposes to a buyer/seller taxidermist for thirty (30) days after the close of the season. Buyer/seller taxidermists shall not sell, trade or barter any edible meat from wildlife. Regular taxidermists may accept for mounting, and buyer/seller taxidermists may buy, wildlife taken outside the season if that specimen is tagged with a department disposal permit signed by an authorized agent of the department. Garments or products (except mounted specimens) made from processed wildlife may be bought or sold by anyone at any time.

Section 5. Selling of Abandoned Mounts. Regular taxidermists desiring to sell abandoned mounts shall apply to the commissioner by letter. The letter shall identify the mounts to be sold, with the name and address of the person for whom it was mounted and the date that each specimen was accepted for mounting. Upon receipt of the required information, the commissioner may issue a permit authorizing sale of described mounts during a sixty (60) day period beginning with the date the permit is issued. The commissioner shall be notified by written report, within ten (10) days of the sale, of the name and address of the purchaser and a description of the mount(s) purchased.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
CHARLES E. PALMER, JR., Chairman

APPROVED BY AGENCY: June 13, 1988

FILED WITH LRC: August 15, 1988 at 10 a.m.

PUBLIC HEARING: A public hearing will be held on September 28, 1988 at 9 a.m. in the Commission Room of the Department of Fish and Wildlife Resources central offices at Frankfort, Kentucky. Those interested in attending this hearing shall contact: Lauren Schaaf, Director, Wildlife Division, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: There are about 379 taxidermists licensed in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: Since this is a new regulation, governed by a new statute, it is not known how many will opt for the newly required buyer/seller taxidermist license. Those who do not opt to purchase the buyer/seller taxidermist license will continue to purchase a regular taxidermist license and will not be impacted by the new fees. Those who opt to buy the new buyer/seller taxidermist license will be assessed an additional \$138.50.

2. Continuing costs or savings: Those who do not opt to purchase the buyer/seller taxidermist license will continue to purchase a regular taxidermist license and will not be impacted by the new fees. Those who opt to buy the new buyer/seller taxidermist license will be assessed an additional \$138.50.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Those who do not opt to purchase the buyer/seller taxidermist license will continue to purchase a regular taxidermist license and will incur less reporting requirements due to their not having to send in monthly reports. Those who opt to buy the new buyer/seller taxidermist license will only have to report those wildlife parts purchased on a monthly basis but will no longer have to report all specimens mounted. Both will, however, have to keep such items on their books for five years; a requirement that they had before this regulation was changed.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Since this is a new regulation, governed by a new statute, it is not known how many will opt for the newly required buyer/seller taxidermist license. Those who do not opt to purchase the buyer/seller taxidermist license will continue to purchase a regular taxidermist license and will not be impacted by the new fees. Those who opt to buy the new buyer/seller taxidermist license will be assessed an additional \$138.50. The income generated by the latter will accrue to the department.

2. Continuing costs or savings: The number of taxidermists who opt to purchase the buyer/seller taxidermist license will continue to generate an additional \$138.50 to the

department annually.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be a decrease in paperwork to the agency from not having to file monthly reports on specimens mounted. Reports from purchased goods, however, will continue to be filed monthly.

(3) Assessment of anticipated effect on state and local revenues: Overall state and local revenues will be unaffected except for the revenue generated to the local and state economies due to the ability to buy and sell wildlife parts and mounted specimens. The level of income that will be generated cannot be estimated at this time. Department income will increase.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Taxidermists could have been required to purchase only a regular taxidermist license and not incurred additional fees. In order to maintain consistency with others who may buy and sell wildlife hides, it seemed prudent to require buyers and sellers of wildlife parts for taxidermy purposes to purchase a license with an equivalent cost or \$150.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There will be no overlap or conflict with other statutes or regulations. This regulation is being promulgated to clarify provisions of KRS 150.175 and 150.411.

(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? Yes.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20 1985.

2. State compliance standards. Cannot allow the buying or selling of migratory wildlife and requires a federal permit to mount migratory wildlife.

3. Minimum or uniform standards contained in the federal mandate. This regulation complies with the federal mandate.

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

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

PUBLIC PROTECTION & REGULATION CABINET
Public Service Commission
Executive Director's Office

807 KAR 5:069. Water district and water association construction cases.

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.023

NECESSITY AND FUNCTION: This regulation sets out minimum filing requirements and procedures a water district or water association shall follow when seeking commission approval of a construction project financed in whole or in part by Farmers Home Administration or the U.S. Department of Housing and Urban Development.

Section 1. Commission Responsibility. The commission shall approve an application within thirty (30) days from the time the utility meets minimum filing requirements. Approval shall be by order granting a certificate of public convenience and necessity to construct proposed systems and authorizing any financing or revisions in customer rates necessary to the proposal and which are set out in the financing documents.

Section 2. Utility Responsibility. The utility shall file its application in proper form and include discussion of minimum filing requirements set out herein. Any deviation to the minimum filing requirements shall be clearly identified in the application and supported by an appropriate motion to deviate. The thirty (30) day period for commission review shall not begin until the minimum filing requirements are met or an order granting the motion to deviate is entered.

Section 3. Minimum Filing Requirements. An application filed under this regulation shall include the following:

(1) A formal application, signed by a utility official and counsel, consistent with requirements of 807 KAR 5:001, Section 8. An original and ten (10) of the application, including all exhibits, shall be submitted. The application shall clearly state reasons for filing and statutes under which commission approval is needed.

(2) Minimum filing requirements shall be defined as the following detailed information and shall be included with the application:

(a) Copy of FmHA letter of conditions. For projects financed with HUD funds, a copy of the appropriate agency approval letter, including all terms and conditions to be met, shall be included.

(b) Copy of FmHA letter of concurrence in bid award.

(c) Copy of preliminary and final engineering reports.

(d) Certified statement from an authorized utility official confirming:

1. That the proposed plans and specifications for the project have been designed to meet the minimum construction and operating requirements set out in 807 KAR 5:066, Section 5(3) and (4), Section 6(1), Sections 7 and 8, Section 9(1) through (3), Section 10(1) and Section 11;

2. That all other state approvals or permits have already been obtained;

3. That any proposed rates shall produce the total revenue requirements set out in

engineering reports; and

4. Dates when construction will begin and end.

(e) That notice to the customers has been given in conformance with Section 4 of this regulation. A copy of the notice shall be included in the application.

(f) If necessary, a motion requesting approval to deviate from any minimum construction standard or operating condition set out in subsection 2(d) of this section. The motion shall be sufficiently supported to identify reasons minimum requirements cannot be met.

Section 4. Notice to Customers of Rate Change. A utility shall give public notice to its customers of a proposed rate change made under this regulation in the following manner:

(1) Prior to or at the same time application is made a one (1) time notice shall be given by either direct mail to each customer or in newspaper of general circulation in local service area.

(2) The notice shall contain the current and proposed rates and a brief description of the construction project.

Section 5. Additional Construction Activity. In instances where surplus project funds remain, a utility may construct additional plant facilities as an ordinary extension of service without prior commission approval if it results in no change in existing customer's rates. The utility shall notify the commission in writing of any additional construction and include appropriate borrower authorization statements.

Section 6. System Maps. Following completion of any construction authorized under this regulation, the utility shall maintain system maps consistent with 807 KAR 5:006, Section 18.

RICHARD D. HEMAN, JR., Chairman

ROBERT M. DAVIS, Vice Chairman

SQUIRE N. WILLIAMS, JR., COMMISSIONER

THEODORE COLLEY, Secretary

APPROVED BY AGENCY: July 22, 1988

FILED WITH LRC: July 27, 1988 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, September 21, 1988 at 1:30 p.m., EDT, at the Commission's offices, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Forest M. Skaggs, Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602, (502) 564-2473.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Forest M. Skaggs

(1) Type and number of entities affected: This regulation sets forth minimum filing requirements and procedures a water district, water association or combined water, gas, or sewer district shall follow when seeking commission approval of a construction project financed in whole or in part by FmHA or HUD funds. Commission records indicate there are 141 water districts, 30 water associations, and 9 combined water, gas, or sewer districts affected by this regulation. The total number of water utilities required to seek commission approval of proposed construction projects will neither increase nor decrease. Because this regulation prescribes the minimum filing requirements and because the statute authorizing its promulgation declares that the commission shall approve such projects after the minimum filing requirements are met, this regulation may also affect directly or indirectly and in varying degrees, those persons or utilities who provide construction activity or support services in connection with proposed construction projects.

(a) Direct and indirect costs or savings to those affected:

1. First year: This regulation initially reduces the costs associated with preparation of applications in connection with construction cases before the commission. Because the commission is statutorily mandated to approve the project within 30 days, savings will result to the utilities due to the decrease in both number and types of documents which will be filed pending commission investigation. Rate case expense will be reduced because the statute and the commission's authority in promulgating this regulation eliminate any possibility that a public hearing could or would be held. An additional savings will be realized by a reduction in costs associated with construction cases which are pending before the commission on July 15, 1988. In addition, any costs associated with commission recommended changes, revisions, or modifications under the former procedures are eliminated by this regulation.

2. Continuing costs or savings: Savings enumerated above will continue each year thereafter.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No effects on competition and no additional factors.

(b) Reporting and paperwork requirements: This regulation will result in a significant decrease in the documentation and verification necessary to show compliance with commission regulations regarding minimum construction and operating requirements (807 KAR 5:066, Section 5(3) and (4), Section 6(1), Sections 7 and 8, Section 9(1) through (3), Section 10(1), and Section 11) and the filing of rate schedules (807 KAR 5:011, Sections 4 through 9, 807 KAR 5:001, Sections 9 and 10). Under this regulation an authorized utility representative verifies compliance by filing a certified statement to that effect.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This regulation will reduce staff man-hours and agency expense associated with investigation and review of construction projects funded by FmHA or HUD. Because the possibility of public hearings is effectively

eliminated due to the 30 day review process the commission should realize a reduction in hearing related expenses.

2. Continuing costs or savings: Savings enumerated above will continue each year thereafter.

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: Internally generated documents and correspondence directed to utilities with respect to requests for additional information or clarification of the information provided within or to supplement the application will be reduced and no field audit reports will be prepared. Significant reductions in the amount of documentation available for staff review will be reduced and replaced by a certified statement issued by an authorized utility official.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods that could have been used to implement this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation conflicts with KRS 278.190 wherein it states the commission may suspend a proposed rate schedule for up to 5 months after the date it was to become effective. The statute further provides that the commission may hold hearings and at those hearings the utility shall bear the burden of proof. Under this regulation and the statute authorizing its promulgation, the commission has no discretion to suspend a rate schedule filed in conjunction with an application for public convenience and necessity where funds provided by FmHA or HUD are involved. Further, the commission may not modify or reject any portion of the application and therefore, the utility carries no burden of proof to show the rates are just and reasonable or that construction is needed and in the public interest.

(a) Necessity of proposed regulation if in conflict: This regulation is promulgated by the agency to comply with changes to KRS 278.023.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Efforts were made to harmonize the regulation with conflicting provisions of KRS 278.020 by requiring customers of a utility be notified of a proposed rate change. On the burden of proof question the utility must at a minimum certify certain facts to the agency; however, since hearings will not be held and no facts will be in dispute the utility carries no burden to show the rates proposed are reasonable or that construction is needed and in the public interest.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. The statute authorizing the promulgation of this regulation affects only one class of regulated utilities and provides no agency discretion to tailor the regulation as to size of the utility, number of customers or on any other basis.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate

to any aspect of a local government, including any service provided by that local government?

Yes X No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a division of those county governments with water districts created under Chapters 65 and 74 of the Kentucky Revised Statutes.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation will impact water district construction projects which are financed by either of two federal agencies, FmHA or HUD. Promulgation of this regulation is authorized by KRS 278.023 and the regulation will affect only those local governments administering water districts or combined water gas or sewer districts created under KRS Chapter 74. The only impact on water districts is that filing requirements and documentation necessary

for approval of construction projects financed by FmHA or HUD will be reduced to a minimum.

4. How does this administrative regulation affect the local government or any service it provides? The regulation sets forth minimum filing requirements and procedures a water district, water association, or combined water, gas, or sewer district shall follow when seeking commission approval of a construction project financed in whole or in part by FmHA or HUD funds. Compliance with the regulation is a preliminary step in beginning water construction projects which will provide necessary water or sewer service or an increase in the quality of existing service to the residents of the geographical area to be served by the district. There will be no increase or decrease in state government revenues or expenses. The impact on county government would be reflected in decreasing expenses for professional fees and reduced paperwork requirements. These reductions are impossible to estimate because they depend solely upon the type and number of projects proposed in the future.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the August 3, 1988 Meeting

The August meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, August 3, 1988 at 10 a.m. in Room 107. Representative Mark D. O'Brien, Chairman, called the meeting to order, and the secretary called the roll. The minutes of the July 6, 1988 meeting were approved without objection.

Present August 3, 1988 were:

Members: Representative Mark D. O'Brien, Chairman; Senators Harold Haering, Pat McCuiston and Senator Bill Quinlan; Representatives Jim Bruce, Ronny Layman and Joe Meyer.

Guests: Scott Akers, Ray Kring, Richard A. Preston, Daniel C. Wilson, Revenue Cabinet; Pam Johnson, Bobby J. McKee, Retirement Systems; Ilse R. Dickerson, Randy Hampton, Sheila Tharpe, Crime Victims Compensation Board; Larry Perkins, Board of Landscape Architects; Connie Y. Malone, Corrections Cabinet; Sandra G. Pullen, Transportation Cabinet; Steve Goodrum, Guy B. Schoofield, Labor Cabinet; Patrick Watts, Department of Insurance; James M. Baker, Edward B. Hatchett, Jr., Wanda S. Harrod, Ronda Paul, Ella Robinson, Jan Smith, Thomas W. Stout, Department of Financial Institutions; Joe Anderson, Barbara Coleman, Louise Greeman, Gary Grubbs, Anne Hager, N. Clifton Howard, Sandra MacLaren, Marvin Miller, Lynn Owens, Patrick Rickard, Thomas C. Roach, Carol Sauers, Rita Sutton, Larry Taylor, Mike Townsend, Mark Yancey, Cabinet for Human Resources; Jenifer Tarter, Governor's Office.

LRC Staff: Susan Wunderlich, Joe Hood, Gregory Karambellas, Donna Pierce and Carla Arnold.

The Administrative Regulation Review Subcommittee met on August 3, 1988, and submits this report:

The administrative regulations considered at this meeting are to be referred to an appropriate jurisdictional committee for review.

The Subcommittee determined that the following administrative regulations do not comply with KRS Chapter 13A or other applicable statutes as set forth below:

Revenue Cabinet: Department of Professional and Support Services: Selective Excise Tax; Motor Fuels

103 KAR 43:250 (Applications of special fuels tax to the railroad industry.) The proposed regulation would declare that special fuels purchased by a railroad company for use in locomotives or unlicensed vehicles or equipment for nonhighway use are not subject to the special fuels tax, and that such tax is not payable by the selling dealer. House Bill 591, enacted by the 1988 Session of the General Assembly, generally requires the prepayment of the special fuels tax by a special fuels dealer, with a refund to the ultimate consumer for tax paid on fuels consumed in nonhighway use. The Subcommittee approved a motion to attach a statement of objection because the regulation does not comply with statutory authority.

Public Protection and Regulation Cabinet: Department of Insurance: Trade Practices and Frauds

806 KAR 12:090 (Unfair claims settlement practices.) The Subcommittee attached a statement of objection relating to the requirement that an acknowledgment letter be sent within ten working days of receiving notification of a claim unless payment is made in such period. The statute required that this be done with "reasonable promptness" and the Subcommittee felt the ten day requirement was unreasonable from the standpoint of costs.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Transportation Cabinet: Department of Highways: Traffic

603 KAR 5:072 (Mandatory annual bus inspection.) Section 1 of this regulation was amended to redefine the term "bus" to not include motor vehicles operated by any common school system rather than those used primarily to transport school pupils.

Labor Cabinet: Department of Workplace Standards: Occupational Safety and Health

803 KAR 2:020 (Adoption of 29 CFR Part 1910.) This regulation was amended to adopt by reference materials referred to but not actually adopted.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Kentucky Employees' Retirement System: General Rules

105 KAR 1:010 (Contributions and interest rates.) Several questions were raised by Representative Meyer concerning the increase in contribution rates. Agency personnel responded that this only applied to CERS and the rates were based on an actuarial recommendation.

Public Protection and Regulation Cabinet: Crime Victims Compensation Board

Claims and Awards

107 KAR 1:050 (Prorating awards.)

Corrections Cabinet: Office of the Secretary

501 KAR 6:020 (Corrections policies and procedures.)

501 KAR 6:040 (Kentucky State Penitentiary.)

501 KAR 6:060 (Northpoint Training Center.)

501 KAR 6:070 (Kentucky Correctional Institute for Women.)

501 KAR 6:080 (Corrections Cabinet Manuals.)

501 KAR 6:130 (Western Kentucky Farm Center.)

501 KAR 6:140 (Bell County Forestry Camp.)

Transportation Cabinet: Administration

600 KAR 1:080 (Repeal of transportation related administrative regulations.)

Public Protection and Regulation Cabinet: Department of Insurance: Casualty Insurance Contracts

806 KAR 20:010 (Declination, cancellation, and nonrenewal of property and casualty insurance.)

Cabinet for Human Resources: Department for Health Services: Division of Substance Abuse: Alcohol, Drugs and Occupational Programs

902 KAR 3:060 (Licensing procedures.)
902 KAR 3:075 (Quality assurance.)
902 KAR 3:080 (Client's rights.)
902 KAR 3:115 (Day/night intensive outpatient treatment.)
902 KAR 3:205 (Definitions for drug abuse treatment and education (DATE) centers.)
902 KAR 3:210 (Licensing procedures.)
902 KAR 3:225 (Quality assurance.)
902 KAR 3:230 (Clients' rights.)
902 KAR 3:250 (Nonresidential day care centers.)

Local Health Departments

902 KAR 8:020 (Policies and procedures for local health department operations.)

902 KAR 8:030 (Merit system for local health departments.)

Hospitalization of Mentally Ill and Mentally Retarded

902 KAR 12:080 (Policies and procedures for mental health/mental retardation facilities.)

Commission for Health Economics Control in Kentucky

902 KAR 20:006 (Certificate of need process.)
902 KAR 20:126 (Licensure hearings.)
902 KAR 20:127 (Certificate of need hearings.)
902 KAR 20:132 (Certificate of need expenditure minimums.)

902 KAR 20:135 (Certificate of need application fee schedule.)

Department for Employment Services: Unemployment Insurance

903 KAR 5:270 (Maximum weekly benefit rates.)

Department for Social Insurance: Public Assistance

904 KAR 2:140 (Supplementary policies for programs administered by the Department for Social Insurance.)

904 KAR 2:202 (Repeal of 904 KAR 2:150; 904 KAR 2:180; 904 KAR 2:190; and 904 KAR 3:090.)

The following administrative regulations were deferred at the request of the promulgating administrative body and are not to be referred to an appropriate jurisdictional committee for review:

General Government Cabinet: Board of Dentistry

201 KAR 8:400 (Complaint procedure.)

201 KAR 8:410 (Procedures for disciplinary hearings.)

Board of Examiners and Registration of Landscape Architects

201 KAR 10:050 (Fees.)

Education and Humanities Cabinet: Department of Education: Office of Local Services: School Terms, Attendance and Operation

702 KAR 7:090 (Requirements for coaches and other personnel staffing interscholastic athletic programs.)

Office of Instruction: Teacher Education

704 KAR 15:080 (Paraprofessional employees and volunteer personnel.)

The Subcommittee had no objections to emergency regulations which had been filed.

Other Business:

Public Protection and Regulation Cabinet: Department of Financial Institutions: Division of Banking and Division of Thrift Institutions

808 KAR 1:060 (Remote service units.) On April 15, 1988, as provided by KRS 13A.030(1)(a), (b) and (c), the Subcommittee sent a letter to the Commissioner of the Department of Financial Institutions requesting that he provide the Subcommittee with an explanation of how this administrative regulation complied with KRS 287.180 and 290.055(2). The Subcommittee felt that specific authorization to establish remote service units was required. Since House Bill 652 was not enacted during the 1988 Regular Session, such specific authority was lacking.

Representative Bruce stated that the Subcommittee had not received a response. The Subcommittee had approved a motion inviting the Commissioner to the August 3, 1988, meeting of the Subcommittee to explain its statutory authority for this administrative regulation.

The Commissioner responded by letter to the Subcommittee. In his letter, he stated that the Department felt that the regulation was valid because it was valid when first promulgated. The Subcommittee felt that the question of validity should be determined by current statutory requirements. Department personnel agreed to meet with members of the Subcommittee on this issue. Attached to this report are informational copies of the Department response and a staff memorandum prepared at the direction of the Subcommittee.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Sanitary Engineering

401 KAR 6:300 (Water well drillers certification; examination; fees.)

Senator McCuiston discussed problems in securing temporary permits relating to well drilling. He stated that, although it was announced that such permits would be expedited because of the emergency brought on by the current drought, this did not occur. The Subcommittee approved a motion to request that Cabinet and Division personnel be requested to attend the next meeting of the Subcommittee to discuss this issue and that staff prepare material relevant to this issue.

The Subcommittee adjourned at 11:15 a.m. until September 6, 1988.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following report(s) were forwarded to the Legislative Research Commission by the appropriate jurisdictional committee(s) and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of July 21, 1988

The Interim Joint Committee on Education reviewed and approved the following administrative regulations at its July 21, 1988 meeting:

701 KAR 5:020
702 KAR 1:115
704 KAR 3:290
704 KAR 3:292
705 KAR 2:120 & E
709 KAR 1:050

The Committee also considered 905 KAR 7:230. After several speakers raised concerns about the regulation, Mrs. Alice Martinson representing the Cabinet for Human Resources asked that the regulation be deferred until the next committee meeting scheduled for August 8, 1988.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of August 8, 1988

The Committee reviewed 905 KAR 7:230 at its August 8, 1988, meeting.

The Committee, with the consent of the Cabinet for Human Resources, amended the regulation by deleting the following sentence from Section 1.: "The Manager of DSS Education Branch shall have the option of belonging to the State Teachers Retirement System or the Kentucky Retirement System." The Committee approved the regulation as amended.

INTERIM JOINT COMMITTEE ON BANKING & INSURANCE
Meeting of August 4, 1988

The Interim Joint Committee on Banking and Insurance met on August 4, 1988 meeting.

The Committee determined that the following regulation complied with KRS Chapter 13A:

806 KAR 20:020

The Committee adjourned at 11:00 a.m. until September 13, 1988.

INTERIM JOINT COMMITTEE ON HEALTH & WELFARE
Meeting of August 3, 1988

The Interim Joint Committee on Health and Welfare met on August 3, 1988 to review administrative regulations assigned and submits this report:

The Committee determined that the following administrative regulations complied with KRS Chapter 13A:

902 KAR 11:010
902 KAR 12:080
902 KAR 45:110
902 KAR 45:120
905 KAR 1:091
905 KAR 2:010

The Committee had no objections to emergency regulations which had been filed.

The Committee adjourned at 3:05 p.m. until August 31, 1988.

INTERIM JOINT COMMITTEE ON LABOR & INDUSTRY
Meeting of August 4-5, 1988

The Committee did not have any objections to the following new or amended regulations listed below:

903 KAR 5:260
903 KAR 1:010
803 KAR 25:011
903 KAR 5:270
803 KAR 2:020

The Committee reviewed the regulations pursuant to the provisions of 1988 HB 901 which authorizes additional legislative review of each new or amended administrative regulations.

The Committee adjourned at 12:00 p.m. until September 13, 1988 (tentative).

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates.....	C2
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Subject Index to Volume 14.....	C12

LOCATOR INDEX -- EFFECTIVE DATES

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

VOLUME 14

Emergency Regulation	14 Ky.R. Page No.	Effective Date	Regulation	14 Ky.R. Page No.	Effective Date
705 KAR 2:120E	2149	5-9-88	704 KAR 3:290		
Replaced	2217	7-21-88	Amended	2215	7-21-88
902 KAR 11:010E	2163	4-18-88	704 KAR 3:292		
Replaced	2073	8-3-88	Amended	2216	7-21-88
902 KAR 45:110E	2163	4-15-88	704 KAR 15:080		
Replaced	2082	8-3-88	Amended	1652	
903 KAR 1:010E	2168	4-18-88	705 KAR 2:120		
Replaced	2088	8-5-88	Amended	2217	7-21-88
905 KAR 1:091E	2169	4-18-88	709 KAR 1:050		
Replaced	2094	8-3-88	Amended	2218	7-21-88
905 KAR 2:010E	2173	4-18-88	803 KAR 25:011	(See 15 Ky.R.)	
Replaced	2098	8-3-88	806 KAR 12:090	(See 15 Ky.R.)	
			806 KAR 20:010	(See 15 Ky.R.)	
			806 KAR 20:020	2245	8-4-88
			806 KAR 39:070	(See 15 Ky.R.)	
			810 KAR 1:013		
			Amended	2224	8-5-88
			815 KAR 45:015		
			Amended	2227	8-5-88
			815 KAR 45:030		
			Amended	2229	8-5-88
			815 KAR 45:035		
			Amended	2230	8-5-88
			902 KAR 10:021	(See 15 Ky.R.)	
			902 KAR 10:130	(See 15 Ky.R.)	
			902 KAR 11:010		
			Amended	2073	8-3-88
			902 KAR 12:080		
			Amended	2233	8-3-88
			902 KAR 45:110		
			Amended	2082	8-3-88
			902 KAR 45:120	(See 15 Ky.R.)	
			903 KAR 1:010		
			Amended	2088	8-5-88
			903 KAR 5:260		
			Amended	2241	8-5-88
			905 KAR 1:091		
			Amended	2094	8-3-88
			905 KAR 2:010		
			Amended	2098	8-3-88
			905 KAR 7:230	(See 15 Ky.R.)	
Regulation	14 Ky.R. Page No.	Effective Date			
201 KAR 3:070					
Repealed	2244	8-5-88			
201 KAR 3:080	2244	8-5-88			
201 KAR 9:101					
Amended	2191	8-5-88			
201 KAR 20:161					
Amended	2192	8-5-88			
201 KAR 20:215					
Amended	2193	8-5-88			
201 KAR 26:240	(See 15 Ky.R.)				
501 KAR 6:030					
Amended	2195	8-5-88			
501 KAR 6:040					
Amended	2197	8-5-88			
501 KAR 6:070					
Amended	2198	8-5-88			
501 KAR 6:120					
Amended	2200	8-5-88			
603 KAR 5:070					
Amended	2202	8-5-88			
603 KAR 5:210					
Amended	2204	8-5-88			
603 KAR 5:230					
Amended	2206	8-5-88			
701 KAR 5:020					
Amended	2213	7-21-88			
702 KAR 1:115					
Amended	2214	7-21-88			
702 KAR 7:090					
Amended	1651				

VOLUME 15

Emergency Regulation	15 Ky.R. Page No.	Effective Date	Emergency Regulation	15 Ky.R. Page No.	Effective Date
101 KAR 1:325E	107	6-16-88	401 KAR 32:040E	122	7-14-88
105 KAR 1:010E	108	6-22-88	401 KAR 34:090E	123	7-14-88
107 KAR 1:050E	3	6-10-88	401 KAR 35:070E	131	7-14-88
201 KAR 8:400E	3	6-13-88	401 KAR 35:090E	137	7-14-88
201 KAR 8:410E	4	6-13-88	501 KAR 6:110E	781	7-19-88
201 KAR 9:175E	777	7-27-88	501 KAR 6:140E	783	7-19-88
201 KAR 10:050E	5	6-2-88	501 KAR 9:010E	144	6-20-88
201 KAR 26:240E		4-14-88	501 KAR 9:020E	145	6-20-88
Replaced	250	8-5-88	501 KAR 9:030E	146	6-20-88
302 KAR 20:056E	110	6-27-88	501 KAR 9:040E	147	6-20-88
401 KAR 30:010E	111	7-14-88	501 KAR 9:050E	147	6-20-88
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Definitions; 401 KAR 30:010 & E
Generators of Hazardous Waste
General provisions; 401 KAR 32:010
Recordkeeping, reporting; 401 KAR 32:040 & E
Identification, Listing of Hazardous Waste
General provisions; 401 KAR 31:010
Identifying criteria; 401 KAR 31:020 & E
Solid Waste Facilities;
Permit fees; 401 KAR 47:060

WATER

Quality
KPDES discharge permit, fees; 401 KAR 5:085
Operator certification; 401 KAR 5:010
Permits to discharge; 401 KAR 5:005
Resources
Definitions; 401 KAR 4:110
Wild rivers administration & management; 401 KAR 4:120
Wild rivers boundaries; 401 KAR 4:100
Wild rivers change of use permit procedures; 401 KAR 4:130
Wild rivers change of use permit standards; 401 KAR 4:140
Sanitary Engineering
Distribution, treatment; 401 KAR 6:040
Public, semipublic; 401 KAR 6:015
Water well drillers; 401 KAR 6:300

WORKERS' COMPENSATION

Joint self-insurers; 803 KAR 25:025 & E
Procedures; 803 KAR 25:011 & E
Rehabilitation procedures; 803 KAR 25:080 & E

