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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 August 3, 1989. See **tentative** agenda on page 115 in this Administrative Register.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA
August 3, 1989
(Rm. 107, Capitol Annex @ 10 a.m.)

FINANCE AND ADMINISTRATION CABINET

Kentucky Infrastructure Authority
200 KAR 17:010 & E. Guidelines for infrastructure revolving fund.

GENERAL GOVERNMENT CABINET

Board of Pharmacy
201 KAR 2:131. Repeal of 201 KAR 2:130.

Board of Barbering
201 KAR 14:051. Supervision of apprentice licensees. (Not Amended After Hearing)

Board of Chiropractic Examiners
201 KAR 21:041. Licensing; standards, fees.
201 KAR 21:070. Licensing examination requirements.
201 KAR 21:075. Peer review procedures and fees.
201 KAR 21:080. Seventy-two (72) hour right of rescission.
201 KAR 21:085. Preceptorship program.
201 KAR 21:090. Recommended course work for two (2) year prechiropractic education.

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Department of Fish and Wildlife Resources

Fish
301 KAR 1:130. Live bait for personal use.

CORRECTIONS CABINET

Office of the Secretary
501 KAR 6:020. Corrections policies and procedures.
501 KAR 6:030. Kentucky State Reformatory.
501 KAR 6:040. Kentucky State Penitentiary.

EDUCATION AND HUMANITIES CABINET
Department of Education
State Board for Elementary and Secondary Education
Office of Local Services

Buildings and Grounds
702 KAR 4:050. Building sites; inspection, approval.
702 KAR 4:110. Program space; space allocation.
702 KAR 4:120. Square foot costs and maximum budget.
702 KAR 4:130. Increase in financial budget.

Office of Instruction

Teacher Certification
704 KAR 20:550. Professional school certificate for college faculty. (Deferred from July meeting)

LABOR CABINET
Department of Workers' Claims

Workers' Compensation Board
803 KAR 25:090. Workers' compensation medical fee schedule. (Amended After Hearing) (Deferred from July meeting)
803 KAR 25:100. Procedures for workers' compensation rehabilitation. (Amended After Hearing) (Deferred from July meeting)

PUBLIC PROTECTION AND REGULATION CABINET
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Insurance Contract
806 KAR 14:120. Minimum standards for the readability and intelligibility of insurance contracts.

Department of Financial Institutions
Division of Securities

Securities
808 KAR 10:210. Registration exemptions - Federal Regulation D.

Department of Housing, Buildings and Construction

Boilers and Pressure Vessels
815 KAR 15:010. Definitions.
815 KAR 15:020. Administrative procedures; requirements.
815 KAR 15:030. General requirements.
815 KAR 15:040. Power boiler requirements.
815 KAR 15:085. Change of boiler contractor license holders.

Plumbing
815 KAR 20:090. Soil, waste and vent systems.
815 KAR 25:010. Mobile homes.

CABINET FOR HUMAN RESOURCES
Department for Social Services

Day Care
905 KAR 2:070. Standards for the certification of small family day care homes.

Department of Medicaid Services

Medicaid Services
907 KAR 1:054. Primary care center services.
907 KAR 1:432. Incorporation by reference of the home and community based waiver services manual.

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
200 KAR 17:010E

The Kentucky Infrastructure Authority has adopted resolutions setting forth criteria in respect of its infrastructure revolving fund program, which resolutions constitute a contract with bondholders, it is necessary that conforming administrative regulations be promulgated prescribing criteria for the infrastructure revolving fund. The purpose of the regulation hereby promulgated is to establish definitive standards with respect to the infrastructure revolving fund. The regulations provide detailed guidance and proper regulation structure for the initiation and financing by the authority of eligible infrastructure projects. Accordingly, it has been and is hereby determined that an emergency exists which requires immediate action. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary regulation was filed with the Regulations Compiler on June 12, 1989.

WALLACE G. WILKINSON, Governor
L. ROGERS WELLS, Secretary

FINANCE AND ADMINISTRATION CABINET
Kentucky Infrastructure Authority

200 KAR 17:010E. Guidelines for infrastructure revolving fund.

RELATES TO: KRS Chapter 224A
STATUTORY AUTHORITY: KRS Chapter 13A, 224A.070(1), 224A.113
EFFECTIVE: June 15, 1989
NECESSITY AND FUNCTION: KRS 224A.070(1) and 224A.113 authorize the Kentucky Infrastructure Authority to promulgate regulations in accordance with KRS Chapter 13A, to govern the application for and provision of financial assistance to governmental agencies for the construction or acquisition of infrastructure projects from the infrastructure revolving fund.

Section 1. Definitions. For the purposes of this regulation the words and terms used shall have the same meaning as in KRS 224A.011, with the following additions:

(1) "Applicant" shall mean any governmental agency that has submitted an application for funds to the Kentucky Infrastructure Authority.

(2) "State clearinghouse" shall mean a review conducted within the Department of Local Government pursuant to federal or state law or regulations.

(3) "Authority staff" shall mean the Office

for Investment and Debt Management.

(4) "Conditional commitment letter" shall mean a letter delivered to the borrowing governmental agency issuing the authority's commitment to provide a loan conditional on certain actions by the governmental agency on or before the closing date.

(5) "Department" shall mean the Department of Local Government.

(6) "Closing date" shall mean the date established by the authority for execution of the assistance agreement immediately preceding the award of construction contracts and satisfaction of conditions on the loan.

Section 2. Eligible Applicants. (1) Any governmental agency, as defined in KRS 224A.011, is eligible to apply to receive financial assistance for construction or acquisition of infrastructure projects.

(2) Each applicant must certify in writing that it is unable to finance the entire infrastructure project from its own resources. Documentation evidencing its inability will include the following:

(a) Letters from local lending institutions.

(b) An opinion of bond counsel, if applicable.

(c) If funds are for wastewater treatment facility, a statement from the Natural Resources and Environmental Protection Cabinet stating either:

1. The applicant will not qualify for funding during the current funding cycle;

2. The applicant has applied and fallen below the funding level in two (2) consecutive attempts; or

3. The applicant needs to supplement Natural Resources and Environmental Protection funds.

(d) If the applicant is in an area which qualifies for assistance through the Farmer's Home Administration ("FmHA"), a statement stating either:

1. The applicant would not qualify for funding;

2. Applicant has previously applied for FmHA funding and has failed to receive assistance in two (2) consecutive attempts; or

3. The applicant needs to supplement the FmHA funds with infrastructure revolving fund.

(e) Statements from any other sources or other certifications, which have a bearing on the application, will be considered.

(3) Each applicant must have or will attain the legal authority necessary for constructing, operating and maintaining the proposed infrastructure project. The applicant must also have the legal authority to obtain, give security for, and repay the proposed loan. The applicant shall be responsible for operating, maintaining and managing the infrastructure project and providing for its continued availability and use at rates and terms that will be adequate to meet its obligations as they become due including any loan. If the infrastructure project is to be operated, maintained or managed by a third party under contract, management agreement or written lease, the applicant shall nevertheless continue to be responsible for compliance with the requirements of this section.

Section 3. Eligible Infrastructure Projects. Monies in the infrastructure revolving fund shall be used for infrastructure projects which will enhance the health, safety and welfare, and encourage economic development opportunities in local communities as determined by the authority based upon each application. Eligible activities include: construction or acquisition of treatment works, distribution and collection facilities, or water resources projects instituted by an applicant, as approved by the authority and as may be required by law, the Natural Resources and Environmental Protection Cabinet or other public agency of having regulatory jurisdiction over the project; solid waste management facilities; dams; storm water control and treatment systems; solid waste handling and disposal facility; gas or electric utility; or any other public utility or public service project which the applicant may be authorized by law to operate, and which the authority finds will enhance the health, safety and welfare and encourage economic opportunities within or among local communities.

Section 4. Submission Requirements and Review Process. (1) The original and one (1) copy of each application must be submitted to: Department of Local Government, Capital Plaza Tower, Second Floor, Frankfort, Kentucky 40601, Attention: Director, Division of Community Programs; and one (1) copy of each application must be simultaneously submitted to the Kentucky Infrastructure Authority, Room 318, Capitol Annex Building, Frankfort, Kentucky 40601, Attention: Executive Director.

(2) Application forms may be obtained from the Department of Local Government, and a complete set of application forms must be submitted before an application will be considered for assistance from the infrastructure revolving fund.

(3) Only one (1) application from an eligible applicant will be accepted at one (1) time. An application may be withdrawn at any time by an applicant, and any project previously disapproved for assistance from the infrastructure revolving fund may be resubmitted.

(4) The time frame for application review generally shall be: forty-five (45) days for Kentucky State Clearinghouse review; thirty (30) days for Department of Local Government review and priority assignment; and thirty (30) days for authority credit review; provided, however, that the agencies responsible for each part of the review may extend the time for review beyond these guidelines as may be necessary for thorough review, or to obtain from the applicant, and to consider clarification of anything contained in the application. Applicants may supplement their applications during the review process to clarify or explain the project scope, funds pledged as repayment of the loan, or make adjustments in the application to enhance the programmatic or financial feasibility of the project.

Section 5. Criteria for Selecting Eligible Projects. (1) The Department of Local Government shall select and determine eligible projects for loans or grants. The department shall take into consideration the following:

(a) Unemployment data, which will be specific to the county or counties from which the application originates and will reflect the most recent figures available from each county.

(b) The applicant's relationship to the capital investment plan, which will determine how well the infrastructure project fits into the economic strategy of the community. An

infrastructure project which directly relates to economic development is one that stimulates the creation of new job opportunities or prevents the loss of a significant number of jobs. An infrastructure project will be considered based on the degree to which it enhances economic development efforts through job creation or retention and the level of priority in the community's capital investment plan.

(c) The department will determine the extent of the need for the infrastructure project and the impact which the project will have on the local economic development efforts. A primary consideration will be whether jobs will be created or retained as a result of the infrastructure project.

(d) The department will determine if the proposed costs of completing the infrastructure project is reasonable given the geographic location of the infrastructure project, current pricing trends, required professional services, and any other factors that may have a bearing on the project. Cost figures submitted in the application will be reviewed to determine whether the proposed budget for the project is feasible.

(e) The department will determine the overall project effectiveness and determine if the most beneficial project has been designed for the use of the infrastructure revolving fund.

(2) The department will review applications and assign a priority ranking based on the selection criteria. Projects will be ranked as Priority I, Priority II, or Priority III.

(a) A Priority I ranking will be assigned when, having considered all criteria, the project will make a significant economic impact on the community through the creation or retention of jobs; is well designed; cost effective; and, generally, determined by the department to be the most suitable solution to the community's needs.

(b) Priority II will be assigned when one (1) or more factors exist which would limit the success or feasibility of the project.

(c) Priority III will be assigned when, having considered all the criteria, the department finds that the project is premature, is not feasible, or is inappropriate for assistance from the infrastructure revolving fund.

(d) The department will recommend Priority I rankings to the authority's staff for financial review.

(3) Financial review of the Priority I designated project applications will include:

(a) Analysis of:

1. The appropriateness of the type of revenues pledged for the repayment of the loan;

2. The validity of the assumptions used to project new revenues resulting from the project;

3. Security of monies other than the infrastructure loan pledged to fund the project cost;

4. Ability of the applicant to provide for maintenance and operations cost of the project and related public service system;

5. Ability of the applicant to service existing debt of the system related to the project;

6. Security of funds pledged by entities, other than the applicant, to repay the infrastructure loan; and

7. Ability of the authority to finance the applicant project using the financing programs permitted by Kentucky and federal law or regulation.

(b) At any time during the financial analysis, an applicant may be notified of a deficiency. If the problem cannot be resolved through negotiation, the authority may remove the application from consideration.

Section 6. Loan Process. (1) Upon completion of the credit review by the authority's staff, the application will be submitted to the authority for final action.

(2) If the authority approves the application, a conditional commitment letter shall be issued to the applicant. This letter shall set forth the conditions and documentations required by the authority prior to execution of an assistance agreement. No funds will be provided until the assistance agreement is fully executed. The commitment will be made upon the authority's satisfaction that the project proposed is financially feasible, the applicant is credit worthy and the project will comply with all technical and program requirements set forth in state and federal law and regulations.

(3) The authority shall establish interest rates quarterly based on prevailing market conditions. The rate of interest on each loan shall be set forth in the commitment letter.

(4) Loan repayments shall not exceed thirty (30) years, and principal shall be payable annually, and interest semiannually, unless the authority establishes a more frequent payment schedule due to credit concerns. Loan repayments ordinarily shall commence within six (6) months after the start of construction, unless repayment is dependent on revenues generated from the specific infrastructure project. In such cases, loan repayment shall begin within six (6) months after the infrastructure project is operational, and interest to cover the authority's cost of money during the construction period may be added to the amount of the loan.

(5) The principal amount of each loan shall be equal to the amount approved by the authority. The final loan amount may be adjusted by up to ten (10) percent of the commitment without further action by the authority, subject to availability of funds to service the debt.

(6) Upon certification of construction of the infrastructure project as eighty (80) percent complete, and the submission by the applicant of evidence of the exact cost of the project, an inspection will be held by the authority staff to provide for any adjustments in the loan amount.

(7) The assistance agreement between the authority and application shall contain such terms and conditions as the authority deems necessary to maintain the financial integrity of the infrastructure revolving fund according to the circumstances of each project.

Section 7. Applicant Management Capacity. The department and the authority's staff shall require as a condition of any loan that the applicant perform any or all of the following:

(1) Document compliance with statutory mandates for financial accountability and personnel management.

(2) Demonstrate the ability to operate, as well as maintain, the project in a proper manner over the life of the loan.

(3) Document compliance with any other state or federal agencies.

Section 8. Loan Closing and Extensions. An applicant must meet all conditions for loan closing and take action to award contracts for the project within not more than eleven (11) calendar months after the date of the conditional commitment letter, otherwise, the loan commitment shall expire. (For example, if an application was approved on January 1, 1989, bids for the project must be accepted and the loan agreement signed by November 30, 1989.) One (1) extension period of up to six (6) months may be granted if needed. If the extension is denied, the loan offer may be rescinded. If a request for a time extension is granted, but all the conditions still cannot be met during the extension period, the loan commitment may be rescinded. The applicant may reapply for any project for which the loan commitment has been expired or been rescinded under this section.

Section 9. Authority to Administer the Program. The authority shall monitor the assistance agreements and require that financial reports be made available to the authority by the governmental agency at such intervals as shall be deemed necessary by the authority. The authority shall monitor the economic impact on the community, the cash flows of the project, and perform all actions that shall be required to assure that the agreements continuously meet the program standards established by this regulation.

L. ROGERS WELLS, JR., Secretary
APPROVED BY AGENCY: June 9, 1989
FILED WITH LRC: June 15, 1989 at 3 p.m.

STATEMENT OF EMERGENCY
502 KAR 45:010E

The Department of State Police is promulgating regulation simultaneously with the promulgation of this regulation which changes the time that cadets in the academy take the constitutional oath of office. That regulation is in conflict with current definitional provisions of the department's regulations. Accordingly, this regulation resolves the conflict by superseding the current definitional regulations. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 26, 1989.

WALLACE G. WILKINSON, Governor
W. MICHAEL TROOP, Secretary

JUSTICE CABINET
Department of State Police

502 KAR 45:010E. Definitions.

RELATES TO: KRS 16.040, 16.050
STATUTORY AUTHORITY: KRS 16.050, 16.080
EFFECTIVE: June 28, 1989
NECESSITY AND FUNCTION: KRS 16.040 and 16.050 provide that the Commissioner of the Kentucky State Police and the State Police Personnel Board may adopt such regulations as necessary to assure appointment of qualified officers to the department. This regulation establishes the definitions to be utilized in the administrative regulations concerning the selection process.

Section 1. As employed in these regulations, unless the context requires otherwise, the following words and phrases have the following meanings:
(1) "Department" means the Department of State Police.
(2) "Commissioner" means the Commissioner of the Department of State Police.
(3) "Board" means the State Police Personnel Board.
(4) "Officer" means any member of the Department of State Police who <u>has successfully completed the prescribed course of instruction at the State Police Academy and who</u> possesses the powers of a peace officer.
(5) "Cadet trooper" means any officer employee of the Department of State Police from the time of appointment until successful completion of the course of training at the State Police Academy and the taking of the oath of office.
(6) "Register" means the official list of persons eligible for appointment to the position of cadet trooper placed in rank order according to approved guidelines.
(7) "Appointment" means selection of a person from the register to be employed as a cadet trooper.
(8) "Candidate" means an applicant for employment who has successfully completed all phases of the selection process and whose name is placed on the register from which appointments will be made.
(9) "Applicant" means a person who has filled out an application for employment as a cadet trooper with the agency.

W. MICHAEL TROOP, Secretary
APPROVED BY AGENCY: June 26, 1989
FILED WITH LRC: June 28, 1989 at 9 a.m.

STATEMENT OF EMERGENCY
502 KAR 45:125E

This regulation will effect the time when cadets in the Kentucky State Police Academy will take the constitutional oath of office as required by KRS 16.080(2). Due to the fact that a new class will begin on July 2, 1989, there is insufficient time to promulgate the necessary regulatory change in accordance with the provisions of Chapter 13A of the Kentucky Revised Statutes. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 26, 1989.

WALLACE G. WILKINSON, Governor
W. MICHAEL TROOP, Secretary

JUSTICE CABINET
Department of State Police

502 KAR 45:125E. Oath of office.

RELATES TO: KRS 16.080(2)
STATUTORY AUTHORITY: KRS 16.080(1)
EFFECTIVE: June 28, 1989
NECESSITY AND FUNCTION: KRS 16.080(2) requires the Commissioner of the Department of State Police and each officer of the department to take the constitutional oath of office before entering upon the discharge of their official duties. This regulation clarifies when the oath

is to be administered and when appointees become officers.

Section 1. Appointees shall, upon reporting for duty as directed by the commissioner, take the constitutional oath of office for the position of cadet trooper.

W. MICHAEL TROOP, Secretary
APPROVED BY AGENCY: June 26, 1989
FILED WITH LRC: June 28, 1989 at 9 a.m.

STATEMENT OF EMERGENCY
902 KAR 20:280E

This emergency regulation establishes licensure standards for prescribed pediatric extended care services (PPEC). KRS 216.890 mandates that the Cabinet for Human Resources establish reasonable and fair standards for PPEC by July 1, 1989. In order to meet this requirement, it is necessary to promulgate the regulation by emergency. This emergency regulation shall be replaced by an ongoing administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 16, 1989.

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

CABINET FOR HUMAN RESOURCES
Office of the Inspector General

902 KAR 20:280E. Standards for prescribed pediatric extended care.

RELATES TO: KRS 216.875, 216.880, 216.885
STATUTORY AUTHORITY: KRS 216.042, 216.890
EFFECTIVE: June 22, 1989
NECESSITY AND FUNCTION: KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health facilities and health services. KRS 216.890 mandates that the Kentucky Cabinet for Human Resources promulgate standards to regulate prescribed pediatric extended care (PPEC) services.

Section 1. Definitions. (1) "Protocol of care" is the comprehensive plan for implementation of medical, nursing, psychosocial, developmental, and educational therapies to be provided by the PPEC. An individualized protocol of care shall be developed upon admission and shall be revised to include recommended changes in the therapeutic plans. The disposition to be followed in the event of emergency situations shall be specified in the protocol of care.

(2) "Prescribing physician" is the physician who signs the order admitting the child to the PPEC.

(3) "Primary physician" is the physician who maintains overall responsibility for the child's medical management and is available for consultation and collaboration with the PPEC staff.

(4) "Medical director" is a board certified pediatrician who serves as the liaison between the PPEC and the medical community, reviews the quality and appropriateness of PPEC services, and is available for consultation to the PPEC staff.

(5) "Nursing director" is a licensed registered nurse responsible for providing continuous supervision of PPEC services and managing the daily operations of the facility.

(6) "Occupational therapist" means a person who is licensed pursuant to KRS Chapter 319A.

(7) "Speech pathologist" means a person who is licensed pursuant to KRS Chapter 334A.

(8) "Social worker" means a person who is licensed pursuant to KRS 335.090, if applicable, and who is a graduate of a school of social work accredited by the Council on Social Worker Education.

(9) "Physical therapist" means a person who is licensed pursuant to KRS Chapter 327.

(10) "Child life specialist" is an individual with baccalaureate preparation in child life, early childhood education, or a related field and current experience in planning and implementing developmental stimulation programs for children.

Section 2. Scope of Operation and Services. The prescribed pediatric extended care (PPEC) center is a nonresidential health care service which provides an important link in the continuum of care for medically or technologically dependent children. The (PPEC) center provides the following triad of necessary services for dependent children and their parents: day health care, developmental interventions, and parental training.

Section 3. Applicability. (1) All prescribed pediatric extended care facilities shall be equipped and staffed to accommodate no fewer than three (3) medically/technologically dependent children and shall meet standards established herein.

(2) All PPEC facilities shall have a minimum full-time equivalent staff of two (2) registered nurses and one (1) nursing assistant. Thereafter, the ratio of staff to children shall be maintained at one (1) RN staff for every six (6) children; or one (1) staff (LPN or nursing assistant) to every three (3) children.

Section 4. Criteria for Admission. (1) Infants and children considered for admission to the PPEC facility shall be those with complex medical conditions requiring continual care, including but not limited to, supplemental oxygen, ventilator dependence, cystic fibrosis, apnea, spinal cord injury and malignancy, etc.

(2) Children with risk of infection shall not be admitted unless authorized by the prescribing physician.

(3) The primary physician, in consultation with the parent(s) or legal guardian(s), shall recommend placement in a PPEC facility, taking into consideration the medical, emotional, psychosocial and environmental factors.

(4) The child shall be medically stabilized, require ongoing nursing care, and other interventions.

Section 5. Preadmission Conference. (1) If the child meets the admission criteria, the primary physician or his/her designate shall contact the medical or nursing director of the PPEC to schedule a preadmission conference.

(a) If the child is hospitalized at the time of referral, preadmission planning shall include the parent(s) or guardian(s), relevant hospital medical, nursing, social services and developmental staff to assure that the discharge plans shall be accommodated following placement

in the PPEC.

(b) If the child is not hospitalized at the time of referral, preadmission planning shall be conducted with the primary physician, parent(s) or guardian(s), PPEC representatives and representatives of other relevant agencies as determined by the primary physician, and nursing director of the PPEC.

(c) Preadmission planning shall be scheduled within seventy-two (72) hours and allow sufficient time to assure that the therapeutic plan can be implemented upon placement in the PPEC.

(d) The protocol for care shall be developed by the PPEC staff following preadmission planning.

(e) The protocol for care shall include specifications of criteria for discharge from the PPEC.

(2) A consent form, outlining the purpose of a PPEC facility, family responsibilities, authorized treatment and appropriate liability releases, and emergency disposition plans shall be signed by the parent(s) or guardian(s) and witnessed prior to admission to the PPEC facility. The parent(s) or guardian(s) and the PPEC facility shall be provided a copy of the consent form.

Section 6. Admission Procedure. (1) Infants and children shall be considered for admission to the PPEC facility if they have complex medical conditions requiring skilled nursing care, e.g., children with conditions including but not limited to, supplemental oxygen, ventilator dependence, cystic fibrosis, apnea, spinal cord injury and malignancy, etc.

(2) In consultation with the parent(s) or legal guardian(s), a child may be referred to the PPEC medical or nursing director for determination of placement.

(3) All children placed in the PPEC facility shall have documentation of a physician's written order placed in the child's medical record. A copy of the order shall be provided to the child's parent(s) or guardian(s).

(4) Prior to placement, preadmission planning conferences shall be held for the purpose of developing a protocol for care.

(5) The protocol for care shall be developed under the direction of the PPEC nursing director and shall specify the treatment plan needed to accommodate the medical, nursing, psychosocial and educational needs of the child and family. Specific goals for care shall be identified. Plans for achieving the goals shall be determined and a schedule for evaluation of progress shall be established. The protocol shall include specific discharge criteria.

(6) The protocol shall be signed by the physician, authorized representative of the PPEC and parent(s) or guardian(s). Copies of the protocol shall be given to the parent(s) or guardian(s). Copies of the protocol shall be given to the parent(s) or guardian(s) primary physician, PPEC staff and other agencies as appropriate.

(7) A consent form, outlining the purpose of a PPEC facility, family responsibilities, authorized treatment, appropriate liability releases, and emergency disposition plans shall be signed by the parent(s) or guardian(s) and witnessed prior to admission to the PPEC facility. The parent(s) or guardian(s) and the facility shall be provided a copy of the consent form.

Section 7. Provision of Services. (1) Medical staff services.

(a) Children shall be admitted to the PPEC upon prescription by the child's primary physician or by the medical director.

(b) The child's primary physician shall maintain responsibility for the overall medical therapeutic plan and shall be available for consultation and collaboration with the PPEC medical and nursing personnel.

(c) The medical director shall participate in reviews of the protocol for care. Prescribed therapies shall be adjusted in consultation with the primary physician to accommodate the child's condition.

(d) The PPEC shall coordinate the prescribed therapies for the child.

(2) Nursing staff services.

(a) A PPEC nursing staff member shall participate in preadmission planning.

(b) Nursing personnel, under the direction of the nursing director, shall be responsible for implementing the nursing care.

(c) Nursing personnel shall be responsible for monitoring and documenting the effects of prescribed therapies.

(d) Nursing personnel shall inform the primary physician and medical director of the results of therapeutic interventions.

(e) Nursing personnel shall participate in interdisciplinary staffings regarding the child's progress.

(f) Nursing personnel shall assure that the PPEC provides an environment conducive to the stabilization of the child's medical condition and the promotion of the child's development.

(g) Nursing personnel shall be responsible for maintaining the child's record in accordance with facility policies and procedures.

(h) Nursing personnel shall instruct the parent(s) or guardian(s) in how to provide the necessary therapies in the home.

(3) Developmental services.

(a) Each child shall have a functional assessment and an individualized program plan to accommodate the child's developmental needs. The following functional areas shall be included as appropriate: self care, communication skills, social skills, motor skills, preacademic areas, play with toys/objects, growth and development appropriate for age.

(b) The child's program plan shall include specific programs and action steps to facilitate developmental progress and shall be reviewed at least quarterly.

(c) The child's developmental and educational needs shall be incorporated into the protocol for care.

(d) The child's program plan shall include:

1. Measurable goals in need areas or goals to enhance and normalize independent functioning in daily activities.

2. A description of the patient's strengths and present performance level with respect to each goal;

3. Skill areas in priority order;

4. Anticipatory planning for specific areas identified as at-risk for future problems.

(e) The child life specialist shall participate in regularly scheduled interdisciplinary staffings.

(f) A program for parent(s) or guardian(s) shall be provided to prepare parent(s) or

guardian(s) to accommodate the child's developmental needs.

(g) The PPEC shall provide parent(s) or guardian(s) education services by including them in care-related conferences and teaching them how to perform necessary therapies and how to meet the developmental and psychosocial needs of their child at home.

(h) PPEC staff shall make referrals to appropriate resources, facilitate access to community, social, educational and financial services, and shall provide counseling to enhance coping skills, interpersonal relationships and family functioning.

(4) Nutritional services.

(a) If needed, the services of a registered dietition shall be available regarding the nutritional needs and special diets of individual children.

(b) All food and formula except for specialized formula shall be provided by PPEC staff under the supervision of the nursing director.

(c) Prepared foods shall be kept under refrigeration with identifying dates and patient names.

Section 8. Quality Assurance. (1) The PPEC center shall ensure that there is an effective, quality assurance program to evaluate the provision of patient care.

(2) The quality assurance program shall be ongoing and have a written plan of implementation.

(a) All organized services related to patient care, including services furnished by a contractor, shall be evaluated, semiannually.

(b) Nosocomial infections and medication therapy shall be evaluated.

(c) Evidence of parent(s) or guardian involvement shall be evaluated semiannually.

Section 9. Administration. (1) The administrative structure of the PPEC shall include a policy and procedure manual which reveal all operational aspects of the service.

(2) Personnel policies and procedures shall specify qualifications and required ratios of staff members employed by PPEC and shall include: a current personnel file, positions descriptions, employee benefits, policies for overtime, compensatory time, performance evaluations, termination of employment.

(3) A formal orientation and development program is required for all PPEC employees and staff.

(4) The facility shall be administered on a sound financial basis consistent with good business practice. Financial records which identify all income by source and describe all expenditures by category in such a manner as to be auditable by commonly recognized procedures.

(5) Policies and procedures pertaining to PPEC services shall be available to the public and shall include:

(a) A procedure manual with specifications for each therapeutic intervention shall be available for use by all staff involved in the care of the children; the manual shall be reviewed every six (6) months to assure that procedures conform to prevailing and acceptable treatment modalities.

(b) An admission and discharge register, listing clients admitted by name with identifying information about each and the source from which the child was admitted, the reason for disposition, adequate identifying information and the place to which the individual is to be discharged;

(c) A daily census record;

(d) An accident and incident record;

(e) A complete medical and nursing history shall be maintained for each child;

(f) Periodic review of each child's protocol of care to update the protocol in consultation with other professionals involved in the child's care. Changes in the orders shall be documented and signed by the primary physician;

(g) Prior to a discharge, conferences involving PPEC staff, the primary physician, the parent(s) or guardian(s) and staff of other agencies involved in the patient's care shall be held to discuss postdischarge care and follow-up;

(h) A discharge order written by the primary physician shall be documented and entered in the child's record. A discharge summary, which includes the reason for discharge, shall also be included in the record.

(i) Except in emergency situations, other agencies involved in the care of the patient/family shall be notified prior to the discharge date.

(j) The center shall have linkage agreements through written agreements with providers of other levels of care which may be medically needed to supplement the services available at the center.

(k) The center shall have written policies which assure the reporting of cases of abuse, neglect, or exploitation of children to the Cabinet for Human Resources pursuant to KRS 199.335.

Section 10. Personnel. (1) A board certified pediatrician shall serve as the medical director for the PPEC facility. Responsibilities shall include:

(a) Participation in preadmission planning to establish a protocol of care with the primary physician, parent(s) or guardian(s) and staff of the PPEC center;

(b) Periodic review of services to assure acceptable levels of quality;

(c) Maintenance of a liaison role with the medical community;

(d) Advisement on the development of new programs and modifications of existing programs; and

(e) Assurance that medical consultation shall be available in the event of his/her absence.

(2) A nursing director shall be employed to provide continuous supervision of PPEC services and shall be responsible for daily operations of the facility.

(a) In addition the nursing director shall be responsible for:

1. All services rendered at the center;

2. Personnel management;

3. Organization and implementation of in-service education programs for staff;

4. Assistance to medical director in determining patient eligibility for admission to PPEC;

5. Assurance of adequate nursing representation at preadmission conference; and

6. Supervision of all patient records and documentation of center's activities to assure compliance to rules and regulations.

(b) Credentials and training.

1. Registered nurse with a current license in the state of Kentucky.

2. Nursing services shall be provided within their respective scope of practice pursuant to KRS Chapter 314 and any regulations promulgated thereunder.

3. The nursing director shall have at least two (2) years nursing experience of which six (6) months shall have been spent in a pediatric intensive care or neonatal intensive care setting during the previous five (5) years.

(3) Staffing.

(a) The PPEC center shall employ nursing and ancillary staff that are necessary to provide the services essential to the center's operation.

(b) There shall be an individual personnel record for each person employed by the center which includes the following:

1. Resume with employee's training and experience;

2. Evidence of current licensure or registration;

3. Reports of all accidents occurring on duty; and

4. Current certification in basic life support.

(c) The following categories of personnel shall be available to the PPEC on an in-house or consultant basis:

1. Child life specialist.

2. Occupational therapist.

3. Physical therapist.

4. Speech pathologist.

5. Social worker.

Section 11. In-service Training for Staff/Parents and Guardian(s). (1) Monthly staff development programs appropriate to the category of personnel shall be conducted to maintain quality patient care.

(2) All staff development programs shall be documented.

(3) All personnel shall be expected to maintain current certification in basic life support.

(4) Each new employee shall participate in orientation to acquaint the employee with the philosophy, organization, program, practices, and goals of the PPEC facility.

(5) A comprehensive orientation to acquaint the parent(s) and/or guardian(s) with the philosophy and services shall be provided at the time of the child's placement in the PPEC.

(6) Staff development programs shall be provided to:

(a) Facilitate the ability of the staff to function as a member of an interdisciplinary team which includes health professionals and the parent(s) and/or guardian(s).

(b) Improve communication skills to facilitate a collaborative relationship between parent(s) and/or guardian(s) and professionals.

(c) Increase understanding the effects childhood illness has on the child's development and the parent(s) and/or guardian(s).

(d) Increase understanding and coping with the effects of childhood illnesses and shall cover a variety of topics including: issues of death and dying; awareness of services available at the hospital, school, community, state, and professional organizations, and fostering of advocacy skills.

(e) Develop case management skills to assist the family in setting priorities and planning and implementing the child's care at home.

(f) Provide training in the implementation of new technology.

(g) Develop a comprehensive protocol for care which includes the medical, nutritional, developmental and psychosocial needs of medically/technologically dependent children.

(h) Prepare for management of emergency situations.

Section 12. Physical Environment. (1) Accessibility. The PPEC shall meet requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and regulations promulgated thereunder.

(2) Fire safety. The PPEC shall be approved by the Fire Marshal's office before licensure and relicensure is granted by the licensure agency.

(3) Housekeeping and maintenance services.

(a) Housekeeping. The center shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other sources.

(b) Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

1. The center shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair.

2. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair.

3. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

4. A pest control program shall be in operation in the centers pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

5. Sharp wastes, including needles, scalpels, razors or other sharp instruments used for patient care procedures shall be segregated from other wastes and aggregated in puncture resistant containers immediately after use. Needles and syringes shall not be recapped, cut, dismantled, or destroyed after use, but shall be placed intact directly into a puncture resistant container. The containers of sharp wastes shall either be incinerated, on site or off site, or rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet.

6. The center shall establish a written policy for the handling and disposal of all infectious, pathological, and contaminated waste if the center generates them. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 or 401 KAR 61:010.

a. Infectious waste shall be placed in double impervious plastic bags and each bag shall be two (2) mils in thickness. A bag, when full, shall not exceed twenty-five (25) pounds. All bags shall be securely closed and a tag, which reads "INFECTIOUS WASTE" and identifies the center from which the waste is being removed and shall be attached to the bag in a conspicuous manner.

b. The following wastes shall be disposed of by incineration or, be autoclaved before disposal, or be carefully poured down a drain

connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

Section 13. Emergency Procedures. (1) A copy of the current annual fire inspection report, shall be on file with the licensing agency.

(2) There shall be a working telephone, which is neither locked nor a pay station, in the center.

(3) Emergency telephone numbers shall be posted on or in the immediate vicinity of all telephones.

WILLIAM M. GARDNER, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 16, 1989
FILED WITH LRC: June 22, 1989 at 3 p.m.

STATEMENT OF EMERGENCY
903 KAR 5:270E

Under KRS Chapter 13A the administrative body is required to implement this regulation in order to have sufficient authority for the declaring of a maximum weekly benefit rate. Therefore, in order to properly establish a maximum weekly unemployment insurance rate for the year beginning July 1, 1989, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation will not suffice because the correct weekly benefit amount would not be declared in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

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

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance

903 KAR 5:270E. Maximum weekly benefit rates.

RELATES TO: KRS 341.380
STATUTORY AUTHORITY: KRS 194.050, 341.380
EFFECTIVE: June 22, 1989
NECESSITY AND FUNCTION: KRS 341.380 requires the Secretary for Human Resources to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1989 [1988], and prior to July 1, 1990 [1989]. This regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

Section 1. The secretary finds the following to exist:

(1) The "total monthly employment" reported by subject employers for the calendar year of 1988 [1987] was 15,421,347 [14,803,553];

(2) The "average monthly employment," obtained by dividing the total monthly employment by twelve (12), was 1,285,112 [1,233,629];

(3) The "total wages" reported by subject employers for the calendar year of 1988 [1987] was $23,605,828,766 [$22,004,260,410];

(4) The "average weekly wage" for the calendar year of 1988 [1987] for insured employment, obtained by dividing the average monthly employment into total wages for such year and dividing by fifty-two (52), was $353.24 [$343.02];

(5) Fifty-five (55) percent of the average weekly wage of $353.24 [$343.02] for the calendar year of 1988 [1987] was $194.28 [$188.66];

(6) However, the "trust fund balance" as of December 31, 1988 [1987], was $333,642,813.27 [$251,483,024.34] and KRS 341.380 states that if the trust fund balance on December 31 equals or exceeds $275,000,000 [$250,000,000], but is less than $350,000,000 [$275,000,000], the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate by more than twelve (12) [ten (10)] percent; and

(7) The prior year's maximum weekly benefit rate was $166 [$140].

Section 2. On the basis of the above findings, and in accordance with KRS 341.380(3), the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July, 1989 [1988], and prior to the first day of July, 1990 [1989], is determined to be $186 [$166].

MARGARET WHITTET, Acting Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 8, 1989
FILED WITH LRC: June 22, 1989 at 3 p.m.

STATEMENT OF EMERGENCY
904 KAR 2:006E

This emergency administrative regulation revises participation and exemption criteria for the Jobs through Education and Training (JET) Program for AFDC recipients. This revision was required to conform to the federal regulations regarding AFDC WIN Demonstration Projects. With these revisions, the following individuals will not be required to participate in JET: AFDC recipients with a child under age six (6); AFDC recipients in the third trimester of pregnancy. Upon federal approval, this criteria will again be amended to correspond with the October 1990 provisions of the Welfare Reform legislation. JET was implemented effective June 1, 1989. JET is administered by the Department for Social Insurance (DSI) and is operated by the Department for Employment Services (DES). The program provides education and training opportunities to help AFDC recipients obtain financial self-sufficiency. 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 2:006E. Technical requirements; AFDC.

RELATES TO: KRS 205.010, 205.200(2), (3)
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: July 14, 1989
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the

assistance program of Aid to Families with Dependent Children (AFDC) in accordance with Title IV-A of the Social Security Act. KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by regulations in conformity with the Social Security Act and federal regulations. This regulation sets forth the technical requirements of residence, deprivation, living with a relative, age, one (1) category of assistance, work registration, work program participation, cooperation in child support enforcement activities and potential entitlement for other programs for eligibility for AFDC.

Section 1. Residence and Citizenship. Residence is determined in accordance with 45 CFR 233.40 which, in summary, provides that a resident is anyone who is living in the state, entered the state with a job commitment or seeking employment, and is not receiving AFDC benefits from another state. Citizenship is determined in accordance with 45 CFR 233.50 which states that AFDC can be provided only to citizens or aliens lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

Section 2. Deprivation. (1) To be eligible for AFDC, a child must be in need and must be deprived of parental support or care due to the death, continued absence from the home or physical or mental incapacity of a natural or adoptive parent. A married child living with his spouse in the home of his parents is not deprived of parental support or care. A married child living in the home of his parents but divorced or legally separated from his spouse is deprived of parental support if he is dependent on the parent and a parent is dead, incapacitated or continually absent from the home.

(2) Continued absence from the home. To be eligible for AFDC, a needy child must be physically separated from the parent and the nature of the absence of the parent is such as either to interrupt or terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child, and the known or indefinite duration of absence precludes counting on the parent's performance of his function in planning for the present support or care of the child. Absence may be voluntary or involuntary. Voluntary absence includes divorce, legal separation, marriage annulment, desertion of thirty (30) days or more, forced separation of seven (7) days or more, or birth out-of-wedlock. Involuntary absence includes commitment to a penal institution for thirty (30) days or more, long term hospitalization, deportation or single parent adoption. A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

(3) Incapacity. All determinations regarding whether a child has been deprived of parental support or care by reason of the physical or mental incapacity of a natural or adoptive parent shall be in conformance with federal regulations found at 45 CFR §233.90(c)(1)(iv) and the criteria set forth in this subsection. Each determination shall be based on a full consideration and assessment of all medical, social, and economic factors involving a particular claimant. Should a verified medical condition exist, then all relevant social and economic factors will be considered to determine whether the parent's condition is the cause of and results in a parent's inability to support or care for the child(ren).

(a) Incapacity exists in each case when the following criteria are met:

1. It is medically determined that one (1) parent has a physical or mental defect, illness or impairment which was present at the time of application and which has continued or is expected to last for a period of at least thirty (30) calendar days, including a period, if any, in which the claimant is undergoing planned diagnostic studies or evaluation of rehabilitation potential; and

2. It is determined by nonmedical evaluation that such defect, illness or impairment is of such debilitating nature as to reduce substantially or eliminate the parent's ability to support or care for an otherwise eligible child.

(b) Factors to be considered in making the medical determination shall include:

1. The claimant's medical history and subjective complaints regarding an alleged physical or mental defect, illness or impairment; and

2. Competent medical testimony relevant to:

a. Whether a physical or mental defect, illness or impairment exists;

b. Whether the defect, illness or impairment is enough to reduce the parent's ability to support or care for a child; and

c. Whether the defect, illness or impairment is likely to last thirty (30) days. The thirty (30) days is not intended to be a "waiting period." Rather, expected duration is substantial and pertinent to causal relationship.

(c) Factors to be considered in making the nonmedical evaluation shall include:

1. The claimant's age, employment history, vocational training, educational background, and subjective complaints regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

2. The extent and accessibility of employment opportunities available in the claimant's area of residence.

(d) In determining the extent and accessibility of available employment opportunities, the limited employment opportunities of handicapped individuals shall be taken into account; and

1. Available printed materials that provide information regarding available employment opportunities shall be researched;

2. The local Department for Employment Service (DES) office shall be contacted regarding accessible employment opportunities within the claimant's area of residence; and

3. The claimant shall be referred, if necessary, for further appraisal of his abilities.

(e) A written report shall be made of the determination under this subsection.

(f) Each claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing in accordance with federal regulations found at 45 CFR §205.10.

Section 3. Living with a Specified Relative. To be eligible for AFDC a needy child must be living in the home of a relative as specified in the Social Security Act and interpreted as follows:

(1) A blood relative, including father, mother, grandfather, grandmother, brother, sister, uncle, aunt, nephew, niece, first cousin.

(2) Also relatives of the half-blood and preceding generations as denoted by prefixes of grand, great or great-great; a stepfather, stepmother, stepbrother, stepsister.

(3) Any person listed above if parent has had paternity established through the administrative determination process. An administrative determination of paternity is limited to situations in which the following types of evidence are present:

(a) A birth certificate listing the alleged parent; or

(b) Legal documents such as hospital records, juvenile court records, wills, and other court records which clearly indicate the relationship of the alleged parent or relative; or

(c) Receipt of statutory benefits as a result of the alleged parent's circumstances; or

(d) A sworn statement or affidavit of either parent acknowledging paternity plus one (1) of the following:

1. School records;
2. Bible records;
3. Immigration records;
4. Naturalization records;
5. Church documents, such as baptismal certificates;
6. Passport;
7. Military records;
8. U.S. Census records; or
9. Sworn statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(e) Effective April 1, 1987, in cases in which the parent or, in the absence of the parent, the caretaker relative alleges the evidence present in paragraphs (a) or (b) of this subsection is erroneous and provides substantiation of the erroneous information, the parent/caretaker relative shall provide a sworn statement or affidavit acknowledging the erroneous information and containing the correct information on the actual alleged parent. Presence of the sworn statement or affidavit will serve as rebuttal to the evidence present in paragraphs (a) or (b) of this subsection and a determination of paternity will not be acknowledged.

(4) Adoptive parents as well as the natural and other legally adopted children and other relatives of such parents.

(5) Husband or wife of any persons listed above even if the marriage may have terminated, providing termination occurred after the birth of the child.

(6) A child is considered as living in the home even when temporarily absent for medical care, attendance at boarding school, college or vocational school, emergency foster care or short visits with friends or relatives, if the parent continues to exercise control over the child.

Section 4. Age and School Attendance. A child may be eligible for AFDC from birth to age eighteen (18), or to age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program prior to or during the month of their 19th birthday. Full- and part-time is defined in 904 KAR 2:016, standards for need and amount; AFDC. A child is considered in regular attendance in months in which he is not attending because of official school or training program vacation, illness, convalescence or family emergency unless he has indicated an intention not to reenter school.

Section 5. One Category of Assistance. A child or adult relative shall not be eligible for AFDC if receiving supplemental security income.

Section 6. Strikers. (1) A family shall be ineligible for benefits for any month in which the natural or adoptive parent, with whom the child is living is, on the last day of such month, participating in a strike; and

(2) No individual shall be considered eligible for benefits for any month if, on the last day of such month, such individual is participating in a strike.

(3) Strike shall be defined to include a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

Section 7. Work Registration. (1) Unless exempt under the criteria specified in Title IV of the Social Security Act and 45 CFR Section 224.20(b), an individual who has applied for or is receiving AFDC shall be ineligible for benefits if he refuses to register for work.

Section 8. Jobs Through Employment and Training (JET). (1) Effective June 1, 1989, unless exempt from work registration, an individual who has applied for or is receiving AFDC shall be ineligible for benefits if he refuses to participate in the JET Program without good cause.

(2) Individuals exempt from JET are as follows:

(a) Individuals who are ill, disabled, or elderly;

(b) Individuals needed in the home to care for a sick or disabled person;

(c) Individuals working thirty (30) hours or more per week;

(d) A child [An individual] under age sixteen (16) or attending school full time;

(e) A woman in at least the seventh [fourth] month of pregnancy;

(f) Individuals living in a "remote" (non-JET) county;

(g) A parent or caretaker relative of a child under age six (6) [three (3)] who personally provides full-time care of the child with only very brief and infrequent absences from the home. Brief and infrequent absences without considering time traveled to and from work/school are defined as:

1. Employment by the caretaker relative of less than thirty (30) hours per week;
2. Less than full-time school attendance (or for college attendance, enrollment) by the caretaker relative;
3. Less than full-time school attendance (or for college attendance, enrollment) and less than fifteen (15) hours per week employment by

the caretaker relative;
4. Attendance by the child under age six (6) [three (3)] in nursery school;
5. Additional brief and infrequent absences include:
a. Visits by the child under age six (6) [three (3)] with relatives, friends, the absent parent, neighbors, etc.;
b. Visits by the caretaker relative with relatives, friends, neighbors, etc.;
c. Routine shopping and errands;
d. Doctor's visits; and
e. Short-term hospitalization (less than thirty (30) days.
6. If a parent or other caretaker relative is absent from the child for reasons other than these listed, the absence is not considered brief and infrequent.

Section 9. Cooperation in Child Support Enforcement Activities. (1) Inclusion of a specified relative in the AFDC budget is dependent upon his cooperation in child support activities pursuant to 45 CFR 232.12 and refusal, except for "good cause," results in ineligibility of the relative with AFDC payments on behalf of the child(ren) made to a protective payee.
(2) If, after exclusion from the grant for failure to cooperate, the individual states that he is willing to cooperate and wishes to be reinstated, a supplemental application must be completed. If eligibility criteria are met, the individual will be added to the grant effective with the month of application and the protective payee will be removed.
(3) Pursuant to 45 CFR Part 232.40, the Cabinet for Human Resources shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate.
(4) The applicant or recipient will be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:
(a) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the child; or
(b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself to such an extent that it would reduce his capacity to care for the child(ren) adequately; or
(c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicant's/recipient's cooperation; or
(d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction; and the department believes it would be detrimental to the child to require the applicant's/recipient's cooperation; or
(e) The applicant/recipient is being assisted by a public or licensed private social agency to resolve whether to keep the child or release him for adoption and discussion has not gone on for more than three (3) months and the cabinet believes it would be detrimental to the child to require the applicant's/recipient's cooperation.
(5) Specific requirements in determining the existence of good cause and the time limits for providing substantiation of claims are made pursuant to the regulation at 45 CFR 232.42 and 45 CFR 232.43.

Section 10. Potential Entitlement for other Programs. All applicants/recipients must apply for any benefit(s) if potential entitlement exists. Failure to apply results in ineligibility for AFDC.

Section 11. Furnishing of Social Security Account Numbers. All applicants/recipients must furnish social security account numbers pursuant to 45 CFR 232.10.

Section 12. Assignment of Rights to Support. Pursuant to KRS 205.720, by accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any child support owed for the child not to exceed the amount of AFDC payments made to the recipient.

Section 13. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any medical support owed for the child not to exceed the amount of medical assistance payments made on behalf of the recipient.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 28, 1989
FILED WITH LRC: July 14, 1989 at 11 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:004E

This emergency administrative regulation shows the update to the medically needy income level resulting from the Aid to Families with Dependent Children payment increase being implemented on July 1, 1989. This regulation must be promulgated on an emergency basis to permit recipients immediately to qualify under the revised income levels. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on January 4, 1989 since that emergency regulation did not update the medically needy scale. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about July 1, 1989.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

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

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: July 14, 1989
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with

requirements of Title XIX of the Social Security Act. KRS 205.520(3) empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the resource and income standards by which eligibility of the medically needy is determined.

Section 1. Resource Limitations and Exclusions of the Medically Needy. The following provisions are applicable with regard to computation of allowable resources:

(1) The upper limit for resources for family size of one (1) and for family size of two (2) is set at $2,000 and $4,000 respectively, effective January 1, 1989, with fifty (50) dollars for each additional member.

(2) A homestead, occupied or abandoned, household equipment, and farm equipment without limitation on value are excluded from consideration.

(3) Equity of $6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, is excluded from consideration. In addition, for AFDC related MA only cases the value of otherwise countable real property (whether income producing or nonincome producing) may be excluded from consideration for six (6) months if a good faith effort is being made to dispose of the property properly; an additional three (3) months may be allowed for the disposal at the request of the recipient if efforts to dispose of the property within the six (6) month period have been unsuccessful.

(4) Equity of $4,500 in automobiles is excluded from consideration; however, if an automobile is used for employment, to obtain medical treatment of a specific or regulation medical problem, of if specially equipped (e.g., as for use by the handicapped) the total value of such automobile is excluded.

(5) Burial reserves of up to $1,500 per individual, which may be in the form of burial agreement(s) (prepaid burials or similar arrangements), trust fund(s), life insurance policies, or other identifiable funds are excluded from consideration. The cash surrender value of life insurance is considered when determining the total value of burial reserves. When burial funds are commingled with other funds, the applicant has up to thirty (30) days to separately identify the burial reserve amount. Interest or other appreciation of value of an excluded burial reserve is excluded so long as such amount is left to accumulate as a part of the burial reserve.

(6) Burial spaces, plots, vaults, crypts, mausoleums, urns, caskets, and other repositories which are customarily and traditionally used for the remains of deceased persons are excluded from consideration as a countable resource without regard to value.

(7) Resources determined in accordance with subsections (3), (4), and (5) of this section to be in excess of excluded amounts must be considered countable resources when determining whether the individual or family group exceeds the upper limits specified in subsection (1) of this section. If resources exceed the upper limits, the individual or family group is ineligible.

(8) The following exclusions are also applicable as stated:

(a) Proceeds from the sale of a home are excluded from consideration for three (3) months from date of receipt if used to purchase another home.

(b) Resources of a blind or disabled person necessary to fulfill an approved plan for achieving self-support are excluded from consideration.

(c) Payments or benefits from federal statutes, other than Title XVI (Supplemental Security Income), are excluded from consideration (as either a resource or income) if precluded from consideration in Title XVI determinations of eligibility by the specific terms of the statute.

(d) Disaster relief assistance is excluded from consideration.

(e) Cash or in-kind replacement for repair or replacement of an excluded resource is excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

(f) Effective with regard to determinations of eligibility made on or after April 16, 1988, and applicable with regard to the usual three (3) month period for retroactive eligibility, the life interest that Medicaid applicants or recipients may have in real estate or other property shall be excluded from consideration as an available resource.

(g) Effective with regard to determinations of eligibility for periods beginning on or after December 1, 1988 real property is excluded from consideration for adult medical assistance and state supplementation recipients if:

1. Such property is jointly owned and its sale would cause undue hardship due to loss of housing for the other owner or owners; or
2. Its sale is barred by a legal impediment; or
3. The owner's reasonable efforts to sell have been unsuccessful.

(h) Cash payments intended specifically to enable applicants or recipients to pay for medical or social services are not considered as available income or as a resource in the month of receipt or for one (1) calendar month following the month of receipt. If the cash is still being held at the beginning of the second month following its receipt, it will be considered a resource.

(i) Effective with regard to determinations of eligibility made on or after June 1, 1989, any amount received which is a result of an underpayment (i.e., which is a retroactive payment) of benefits from Title II (Federal Old Age, Survivors, and Disability Insurance Benefits) or Title XVI (Supplemental Security Income) is excluded as a resource for the first six (6) months following the month in which the amount is received or for the first nine (9) months following receipt if receipt is during the period of October 1, 1987 through September 30, 1989.

Section 2. Income and Resource Exemptions. Income and resources which are exempted from consideration for purposes of computing eligibility for the comparable money payment program (Aid to Families With Dependent Children and Supplemental Security Income) shall be exempted from consideration by the cabinet, except that the AFDC earned income disregard (first thirty (30) dollars and one-third (1/3) of the remainder) may not be allowed in

determining eligibility for medical assistance only.

Section 3. Income Limitations of the Medically Needy. Eligibility from the standpoint of income is determined by comparing adjusted income as defined in Section 4 of this regulation, of the applicant, applicant and spouse, or applicant, spouse and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	$2,600 [2,500]	$217 [208]
2	3,200 [3,000]	267 [250]
3	3,700 [3,500]	308 [292]
4	4,600 [4,400]	383 [367]
5	5,400 [5,100]	450 [425]
6	6,100 [5,800]	508 [483]
7	6,800	567

For each additional member, $720 [600] annually or sixty (60) [fifty (50)] dollars monthly is added to the scale. The change shown in this section of the regulation shall be effective with regard to determinations of eligibility made on or after July 1, 1989 [1988].

Section 4. Additional Income Considerations. (1) In comparing income with the scale as contained in Section 3 of this regulation, gross income is adjusted as follows in all cases with exceptions as contained in Section 5 of this regulation:

(a) In cases of adults and children, the standard work related expenses of adult members and out-of-school youth are deducted from gross earnings. For those with either full-time or part-time employment the standard work expense deduction is seventy-five (75) dollars per month. All earnings of an in-school child are disregarded. Full-time and part-time employment, and school attendance, shall be as defined in 904 KAR 2:016, Standards for need and amount; AFDC.

(b) In cases of adults and children, dependent care as a work expense is allowed not to exceed $160 per child or incapacitated adult per month for full-time employment (as defined in subsection (1) of this section) or $110 per child or incapacitated adult per month for part-time employment (as defined in subsection (1) of this section). A dependent care work expense deduction is allowed only when the dependent is included in the assistance unit.

(2) The following special factors are applicable for pregnant women, infants and children eligible pursuant to Section 9401 of the Omnibus Budget Reconciliation Act of 1986 (OBRA 86):

(a) Such pregnant women and children may have family income up to, but not to exceed, 100 percent of the official poverty income guidelines as promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of July 1 of the particular state fiscal year;

(b) Pregnant women, infants and children who would be eligible under the provisions of OBRA 86 except for income in excess of the allowable standard may not become eligible by spending down to the official poverty guidelines;

(c) Effective with regard to determinations of eligibility made on or after June 1, 1989, available resources shall be disregarded;

(d) The Aid to Families with Dependent Children (AFDC) budgeting methodology (except for application of the AFDC earned income disregard of the first thirty (30) dollars and one-third (1/3) of the remainder) shall be used; and

(e) Changes of income that occur after the determination of eligibility of a pregnant woman shall not affect such pregnant woman's eligibility through the remainder of the pregnancy including the usual post partum period which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy.

(3) Effective with regard to determinations of eligibility for Medical Assistance furnished on or after October 1, 1988, pregnant women and children eligible pursuant to Section 4101 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) shall be subject to the same special factors applicable to pregnant women, infants, and children as specified in Section 4(2)(b), (c), (d) and (e) of this regulation, and this additional special factor: such pregnant women and children under age one (1) may have family income up to, but not to exceed, 125 percent of the official poverty income guidelines as promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of July 1 of the particular state fiscal year.

(4) The following special income and resource limits and provisions are applicable for determinations of eligibility of qualified Medicare beneficiaries for the special Title XVIII benefits described in 907 KAR 1:006, effective for determinations of eligibility made on or after January 1, 1989.

(a) The following income upper limits, shown as a percentage of the official poverty income level, shall be effective on the specified dates: January 1, 1989, eighty-five (85) percent; January 1, 1990, ninety (90) percent; January 1, 1991, ninety-five (95) percent; and January 1, 1992, 100 percent.

(b) The official poverty income guidelines will be those promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of July 1 of the particular state fiscal year.

(c) The income disregards to be used will be those applicable in the federal Supplemental Security Income (SSI) program.

(d) Resources shall be limited to no more than twice the allowable amount for the federal Supplemental Security Income (SSI) program.

Section 5. Individuals in Chronic Care Institutions. For aged, blind or disabled individuals in chronic care facilities, the following requirements with respect to income limitations and treatment of income shall be applicable.

(1) In determining eligibility, the appropriate medically needy standard is used as are appropriate disregards and exclusions from income. In determining patient liability for the cost of institutional care, gross income is used

as shown in subsections (2) and (3) of this section.

(2) Income protected for basic maintenance, effective July 1, 1986, is forty (40) dollars monthly in lieu of the figure shown in Section 3 of this regulation. All income in excess of forty (40) dollars is applied to the cost of care except as follows:

(a) Available income in excess of forty (40) dollars is first conserved as needed to provide for needs of the spouse and minor children up to the appropriate family size amount from the scale as shown in Section 3 of this regulation.

(b) Remaining available income is then applied to the incurred costs of medical and remedial care that are not subject to payment by a third party (except that, effective for determinations of eligibility for periods beginning on or after December 1, 1988, the incurred costs may be reimbursed under another public program of the state or political subdivision of the state), including Medicare and health insurance premiums and medical care recognized under state law but not covered under the state's Medicaid plan.

(3) The basic maintenance standard allowed the individual during the month of entrance into or exit from the long term care facility shall reasonably take into account home maintenance costs.

(4) When an individual loses eligibility for a supplementary payment due to entrance into a participating long term care facility, and the supplementary payment is not discontinued on a timely basis, the amount of any overpayment is considered as available income to offset the cost of care (to the Medical Assistance Program) if actually available for payment to the provider.

(5) Effective with regard to determinations of eligibility made on March 16, 1989 and thereafter, Supplemental Security Income (SSI) or state supplementation payments received by specified institutionalized Medicaid eligible individuals in accordance with Section 1611(e)(1)(G) of the Social Security Act shall be excluded from consideration as either income or a resource, and such payments may not be used in the posteligibility process to increase the patient liability.

Section 6. Spend-down Provisions. No technically eligible individual or family is required to utilize protected income for medical expenses before qualifying for medical assistance. Individuals with income in excess of the basic maintenance scale as contained in Section 3 of this regulation may qualify for medical assistance in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period; effective October 1, 1988, medical expenses incurred in periods prior to the quarter for which spend-down eligibility is being determined may be used to offset excess income so long as such medical expenses remain unpaid at the beginning of the quarter and have not previously been used as spend-down expenses. Effective for determinations of eligibility for periods beginning on or after February 1, 1989, the incurred costs may be reimbursed under another public program of the state or political subdivision of the state and still be considered incurred costs of the applicant or recipient.

Section 7. Consideration of State Supplementary Payments. For an individual receiving state supplementary payments, that portion of the individual's income which is in excess of the basic maintenance standard is applied to the special need which results in the supplementary payment.

Section 8. Special Needs Contributions for Institutionalized Individuals. Voluntary payments made by a relative or other party on behalf of a long term care facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the Medical Assistance Program. Examples of such special services or items include television and telephone service, private room or bath, private duty nursing services, etc.

Section 9. Pass-through Cases. Increases in social security payments due to cost of living increases but for which the individual would be eligible for supplemental security income benefits or state supplementary payments, and which are received after April 1, 1977, shall be disregarded in determining eligibility for medical assistance benefits; such individuals shall remain eligible for the full scope of program benefits with no spend-down requirements. Beginning on November 1, 1986, the additional amount specified in Section 12202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) shall be disregarded, i.e., that amount of social security benefits to which certain widows or widowers were entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) such individuals would be eligible for federal supplemental security income benefits; eligibility as a result of such disregard shall not exist prior to July 1, 1986. To be eligible, applicants must apply by July 1, 1988.

Section 10. Relative Responsibility. For purposes of the Medical Assistance Program, spouses are considered responsible for spouses and parents are considered responsible for dependent minor children. Effective for determinations of eligibility made on or after December 1, 1987, children under age twenty-one (21) living with parents (but not including children age eighteen (18) and above who are blind or disabled) are considered dependent minor children for purposes of deeming of income and resources under the Medicaid Program even if such children are emancipated under state law. This responsibility, with regard to income and resources, is determined as follows:

(1) "Living with" is defined as sharing a common living arrangement or household, but not including living in the same room in a long term care facility. "Living apart" is defined as not sharing a common household, whether due to estrangement, disability, or illness. Effective July 1, 1987, a husband and wife sharing a room or comparable accommodation in a long term care facility may be considered to be "living with" each other after they have continuously shared such a room or accommodation for six (6) months, if treating such husband and wife as living apart would prevent either of them from receiving medical assistance.

(2) In cases of aged, blind, or disabled

applicants or recipients living with their eligible spouse, total resources and adjusted income of the couple is considered in relation to the resource and income limitations for a family size of two (2), or if other dependents live with the couple, the appropriate family size including the dependents.

(3) In cases of aged, blind or disabled applicants or recipients living with an ineligible spouse, income from the ineligible spouse shall be deemed as available to the eligible spouse as outlined below.

(a) Determine the potential spend-down amount of the eligible individual by comparing the countable income to the Medically Needy Income Level (MNIL) for one (1) as shown in Section 3 of this regulation.

(b) Allocate to other dependents in the household from the ineligible spouse income in an amount equal to one-half (1/2) of the MNIL for a family size of one (1) for each dependent.

(c) If the ineligible spouse's income is more than one-half (1/2) of the MNIL for a family size of one (1), combine the income of the ineligible spouse with that of the eligible individual and compare that figure with the MNIL for a couple to determine the spend-down amount.

(d) Compare the amount resulting from paragraph (a) of this subsection with the result of paragraph (c) of this subsection and determine eligibility using the spend-down amount, if any, which is greater.

(e) Resources shall be considered in the same manner as for an eligible spouse.

(4) In cases of aged, blind, or disabled couples, living apart for any reason other than institutionalization, both of whom are concurrently applying for or receiving MA only, income and resources are considered in relation to resource and income limitations for a family size of two (2), or if other dependents live with either spouse, the family size including such dependents, but only for the first six (6) months after the month of separation, that such couple lives apart; however, if mutual consideration of income and resources causes the individuals to lose eligibility as a couple, eligibility for the individuals is determined in accordance with subsection (4) of this section. If the separation is due to the institutionalization of a spouse, mutual consideration of income ceases in the month after the month of separation but resources are considered mutually available to each other the month of separation, and for the six (6) months following that month unless such would act to preclude eligibility of the individual in long-term care.

(5) In cases of an aged, blind, or disabled individual living apart from a spouse (for a reason other than institutionalization) who is not a recipient of MA only, eligibility is determined on a couple basis for the month of separation and as a single individual after the month of separation.

(6) For an individual whose case is being worked as if he were a single individual due to living apart from his spouse, as shown in Section 10(3) and (4) of this regulation, who has jointly held resources with his spouse, one-half (1/2) of the jointly held resource would be considered a resource; except that the entire amount of a jointly held checking or savings account is considered a resource if the resource may be accessed independently of the spouse.

(7) Total resources and adjusted income of parent(s) and children for whom application is made is considered in relation to limitations for family size. Excluded, however, is the income and resources of an SSI parent and the SSI essential person spouse whose medical assistance eligibility is based on inclusion in the SSI case. Resources and income of an SSI essential person, spouse or nonspouse, whose medical assistance eligibility is not based on inclusion in the SSI case must be considered.

(8) In cases of a blind or disabled child under eighteen (18) living with his parent(s) (including stepparent, if applicable), total resources and adjusted income of the parent(s) is related to limitations for family size, including the applicant or recipient child and other dependent children of parent using the adult scale. The income and resources of the parent(s) shall also be considered available to such child who is aged eighteen (18) through twenty-one (21), if in school, when to do so will work to the child's benefit and the individual was aged eighteen (18) through twenty-one (21) in September, 1980, and was MA eligible at that time.

(9) Income and resources of parent(s) are not considered available to a child living apart from the parent(s), but any continuing contribution actually made is considered as income. Living apart may mean living in a medical institution, special school or in foster care and such status continues even if the child makes visits to the parent(s) home. For comparison with the resource and income limitations, the child's individual resources and income are considered in relation to family size of one (1). Effective with regard to determinations of eligibility for periods beginning on or after December 1, 1988, the following criteria should be used to determine whether a child who has been living with his parents and is institutionalized in a psychiatric facility is to be considered as living apart from his parents: a child is to be considered as living with his parents unless he has been in the facility for thirty (30) or more days or a physician specifies that it is anticipated he will remain in the facility for thirty (30) or more days (regardless of whether the child actually does so); a child who is institutionalized in a psychiatric facility but is legally committed to or in the custody of the Cabinet for Human Resources is not to be considered as living with his parents.

(10) When a recipient (but not including a child) in a family case has income and resources considered in relation to family size and enters a long term care facility, his income and resources are considered in the same manner as previously for up to one (1) year with, effective with regard to determinations of eligibility made on or after February 1, 1988, the individual allowed forty (40) dollars as his basic maintenance standard. When a child in a family case is in the long term care facility, eligibility of the child is determined in the same manner for up to a year but his liability for the cost of care is determined by allowing to the child from his own income forty (40) dollars and considering the remainder available for the cost of care. (Note: in this situation any welfare payment made to the child is disregarded when determining liability for cost

of care.) The eligibility of the individual, with regard to income and resources, shall be determined on the basis of living apart from the other family members whenever it becomes apparent that the separation will last for more than one (1) year.

Section 11. Treatment of Income of the Stepparent or Parent/Legal Guardian of a Minor Parent/Legal Guardian (referred to as a "Grandparent") and Effect on Eligibility of the Assistance Group Effective with Regard to Determinations of Eligibility Made On or After June 1, 1989. An incapacitated (as determined by the department) stepparent's income, or a grandparent's income, is considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. When the stepparent or grandparent living in the home is not being included in the family case, the stepparent's gross income is considered available to the spouse or the grandparent's gross income is considered available to the minor parent in accordance with the policies set forth in this section.

(1) Disregards/exclusions from income. The following disregards/exclusions from income shall be applied:

(a) The first seventy-five (75) dollars of the gross earned income of the stepparent or grandparent who is employed full time or part time (with full-time and part-time employment as defined in Section 4(1) of this regulation).

(b) An amount equal to the medically needy income limitations scale as shown in Section 3 of this regulation for the appropriate family size, for the support of the stepparent or grandparent and any other individuals (not including the spouse or minor parent) living in the home but whose needs are not taken into consideration in the medical assistance eligibility determination and are claimed by the stepparent or grandparent as dependents for purposes of determining his federal personal income tax liability.

(c) Any amount actually paid by the stepparent or grandparent to individuals not living in the home who are claimed by him as dependents for purposes of determining his personal income tax liability.

(d) Payments by the stepparent or grandparent for alimony or child support with respect to individuals not living in the household.

(e) Income of a stepparent or grandparent receiving supplemental security income.

(f) Verified medical expenses for the stepparent or grandparent and his dependents in the home.

(2) Determining eligibility of the grandchild(ren) and stepchild(ren). When a stepparent or grandparent has available income remaining after disregards/exclusions are applied, the income may be deemed to the spouse (of the stepparent) or minor parent (child of the grandparent) but not to the stepchild(ren) or grandchild(ren). Eligibility of the stepchild(ren) or grandchild(ren) is determined in the following manner in order to take this requirement into consideration: consider only the income of the grandchild(ren) and minor parent, or stepchild(ren) and parent (spouse of the stepparent) as appropriate. The budget size would include the child(ren) and parent. If there is no excess, the child(ren) is eligible; if there is an excess, the excess amount may be spent down in the usual manner.

(3)(a) To determine separate eligibility of the minor parent (of the grandchild) or spouse (of a stepparent) when the eligibility of the grandparent or stepparent is not to be determined, consider the income of the child(ren) and his parent, and the actual amount available for deeming from the grandparent or stepparent. The budget size would include the child(ren) and parent (but not the grandparent or stepparent). If there is no excess, the minor parent or spouse (of a stepparent) is eligible; if there is an excess, the excess amount may be spent down in the usual manner.

(b) When the grandparent (of a minor parent) or the stepparent (spouse of the parent with children) are to be included in the case, eligibility of the minor parent or spouse cannot be determined separately but must be determined in combination with that of the grandparent or stepparent. The combined eligibility of the minor parent and grandparent or spouse and incapacitated stepparent is determined in the usual way including the available income of the grandparent or stepparent, the minor parent or spouse of the stepparent, and the grandchild(ren) or stepchild(ren) as appropriate. When the grandparent or incapacitated stepparent is included in the case, the amount excluded for the needs of the grandparent or stepparent in the determination of available income in subsection (1) of this section must be considered as available income for purposes of this determination of eligibility. If there is no excess, the minor parent and grandparent or spouse and incapacitated stepparent are eligible; if there is an excess, the excess amount may be spent down in the usual manner.

(4) When determining eligibility of individuals or family groups with excess income, uncovered incurred medical expenses of all members of the budget unit (and dependents of members of the budget unit whose needs are considered when determining the eligibility of that member) may be used to meet the spend-down amount(s).

Section 12. Companion Cases. When spouses or parent(s) and children living in the same household apply separately for assistance, relative responsibility must be taken into consideration.

(1) In the case of an application for assistance for a dependent child(ren), the income, resources and needs of the parent(s) must be included in the determination of need of the child(ren) even when the parent(s) applies for assistance for himself on the basis of age, blindness, or disability (except as shown in subsection (3) of this section).

(2) In the case of a spouse, income and resources of both spouses are combined and compared against the medically needy income and resources limits for a family size of two (2) even though a separate determination of eligibility shall be made for each individual.

(3) In the case of families with children with a parent eligible for supplemental security income (SSI), neither the income, resources, nor needs of the SSI eligible individual are to be included in the determination of eligibility of the children.

(4) A parent in a family case may request that one (1) or more children be technically excluded

from the determination of eligibility due to income while a regular application for Medicaid eligibility is processed for other children in the family group. In this circumstance, the income and resources of the technically excluded child(ren) and the technically excluded child(ren)'s needs are excluded in the budgeting process when determining eligibility of the family group. A separate spend-down case(s) may then be established for the technically excluded child(ren); the income, resources and needs of the responsible relative or parent are included in the budget in accordance with usual criteria, and income/resources and needs of siblings in the other case may also be included in budgeting for the spend-down case if that works to the advantage of the technically excluded child(ren) for whom eligibility is being determined in the spend-down case. Excess income in the spend-down case may be spent-down using uncovered incurred medical care costs of any member of the family included in the budgeting process for the spend-down case.

Section 13. Treatment of Lump-sum Income. The following policy is effective January 1, 1986: for adult related cases, lump-sum income is prorated over the three (3) month period following the agency's notice of receipt by the client, with any amount spent by the client prior to notification of the agency deducted from the total considered available; any portion of the income remaining available after the three (3) month period is considered in relation to resource limitations; the exception to the treatment of lump sum income is specified in Section 1(8)(i) of this regulation; for AFDC related cases, lump sum income is divided by the medically needy income level and prorated over the resultant number of months. Effective February 1, 1989, lump sum income for individuals eligible under the federal poverty level standards specified in Section 4(2) and (3) of this regulation would be divided by the appropriate standard for the eligible group and prorated over the resultant number of months.

Section 14. Transferred Resources. The policy relating to transferred resources shown in this section is effective for determinations of eligibility for periods of time beginning on or after July 1, 1988 and transfers of property occurring on or after that date.

(1) When an institutionalized individual (defined as an individual in a skilled nursing facility, general intermediate care facility, psychiatric facility, mental hospital, or a participant in a hospice program who is in a skilled nursing or intermediate care facility, or a participant in the home and community based services waiver program or the alternate intermediate services program for the mentally retarded so long as eligibility is being determined using the special income level) applies for medical assistance a period of ineligibility must be computed if at any time during the thirty (30) month period immediately preceding the application the individual disposed of property for less than fair market value. The period of ineligibility (beginning with the month in which the resources were transferred) shall be equal to the lesser of thirty (30) months or the number of months derived by dividing the total uncompensated value of the resources so transferred by the average cost, to a private patient at the time of the application, of nursing facility services in the state (either intermediate care or skilled nursing care as appropriate for the level of care).

(2) An individual shall not be ineligible for medical assistance by virtue of subsection (1) of this section to the extent that the conditions specified in Section 1917(c)(2)(B), (C) and (D) of the Social Security Act are met, nor shall an individual be ineligible for medical assistance due to transfer of resources for less than fair market value except in accordance with this section. Transfers of resources for less than fair market value occurring prior to July 1, 1988 shall not be considered in determinations of eligibility for periods beginning on or after July 1, 1988.

(3) The disposal of a resource, including liquid assets, at less than fair market value shall be presumed to be for the purpose of establishing eligibility unless the individual shows the transfer was in accordance with Section 1917(c)(2)(B) or (C)(i) of the Social Security Act or presents convincing evidence that the disposal was exclusively for some other purpose. If the purpose of the transfer is in accordance with Section 1917(c)(2)(B) or (C)(i) or is for some reason other than to qualify for medical assistance or if the transferred resource was considered an excluded resource at the time it was transferred, the value of the transferred resource is disregarded. If the resource was transferred for an amount equal to at least the assessed value for tax purposes, the resource will be considered as being disposed of for fair market value. Notwithstanding the preceding, if the assessed agricultural value is used for tax purposes the transfer is required to be for an amount equal to the fair market value.

(4) After determining that the purpose of the transfer was to become or remain eligible, the cabinet shall first add the uncompensated equity value of the transferred resource to other currently held resources to determine if retention of the property would have resulted in ineligibility. For this purpose, the resource considered available shall be the type of resource it was prior to transfer, e.g., if nonhomestead property was transferred, the uncompensated equity value of the transferred property would be counted against the permissible amount for nonhomestead property. If retention of the resource would not have resulted in ineligibility, the value of the transferred resource would thereafter be disregarded.

(5) If retention would result in ineligibility, the cabinet will compute a period of ineligibility as provided for in subsection (1) of this section.

(6) The uncompensated value may be excluded from consideration when good cause exists. A waiver of consideration of the uncompensated amount will be granted subject to the following criteria:

(a) "Good cause" means that an expense (or loss) was incurred by the individual or family group due to a natural disaster, fire, flood, storm or earthquake; or illness resulting from accident or disease; or hospitalization or death a member of the immediate family; or civil disorder or other disruption resulting in vandalism, home explosions, or theft of

essential household items.

(b) The exclusion may not exceed the amount of the incurred expense or loss; the amount of the uncompensated value to be excluded cannot include any amount which is payable by Medicaid, Medicare, or other insurance.

Section 15. Special Provisions for AIS/MR Recipients. Medical assistance eligibility for participants in the program of alternative intermediate services for the mentally retarded (AIS/MR) shall be determined taking into consideration the special provisions contained in this section.

(1) Usual institutional deeming rules shall be applicable with regard to the categorically needy including all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level.

(2) AIS/MR services program participants who participate in the AIS/MR program for thirty (30) consecutive days (including any actual days of institutionalization within that period) and who have income not in excess of 300 percent of the SSI standard for an individual shall be determined to be eligible as categorically needy under a special income level (i.e., the special income level is 300 percent of the SSI standard). Income protected for basic maintenance of the AIS/MR participant in the posteligibility determination of patient liability for individuals eligible on the basis of the special income level of 300 percent of the federal SSI standard shall be the standard for the federal supplemental security income program in addition to the SSI general exclusion.

(3) When eligibility is determined using community deeming rules, the attributed cost of care against which monthly available income of the AIS/MR participant shall be applied shall be the projected annual average cost of care for all participants divided by twelve (12) and rounded to the nearest dollar. The amount protected for basic maintenance is the usual medically needy standard for the appropriate family size as shown in Section 3 of this regulation plus the SSI general exclusion.

(4) Eligibility shall continue on the same basis as for an institutionalized individual when the cost of care is greater than the recipient's adjusted monthly income or the recipient is eligible based on the special income level of 300 percent of the SSI level as specified in 907 KAR 1:011, Technical eligibility requirements.

Section 16. Special Provisions for Hospice Recipients. Medical assistance eligibility for participants under the Medicaid hospice benefit shall be determined (when necessary to establish eligibility for medical assistance benefits for cases with income in excess of the usual basic maintenance standard) taking into consideration the special provisions contained in this section.

(1) Income protected for basic maintenance of the hospice participant in the posteligibility determination of patient liability for noninstitutionalized individuals eligible on the basis of the special income level of 300 percent of the federal SSI standard shall be the standard for the federal supplemental security income (SSI) program in addition to the SSI general exclusion. For the noninstitutionalized medically needy participants (all of whom must spend-down on a quarterly basis), the amount protected for basic maintenance is the usual medically needy standard as shown in Section 3 of this regulation plus the SSI general exclusion. For the institutionalized medically needy the amount protected for basic maintenance in the eligibility determination is the medically needy standard for the appropriate family size plus the SSI general exclusion. If a hospice participant is institutionalized in a long-term care facility, the basic maintenance amount is forty (40) dollars per month.

(2) When eligibility is determined for an institutionalized monthly spend-down case, the attributed cost of care against which monthly available income of the hospice participant shall be applied shall be the hospice routine home care per diem (for the hospice providing care) as established by the Medicare program plus the room and board rate for the appropriate level of care (i.e., skilled nursing or intermediate care).

(3) Eligibility shall continue on the same monthly basis as for an institutionalized individual when the recipient is eligible based on the special income level of 300 percent of the SSI level as specified in 907 KAR 1:011, Technical eligibility requirements.

(4) A hospice participant may be eligible for benefits based on this section only if he has elected coverage under the Medicaid hospice benefit rather than the regular Medicaid program.

(5) Usual institutional deeming rules shall be applicable with regard to the categorically needy including all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level.

Section 17. Special Provisions for Recipients Participating in the Home and Community Based Services Waiver Program. Medical assistance eligibility for participants under the home and community based (HCB) services waiver program shall be determined (when necessary to establish eligibility for medical assistance benefits for cases with income in excess of the usual basic maintenance standard) taking into consideration the special provisions contained in this section.

(1) Income protected for basic maintenance of HCB services program participants who are eligible under the special income level shown in this section shall be the standard used for an individual in the federal supplemental security income (SSI) program in addition to the SSI general exclusion.

(2) HCB services program participants who participate in the HCB program for thirty (30) consecutive days (including any actual days of institutionalization within that period) and who have income not in excess of 300 percent of the SSI standard for an individual shall be determined to be eligible as categorically needy under a special income level (i.e., the special income level is 300 percent of the SSI standard).

(3) If an HCB services program participant has income in excess of 300 percent of the SSI standard, eligibility of the participant is determined in the usual manner for an individual who is institutionalized, with the cost of HCB services projected if eligibility is determined

on a monthly basis, except that the amount protected for basic maintenance is the usual medically needy standard for the appropriate family size as shown in Section 3 of this regulation plus the SSI general exclusion.

(4) Usual institutional deeming rules shall be applicable with regard to all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level.

Section 18. Treatment of Potential Payments from Medicaid Qualifying Trusts. When an individual (or his spouse for the individual's benefit) creates (other than by will) a trust (or similar legal device) with amounts payable to the same individual, such trust shall be considered a "Medicaid qualifying trust" if the trustee(s) of the trust are permitted to exercise discretion as to the amount of the payments from the trust to be paid to the individual. In this circumstance the amount considered available to the trust beneficiary shall be the maximum amount the trustee(s) may (using the trustee's discretion) pay in accordance with the terms of the trust, regardless of the amount actually paid. The cabinet may, however, consider as available only that amount actually paid if to do otherwise would create an undue hardship upon the individual; the criteria for determining "undue hardship" shall be established by the cabinet.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 26, 1989
FILED WITH LRC: July 14, 1989 at 11 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:012E

This emergency administrative regulation is being amended to comply with the Medicare Catastrophic Act of 1988 which requires states to make exceptions to the maximum days limit for medically necessary inpatient hospital services furnished to infants under age one (1) in a disproportionate share hospital. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about July 1, 1989.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:012E. Inpatient hospital services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: July 14, 1989
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to inpatient hospital services for which payment shall be made by the Medical Assistance program in behalf of both the categorically needy and the medically needy.

Section 1. Length of Stay. Inpatient hospital services except for services in an institution for treatment of tuberculosis or mental diseases shall be limited to a maximum of fourteen (14) days per admission, with the further exception that effective with regard to medically necessary services provided on or after July 1, 1989 to infants under age one (1) there shall be no limit on the duration of stay or number of admissions. A recipient may transfer from one (1) hospital to another hospital when the [such] transfer is necessary for the patient to receive medical care which is not available in the first hospital. These [Such] transfers and admissions shall begin anew the fourteen (14) day per admission limitation; in such situations, the maximum covered inpatient hospital stay that may result is a total of twenty-eight (28) days for the two (2) admissions. Each admission shall [must] have prior approval of appropriateness by the designated [Kentucky] peer review organization in order for the admission to be covered under the program; this requirement does not apply for emergency admissions. Weekend stays associated with a Friday or Saturday admission will not be reimbursed unless an emergency exists.

Section 2. Covered Admissions. Admissions for which payment is made shall be limited to those primarily indicated in the management of acute or chronic illness, injury or impairment, or for maternity care that could not be rendered on an outpatient basis. Admissions relating to only observation or diagnostic purposes shall not be covered. Cosmetic surgery shall not be covered except as required for prompt repair of accidental injury or for the improvement of the functioning of a malformed or diseased body member.

Section 3. Inpatient Hospital Services not Covered by the Medical Assistance Program. (1) Those services which are not medically necessary to the patient's well-being, such as television, telephone and guest meals.

(2) Private duty nursing.

(3) Those supplies, drugs, appliances, and equipment which are furnished to the patient for use outside the hospital unless it would be considered unreasonable or impossible from a medical standpoint to limit the patient's use of the item to the periods during which he is an inpatient.

(4) Those laboratory tests not specifically ordered by a physician and not done on a preadmission basis unless an emergency exists.

(5) Private accommodations unless medically necessary and so ordered by the attending physician.

(6) The following listed surgical procedures, except when a life-threatening situation exists, there is another primary purpose for the admission, or the admitting physician certifies a medical necessity requiring admission to a hospital:

(a) Biopsy: breast, cervical node, cervix, lesions (skin, subcutaneous, submucous), lymph

node (except high axillary excision, etc), and muscle.
(b) Cauterization or cryotherapy: lesions (skin, subcutaneous, submucous), moles, polyps, warts/condylomas, anterior nose bleeds, and cervix.
(c) Circumcision.
(d) Dilation: dilation and curettage (diagnostic and/or therapeutic nonobstetrical); dilation/probing of lacrimal duct.
(e) Drainage by incision or aspiration: cutaneous, subcutaneous, and joint.
(f) Exam under anesthesia (pelvic).
(g) Excision: bartholin cyst, condylomas, foreign body, lesions lipoma, nevi (moles), sebaceous cyst, polyps, and subcutaneous fistulas.
(h) Extraction: foreign body, and teeth (per existing policy).
(i) Graft, skin (pinch, splint or full thickness up to defect size three-fourths (3/4) inch diameter).
(j) Hymenotomy.
(k) Manipulation and[/or] reduction with or without x-ray; cast change: dislocations depending upon the joint and indication for procedure, and fractures.
(l) Meatotomy/urethral dilation, removal calculus and drainage of bladder without incision.
(m) Myringotomy with or without tubes, otoplasty.
(n) Oscopy with or without biopsy (with or without salpingogram): arthroscopy, bronchoscopy, colonoscopy, culdoscopy, cystoscopy, esophagoscopy, endoscopy, gastroscopy, hysteroscopy, laryngoscopy, laparoscopy, peritoneoscopy, otoscopy, and sigmoidoscopy or procto sidmoidoscopy.
(o) Removal; IUD, and fingernail or toenails.
(p) Tenotomy hand or foot.
(q) Vasectomy.
(r) Z-plasty for relaxation of scar/contracture.

[Section 4. The provisions of of this regulation, as amended, shall be effective October 1, 1985.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 26, 1989
FILED WITH LRC: July 14, 1989 at 11 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:013E

This emergency administrative regulation is being amended to comply with the Medicare Catastrophic Coverage Act of 1988 which requires states to make exceptions for durational limits and to provide for an outlier adjustment in payment amounts paid to disproportionate share hospitals for medically necessary inpatient hospital services provided on or after July 1, 1989, involving exceptionally high costs or exceptionally long lengths of stays for infants under the age of one (1). This regulation must be promulgated on an emergency basis to comply with the federal requirements. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on January 1, 1989 since that administrative emergency regulation did not contain the Medicare Catastrophic Coverage Act of 1988 requirement concerning infants under age one (1) in disproportionate share hospitals. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about July 1, 1989.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

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

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: July 14, 1989
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for hospital inpatient services.

Section 1. Acute Care Hospital, Rehabilitation Hospital and Mental Hospital (Including Psychiatric Facility) Inpatient Services. The state agency will pay for inpatient hospital services provided to eligible recipients of Medical Assistance through the use of rates that are reasonable and adequate to meet the costs that are required to be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

Section 2. Establishment of Payment Rates. The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" revised July 1, 1989 [December 15, 1988], which is incorporated by reference in this regulation. For any reimbursement issue or area not specified in the manual, the cabinet will apply the Medicare standards and principles described in 20 CFR Sections 405.402 through 405.488 (excluding the Medicare inpatient routine nursing salary differential). The Kentucky Medical Assistance Program Inpatient Hospital Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.

Section 3. Compliance with Federal Medicaid Requirements. The cabinet will comply with the requirements shown in 42 CFR 447.250 through 447.280.

Section 4. General Description of the Payment System. (1) Use of prospective rates. Each hospital will be paid using a prospective payment rate based on allowable Medicaid costs

and Medicaid inpatient days. The prospective rate will be all inclusive in that both routine and ancillary cost will be reimbursed through the rate. For universal rate years prior to January 1, 1985 the prospective rate will not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used. For universal rate years beginning on or after January 1, 1985, the prospective rate will not be subject to retroactive adjustment except to the extent that facilities with a rate based on unaudited data will have their rate appropriately revised for the rate year when the audited cost report is received from the fiscal intermediary. However, total prospective payments shall not exceed the total customary charges in the prospective year. Overpayments will be recouped by payment from the provider to the cabinet of the amount of the overpayment, or alternatively, by the withholding of the overpayment amount by the cabinet from future payments otherwise due the provider.

(2) Use of a uniform rate year. A uniform rate year will be set for all facilities, with the rate year established as January 1 through December 31 of each year. The first uniform rate year for mental hospitals shall be July 1, 1985 through June 30, 1986; however, effective January 1, 1986 the mental hospital rate year shall be reestablished and shall be January 1 through December 31 of each year thereafter. Changes of rates throughout the rate year as a result of policy changes shall not change the rate year, although the facility rates may change. Hospitals are not required to change their fiscal years.

(3) Trending of cost reports. Allowable Medicaid cost as shown in cost reports on file in the cabinet, both audited and unaudited, will be trended to the beginning of the rate year so as to update Medicaid costs. When trending, capital costs and return on equity capital are excluded. The trending factor to be used will be the Data Resources, Inc. rate of inflation for the period being trended.

(4) Indexing for inflation. After allowable costs have been trended to the beginning of the rate year, an indexing factor is applied so as to project inflationary cost in the uniform rate year. The forecasting index currently in use is prepared by Data Resources, Inc. This policy shall be effective August 3, 1985.

(5) Peer grouping. Acute care hospitals (but not including those considered to be primarily rehabilitative in nature) will be peer grouped according to bed size. The peer groupings for the payment system will be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds and up (except that the designated state teaching hospitals affiliated with or a part of the University of Kentucky and the University of Louisville shall not be included in the array for facilities with 401 beds and up unless such facility's primary characteristics are considered essentially the same as the peer group's, and the facility, although not a university teaching hospital as such, is treated in such a manner as to recognize the presence of the major pediatric teaching component existing outside the state university hospitals). No facility in the 201-400 peer group shall have its operational per diem reduced below that amount in effect in the 1982 rate year as a result of the establishment of a peer grouping of 401 beds and up. Mental hospitals will not be peer grouped but will have a separate array of mental hospitals only. Rehabilitation hospitals and acute care hospitals considered to be primarily rehabilitative in nature will not be peer grouped or arrayed.

(6) Use of a minimum occupancy factor. A minimum occupancy factor will be applied to capital costs attributable to the Medicaid program. A sixty (60) percent occupancy factor will apply to hospitals with 100 or fewer beds. A seventy-five (75) percent occupancy factor will apply to facilities with 101 or more beds. Capital costs are interest and depreciation related to plant and equipment.

(7) Use of a reduced depreciation allowance. The allowable amount for depreciation on building and fixtures (not including major movable equipment) shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports. The use of a reduced depreciation allowance is not applicable with regard to mental hospitals.

(8) Use of upper limits. For acute care hospitals, an upper limit will be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in each peer group, using the most recent medicaid cost report available as of December 1 of each year. For mental hospitals, an upper limit will be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in the array. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data; however the arrays or upper limits may be changed as a result of changes of agency policy. The upper limit is established at 120 percent for those acute care hospitals serving a disproportionate number of poor patients as defined in subsection (9) of this section, except as specified in this subsection and the upper limit is established at 115 percent for those mental hospitals serving a disproportionate number of poor patients as defined in subsection (9) of this section. For the designated state teaching hospitals affiliated with or a part of the University of Kentucky and the University of Louisville, and major pediatric teaching hospitals affiliated thereto, their upper limit shall recognize their status as teaching hospitals traditionally serving a disproportionate number of poor patients, and shall be set at 126 percent of the median of the array for all other hospitals of comparable size (401 beds and up). Such major pediatric teaching hospitals shall also be paid, in addition to the facilities' base rate, an amount which is equal to two (2) percent of the base for each one (1) percent of Medicaid occupancy, but, effective January 1, 1989, such amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the facility.

(9) Disproportionate share hospitals.

(a) Disproportionate share hospitals are those hospitals meeting the criteria specified in Section 4112(b) and (d) of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) and those hospitals which may not meet such criteria but meet the criteria specified in Section 4112(d) of OBRA 87 and meet this additional criteria:

1. Acute care hospitals with Medicaid

utilization of twenty (20) percent or higher and mental hospitals with Medicaid utilization of thirty-five (35) percent or higher;

2. Hospitals which are designated state teaching hospitals;

3. Hospitals which are designated major pediatric teaching hospitals; and

4. Effective with regard to services provided on or after September 1, 1988, hospitals having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days.

(b) The upper limit for payments for hospitals in Kentucky is set at the lower of allowable Medicaid cost or the median of the facility array of allowable cost with payment adjustments allowed for hospitals deemed disproportionate share hospitals in accordance with subsections (8) and (9) of this section. For compliance with Section 4112(c) of OBRA 1987, the minimum payment adjustment and actual payment adjustment will be computed in the following manner:

1. All hospitals determined to be disproportionate share hospitals shall be entitled to a minimum payment adjustment equal to one (1) dollar as an addition to the hospital payment rate computed using usual upper limits; and for hospitals with Medicaid utilization in excess of one (1) standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state, a further payment adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid utilization in the hospital which is in excess of utilization at the one (1) standard deviation level.

2. Hospitals meeting the additional criteria as shown in paragraph (a) of this subsection shall have their hospital payment rate computed using usual upper limits. The payment adjustment currently applicable for such hospitals shall then be computed and compared with the minimum payment adjustment specified in paragraph (b)(1) of this subsection and the actual payment adjustment added to the payment rate shall be the greater of the two (2) adjustment amounts unless the payment rate specified in subparagraph 3 of this paragraph is applicable.

3. Effective with regard to medically necessary hospital inpatient services provided on or after July 1, 1989 to infants under the age of one (1) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay beyond the date of discharge for the mother of the child), the payment rate shall be set at 125 percent of the uncapped allowable per diem cost, without regard to length of stay or number of admissions of the infants.

(10) Operating costs shall not include professional (physician) costs for purposes of establishing the median based upper limits. Professional costs shall be trended separately.

(11) Hospitals whose general characteristics are not those of an acute care or mental hospital (i.e., because they are rehabilitation hospitals or acute care hospitals considered to be primarily rehabilitative in nature) are not subject to the operating cost upper limits.

(12) Rate appeals. As specified in the Inpatient Hospital Reimbursement Manual, hospitals may request an adjustment to the prospective rate with the submittal of supporting documentation. The established appeal procedure allows a representative of the hospital group to participate as a member of the rate review panel.

Section 5. Payments to Participating Out-of-state Hospitals. (1) Participating out-of-state hospitals shall be reimbursed for covered inpatient services rendered eligible Kentucky Medicaid recipients at the rate of seventy-five (75) percent of usual and customary charges except as specified in subsection (2) of this section. [Professional costs (i.e., physician fees) shall be paid on the basis of the usual and customary charges of the provider.]

(2) Effective with regard to medically necessary hospital inpatient services provided on or after July 1, 1989 to infants under the age of one (1), participating out-of-state disproportionate share hospitals (determined in the same manner as for in-state hospitals except that out-of-state hospitals are not included in facility arrays) shall be paid at the rate of eighty-five (85) percent of usual and customary actual billed charges in recognition of exceptionally high costs and lengths of stay related to infants under the age of one (1), without regard to length of stay or number of admissions of the infants.

(3) Professional costs (i.e., physician fees) for all covered days of stay shall be paid on the basis of the usual and customary charges of the provider.

[Section 6. The amendments to this regulation shall be effective with regard to payments for services rendered on or after July 1, 1988, except as specified in Section 4 of this regulation.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 26, 1989
FILED WITH LRC: July 14, 1989 at 11 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:022E

This emergency administrative regulation provides for the certification of skilled nursing facility units providing preauthorized specialized rehabilitation services for persons with brain injuries and for the preauthorization criteria of patients to receive the specialized brain injury unit services. In order to permit state recipients to receive such services as soon as possible, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be filed with the regulations compiler on or about July 1, 1989.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:022E. Skilled nursing facility services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: July 14, 1989

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to skilled nursing facility services for which payment shall be made by the medical assistance program in behalf of both the categorically needy and medically needy.

Section 1. Participation Requirements. Each facility desiring to participate as a skilled nursing facility shall [must] meet the following requirements:

(1) An application for participation shall be made to the cabinet using the procedures specified by the Commissioner, Department for Medicaid Services, Cabinet for Human Resources. A vendor number shall be assigned to the facility by the cabinet when participation status is achieved.

(2) Each skilled nursing facility shall be required to have participatory status in the program of health care known as Title XVIII, Medicare, before the conditions of participation for Title XIX shall be deemed met.

(3) Each skilled nursing facility shall be required to comply with the preadmission screening and annual resident review requirements specified in Section 1919 of the Social Security Act, effective with regard to admissions and resident stays occurring on or after January 1, 1989. Facilities failing to comply with this requirement shall be subject to disenrollment, with exclusion from participation to be accomplished in accordance with 907 KAR 1:220, Terms and conditions of provider participation; provider appeals, and federal regulations at 42 CFR 431.153 and 431.154.

Section 2. Provision of Service. (1) Payment for services shall be limited to those services provided to eligible individuals meeting the criteria of patient status in that they require skilled nursing care on a continuous basis following an acute illness or as a result of a chronic disease and/or disability and are receiving skilled nursing [such] care in a participating facility.

(2) A participating skilled nursing facility may be certified, in accordance with standards and conditions specified in 907 KAR 1:374, Incorporation by reference of the skilled nursing facility services manual, to operate a unit providing preauthorized specialized rehabilitation services for persons with brain injuries.

Section 3. Determining Patient Status. Professional staff of the cabinet, or a peer review organization operating under its lawful authority pursuant to the terms of its agreement with the cabinet, shall review and evaluate the health status and care needs of the recipient in need of institutional care giving consideration to the medical diagnosis, care needs, services and health personnel required to meet these needs and the feasibility of meeting the needs through alternative institutional or noninstitutional services. A patient shall not qualify for Medicaid patient status unless the person is qualified for admission, and continued stay as appropriate, under the preadmission screening and annual resident review criteria specified in Section 1919 of the Social Security Act with regard to admissions and resident stays occurring on or after January 1, 1989. Patients qualify for skilled nursing care when their needs mandate skilled nursing or skilled rehabilitation services on a daily basis and when, as a practical matter, the care can only be provided on an inpatient basis. Where the inherent complexity of a service prescribed for a patient exists to the extent [is such] that it can be safely or effectively performed only by or under the supervision of technical or professional personnel, the patient would qualify for skilled nursing care. A patient with an unstable medical condition manifesting a combination of care needs in the following areas may qualify for skilled nursing care:

(1) Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or intravenous feeding;

(2) Nasogastric or gastrostomy tube feedings;

(3) Nasopharyngeal and tracheotomy aspiration;

(4) Recent or complicated ostomy requiring extensive care and self-help training;

(5) Indwelling catheter for therapeutic management of a urinary tract condition;

(6) Bladder irrigations in relation to previously indicated stipulation;

(7) Special vital signs evaluation necessary in the management of related conditions;

(8) Sterile dressings;

(9) Changes in bed position to maintain proper body alignment;

(10) Treatment of extensive decubitus ulcers or other widespread skin disorders;

(11) Receiving medication recently initiated, which requires skilled observation to determine desired or adverse effects or frequent adjustment of dosage;

(12) Initial phases of a regimen involving administration of medical gases;

(13) Receiving services which would qualify as skilled rehabilitation services when provided by or under the supervision of a qualified therapist(s), for example [such as]: ongoing assessment of rehabilitation needs and potential; therapeutic exercises which must be performed by or under the supervision of a qualified physical therapist; gait evaluation and training; range of motion exercises which are part of the active treatment of a specific disease state which has resulted in a loss of, or restriction of, mobility; maintenance therapy when the specialized knowledge and judgment of a qualified therapist is required to design and establish a maintenance program based on an initial evaluation and periodic reassessment of the patient's needs, and consistent with the patient's capacity and tolerance; ultrasound, short wave, and microwave therapy treatments; hot pack, hydrocollator infrared treatments, paraffin baths, and whirlpool (in cases where the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, fractures or other complications, and the skills, knowledge, and judgment of a qualified physical therapist are required); and services by or under the supervision of a speech pathologist or audiologist when necessary for the restoration of function in speech or hearing.

Section 4. Reevaluation of Need for Service. Skilled nursing service shall be provided for as long as the health status and care needs are within the scope of program benefits as described in Sections 2 and 3 of this regulation. Patient status shall be reevaluated at least once every six (6) months. If a reevaluation of care needs reveals that the patient no longer requires skilled care, payment shall continue for ten (10) days to permit orderly transfer to a lesser level of care. Patients who met patient status criteria as of August 31, 1985 on the basis that they would have been reclassified to intermediate care patient status except for the unavailability of an intermediate care [such a] bed, and had continued to receive care in the facility while on the waiting list of suitable facilities, will be considered to meet patient status criteria through January 31, 1986 so long as the preexisting conditions for the [such] patient status criteria continue to be met.

Section 5. Evaluation of Patient Status for Persons with Mental Disorders or Mental Retardation. A person with a mental disorder or mental retardation meeting the health status and care needs specified in Sections 2 and 3 of this regulation shall generally be considered to meet patient status. However, these individuals are specifically excluded from coverage in the following situations:

(1) When the cabinet determines that in the individual case the combination of care needs is beyond the capability of the facility, and that placement in the skilled nursing facility is inappropriate due to potential danger to the health and welfare of the patient, other patients in the facility or staff of the facility; and

(2) When the skilled nursing care needs result directly and specifically from a mental disorder; i.e., are essentially symptoms of the mental disorder; and

(3) When the patient does not meet the preadmission screening and annual resident review criteria specified in Section 1919 of the Social Security Act for entering or remaining in a skilled nursing facility.

Section 6. Preauthorization of Provision of Specialized Rehabilitation Services for Persons with Brain Injuries. Patients who are brain injured and meet usual skilled nursing facility patient status criteria may be provided care in a certified unit providing specialized rehabilitation services for persons with brain injuries (i.e., brain injury unit) when the care is preauthorized by staff of the Department for Medicaid Services using criteria specified in this section. For coverage to occur, authorization of coverage must be granted prior to admission of the individual with the head injury into the certified head injury unit, or if previously admitted to the unit with other third party coverage, authorization must be granted prior to exhaustion of those benefits.

(1) Injuries within the scope of benefits are:

(a) Central nervous system injury from physical trauma;

(b) Central nervous system damage from anoxia or hypoxic episodes; and

(c) Central nervous system damage from allergic conditions, toxic substances and other acute medical/clinical incidents.

(2) Indications for admission and continued stay are as follows:

(a) The individual sustained a traumatic brain injury with structural, nondegenerative brain damage and is medically stable;

(b) The individual is not in a persistent vegetative state;

(c) The individual demonstrates physical, behavioral, and cognitive rehabilitation potential;

(d) The individual requires coma management; and

(e) The individual has sustained diffuse brain damage caused by anoxia, toxic poisoning, encepalitis, or cardiovascular accident with rehabilitation potential.

(3) The determination as to whether preauthorization is appropriate will be made taking into consideration the following:

(a) The presenting problem;

(b) The goals and expected benefits of the admission;

(c) The initial estimated time frames for goal accomplishment; and

(d) The services needed.

(4) The following are indicators that show it is inappropriate to preauthorize coverage for services provided in a certified brain injury unit:

(a) Strokes, (note: skilled nursing facilities provide rehabilitation services that are expected to meet the needs of most stroke patients);

(b) Spinal cord injuries in which there are no known or obvious injuries to the intercranial central nervous system;

(c) Progressive dementias and other mentally impairing conditions;

(d) Depression and psychiatric disorders in which there is no known or obvious central nervous system damage;

(e) Mental retardation, developmental disabilities, and birth defect related disorders of long standing; and

(f) Neurological degenerative, metabolic and other medical conditions of a chronic, degenerative nature.

Section 7. [6.] Reserved Bed Days. The cabinet will cover reserved bed days (effective December 1, 1984) in accordance with the following specified upper limits and criteria.

(1) Reserved bed days will be covered for a maximum of fourteen (14) days per absence for a hospital stay with an overall maximum of forty-five (45) days per provider during the calendar year.

(2) Reserved bed days will be covered for a maximum of fifteen (15) days per provider during the calendar year for leaves of absence other than for hospitalization.

(3) Coverage during a recipient's absence for hospitalization or leave of absence is contingent on the following conditions being met:

(a) The person is in Title XIX payment status in the level of care he/she is authorized to receive and has been a resident of the facility at least overnight. Persons for whom Title XIX is making Title XVIII coinsurance payments are not considered to be in Title XIX payment status for purposes of this policy;

(b) The person can be reasonably expected to return to the same level of care;

(c) Due to demand at the facility for beds at that level, there is a likelihood that the bed

would be occupied by some other patient were it not reserved;

(d) The hospitalization is for treatment of an acute condition, and not for testing, brace-fitting, etc.; and

(e) In the case of leaves of absence other than for hospitalization, the patient's physician orders and plan of care provide for such leaves. Leaves of absence include visits with relatives and friends, and leaves to participate in state-approved therapeutic or rehabilitative programs.

Section 8. The amendments to this regulation shall be effective with regard to covered services provided on or after July 1, 1989.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 27, 1989
FILED WITH LRC: July 14, 1989 at 11 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:026E

This emergency administrative regulation is being amended to comply with federal regulations which require a Medicaid agency to provide to children eligible for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services orthodontic treatment when such treatment is medically necessary to correct handicapping malocclusions. The regulation is also being amended to add additional procedures for which a general dentist may be reimbursed. These additional procedures are being added to comply with the Omnibus Budget Reconciliation Act of 1987 which provides for comparability of services between physicians and dentists. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on May 2, 1989 since that emergency regulation did not include the expanded coverage of orthodontic services for children eligible for Early and Periodic Screening, Diagnosis and Treatment services. This emergency administrative regulation shall be replaced by an ordinary regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about July 1, 1989.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:026E. Dental services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: July 14, 1989

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to dental services for which payment shall be made by the Medical Assistance Program in behalf of both the categorically needy and the medically needy.

Section 1. Out-of-hospital Services. Payment for services is limited to those procedures listed in the cabinet's dental benefit schedule which are included in the following categories:

(1) Diagnostic;
(2) Preventive;
(3) Oral surgery;
(4) Endodontics;
(5) Orthodontics;
(6) Prosthetics;
(7) Operative;
(8) Crown; and
(9) Other services.

Section 2. Limitations for those under Age Twenty-one (21). The following limitations shall be applicable with regard to services provided to eligible recipients of medical assistance who are under age twenty-one (21):

(1) Dental prophylaxis, to include application of stannous fluoride, is limited to one (1) treatment per year.

(2) Bitewing x-rays are limited to four (4) x-rays per patient per year per dentist.

(3) Full mouth radiograph is limited to one (1) per patient per every two (2) years per dentist.

(4) The following orthodontic procedures are limited per twelve (12) month period to any combination totaling two (2) per patient: fixed space maintainer, band type; removable space maintainer, acrylic; removable appliance for tooth guidance; and fixed or cemented appliance for tooth guidance. Effective with regard to services provided on or after July 1, 1989, the following orthodontic procedures are available upon appropriate preauthorization by the cabinet (except orthodontic consultation, which need not be preauthorized) when services are medically necessary to correct handicapping malocclusions, with limitations as specified for the individual procedure:

(a) Orthodontic consultation is limited to one (1) per recipient per twelve (12) month period;

(b) Preauthorized orthodontia services for moderately severe handicapping malocclusions;

(c) Preauthorized orthodontia services for severe handicapping malocclusions;

(d) Retention visit or stabilization visit is allowable as a separate procedure only when a patient is referred to another practitioner in another service area and is limited to one (1) per month per recipient with a maximum of twenty-four (24) retention visits and with a maximum of ten (10) stabilization visits per lifetime.

(5) The following prosthetic procedures are limited as specified for the individual procedure:

(a) Transitional appliance, includes one (1) tooth on appliance, upper appliance, is limited to one (1) per twelve (12) month period, per patient;

(b) Transitional appliance, includes one (1) tooth on appliance, lower appliance, is limited to one (1) per twelve (12) month period, per patient;

(c) Repair of fracture of transitional appliance and space maintainer is limited to three (3) per twelve (12) month period, per patient;

(d) Repair of fracture and replacement of one

(1) broken tooth on a transitional appliance and space maintainer is limited to three (3) per twelve (12) month period, per patient;

(e) Repairing broken complete denture with no teeth damaged is limited to three (3) per twelve (12) month period, per patient; and

(f) Repairing broken complete denture and replacing one (1) broken tooth is limited to three (3) per twelve (12) month period, per patient.

(g) Relining upper denture (flask cured only) is limited to one (1) per twelve (12) month period per patient.

(h) Relining lower denture (flask cured only) is limited to one (1) twelve (12) month period per patient.

Section 3. Inpatient Hospital Services. (1) Payment shall be made for all hospital inpatient services rendered by oral surgeons subject to the general physician limitations shown in 907 KAR 1:009, Physicians' services.

(2) Payment shall be provided for services rendered by general dentists for hospital inpatient care for patients termed to be "medically a high risk," defined as:

(a) Heart disease;

(b) Respiratory disease;

(c) Chronic bleeder;

(d) Uncontrollable patient, i.e., retardate, emotionally disturbed;

(e) Other, e.g., car accident, high temperature, massive infection.

Section 4. Coverage of Dental Benefits for Adults. The following named dental benefits only shall be covered for adults (eligible individuals aged twenty-one (21) or over), effective January 1, 1982 except as otherwise specified in this regulation.

(1) Oral surgery, as follows:

(a) Extraction, single tooth, with local anesthetic and including routine postoperative care, effective with regard to services provided on or after November 1, 1987;

(b) Extraction, each additional tooth, with local anesthetic and including routine postoperative care, effective with regard to services provided on or after November 1, 1987; and

(c) Root removal (but not payable on the same day the same tooth was extracted).

(2) Operative, as follows:

(a) Amalgam filling for one (1) surface cavity;

(b) Amalgam filling for two (2) surface cavity;

(c) Amalgam filling for cavity involving three (3) or more surfaces;

(d) Silicate cement filling;

(e) Acrylic, plastic, or composite filling; and

(f) Buildup to repair a fractured incisal or anterior tooth.

(3) Diagnostic services, as follows:

(a) Bitewing x-rays, limited to four (4) x-rays per patient per year per dentist;

(b) Intraoral periapical radiograph, single view; and

(c) Full mouth radiograph, single panoramic film limited to one (1) per patient per every two (2) years per dentist.

(4) Preventive services as follows: adult dental prophylaxis, effective with regard to services provided on or after August 1, 1986.

(5) Other services, as follows: emergency treatment for pain, infection and hemorrhage.

Section 5. Other Provisions, Limitations and Clarifications. (1) Intraoral periapical radiograph, single view, is limited to fourteen (14) per patient, per year, per dentist.

(2) The procedure code for stainless steel crown will also include polycarbonate (acrylic) and full composite crown for anterior teeth. However, should a provider choose to provide crowns for anterior teeth, the usual and customary charge for a stainless steel crown must be billed.

(3) Bonded veneers are not covered as a separate entity, nor should they be provided and billed under any existing procedure code.

(4) The Sargenti method of root canal treatment is not covered under the present root canal procedure codes.

(5) The Medical Assistance Program recognizes five (5) surfaces of a tooth (buccal or labial, mesial, distal, lingual, occlusal or incisal). Only one (1) filling may be billed per surface with a maximum of five (5) per tooth.

(6) Nitrous oxide is not covered under the procedure for general anesthesia or any other procedure.

(7) Effective with regard to services provided on or after May 1, 1989, the following procedures shall be covered for all age groups:

(a) Alveoplasty (alveoloplasty) in conjunction with extractions per quadrant;

(b) Apicoectomy (per tooth) - first root;

(c) Apicoectomy (per tooth) each additional root;

(d) Gingivectomy or gingivoplasty - per quadrant;

(e) Gingivectomy or gingivoplasty - per tooth;

(f) Biopsy - excision of benign tumor - lesion diameter up to 1.25 cm.;

(g) Frenulectomy (frenotomy or frenectomy - separate procedure);

(h) Suture of recent small wounds up to five (5) cm.;

(i) Incision and drainage - intraoral soft tissue;

(j) Incision and drainage - extraoral soft tissue;

(k) Removal of foreign body, skin, or subcutaneous areolar tissue;

(l) Hospital call;

(m) Emergency call (intermediate level of service); and

(n) Comprehensive oral examination (limited to one (1) per provider per recipient per year).

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 27, 1989
FILED WITH LRC: July 14, 1989 at 11 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:027E

This emergency administrative regulation is being amended to show the reimbursement methodology for the expanded coverage of orthodontic services for eligible Early and Periodic Screening, Diagnosis and Treatment (EPSDT) children for medically necessary treatment to correct handicapping malocclusions. This action is being taken to comply with federal regulations. The regulation also contains an amendment to show the payment methodology for additional procedures for which a general dentist may be reimbursed. These

additional procedures are being added to comply with the Omnibus Budget Reconciliation Act of 1987 which provides for comparability of services between physicians and dentists. A technical change has also been made with regard to hospital inpatient services provided by general dentists. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on May 2, 1989 since that emergency regulation did not contain the reimbursement methodology for the expanded coverage of orthodontic services. This emergency administrative regulation shall be replaced by an ordinary regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about July 1, 1989.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:027E. Payments for dental services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: July 14, 1989
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for dental services.

Section 1. Definitions. For purposes of determination of payment:
(1) "Usual and customary charge" refers to the uniform amount which the individual dentist charges in the majority of cases for a specific dental procedure or service.
(2) "Prevailing charge" refers to those charges which fall within the range of charges as computed by the use of a predetermined and established statistical percentile. Prevailing charges for each dental procedure are derived from the overall pattern existing within the state.

Section 2. [1.] Out-of-hospital Care. (1) The cabinet shall reimburse participating dentists for covered services rendered to eligible medical assistance recipients at rates based on the dentist's usual customary, reasonable, and prevailing charges.
[(2) Definitions. For purpose of determination of payment.]
[(a) "Usual and customary charge" refers to the uniform amount which the individual dentist charges in the majority of cases for a specific dental procedure or service.]
[(b) "Prevailing charge" refers to those charges which fall within the range of charges as computed by the use of a predetermined and established statistical percentile. Prevailing charges for each dental procedure are derived from the overall pattern existing within the state.]
(2) [(3)] Method and source of information on charges.
(a) Effective with fee revisions December 1, 1974 and after, individual fee profiles for participating dentists shall [will] be generated from historical data accumulated from charges submitted and processed by the Medical Assistance Program during all of the calendar year preceding the start of the fiscal year in which the determination is made.
(b) Effective with revisions December 1, 1974 and after, Title XIX prevailing fee maximums shall [will] be generated from the same historical data as referenced in paragraph (a) of this subsection.
(c) Effective with revisions December 1, 1974 and after, when applicable, Title XVIII, Part B current aggregate prevailing charge data shall [will] be utilized by the Medical Assistance Program.
(d) Percentile. The Title XIX prevailing charges were established by utilizing the statistical computation of the 50th and 75th percentile.
(4) Maximum reimbursement for covered procedures. Reimbursement for covered procedures shall be limited to the lowest of the following:
(a) The actual charge for services rendered as submitted on the billing statement.
(b) The dentist's median charge for a given service derived from claims processed during all of the calendar year preceding the start of the fiscal year in which the determination is made.
(c) The Title XIX prevailing fee maximum for a given service, derived from claims processed as described in paragraph (b) of this subsection.

Section 3. [2.] Hospital Inpatient Care. (1) Hospitalized inpatient care, which is paid in the same manner as shown in Section 2 [1] of this regulation [with the exception that the same inpatient hospital rate reduction applied to physicians will also be applied to general dentists], refers to those services provided inpatients. It does not include dental services provided in the outpatient, extended care or home health units of hospitals. Any dentist submitting a claim for hospital inpatient care benefits must agree to accept payment in full for services rendered that patient during that admission.
(2) A general dentist may submit a claim for hospital inpatient services for the patient termed "medically a high risk." Medically high risk is defined as a patient in one (1) of the following classifications:
(a) Heart disease;
(b) Respiratory disease;
(c) Chronic bleeder;
(d) Uncontrollable patient (retardate, emotionally disturbed); or
(e) Other (car accident, high temperature, massive infection, etc.).

Section 4. Reimbursement Exceptions. (1) Effective with regard to services provided on or after May 1, 1989, the procedures specified in this section shall not be paid in accordance with Sections 2 and 3 of this regulation but shall be paid at the lower of the provider's usual and customary actual billed charge or the fixed fee (i.e., fee upper limits) specified in this section. The procedures and fixed fees are as follows:
(a) Alveoplasty (alveoloplasty) in conjunction with extractions per quadrant, $54;

(b) Apicoectomy (per tooth) - first root, $60;
(c) Apicoectomy (per tooth) each additional root, $74;
(d) Gingivectomy or gingivoplasty - per quadrant, $168;
(e) Gingivectomy or gingivoplasty - per tooth, $66;
(f) Biopsy - excision of benign tumor - lesion diameter up to 1.25 cm., $37;
(g) Frenulectomy (frenotomy or frenectomy - separate procedure), $47;
(h) Suture of recent small wounds up to five (5) cm., $57;
(i) Incision and drainage - intraoral soft tissue, $39;
(j) Incision and drainage - extraoral soft tissue, $31;
(k) Removal of foreign body, skin, or subcutaneous areolar tissue, $109;
(l) Hospital call, $30;
(m) Emergency call (intermediate level of service), $25; and
(n) Comprehensive oral examination (limited to one (1) per provider per recipient per year), $15.

(2) Effective with regard to services provided on or after July 1, 1989, the procedures specified in this section shall not be paid in accordance with Sections 2 and 3 of this regulation but shall be paid at the lower of the provider's usual and customary actual billed charge or the fixed fee (i.e., fee upper limit) specified in this section with preauthorization required for all procedures except for orthodontic consultation. The procedures and fixed fees are as follows:
(a) Orthodontic consultation, $100, except that the fixed fee is fifty (50) dollars if the provider is referring the recipient to a specialist or the preauthorization for orthodontia services is not approved or a request for preauthorization of orthodontia services is not made;
(b) Preauthorized orthodontic services for moderately severe handicapping malocclusions, $1,600 for orthodontists and $1,440 for general dentists;
(c) Preauthorized orthodontic services for severe handicapping malocclusions, $2,400 for orthodontists and $2,160 for general dentists;
(d) Retention visits, $30; and
(e) Stabilization visit, $15.

Section 5. [3.] Oral surgeons shall be treated in the same manner as physicians for reimbursement purposes, and shall be subject to the terms and conditions of payment shown in 907 KAR 1:010, Payments for physicians' services.

[Section 4. The amendments to this regulation shall be effective with regard to services provided on or after November 1, 1987.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 27, 1989
FILED WITH LRC: July 14, 1989 at 11 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:031E

This emergency administrative regulation is being amended as follows effective with regard to services provided on or after July 1, 1989: durable medical equipment (DME) is being removed as a covered service under the home health agency component since DME is now covered separately; to simplify the reimbursement methodology for new home health agencies, they will be paid seventy (70) percent of the Medicaid maximum rate not to exceed Medicare upper limits; to simplify the reimbursement methodology for out-of-state home health agencies, they will be paid at the lower of the Medicare maximum payment rate or the Medicaid maximum payment rate or the agency's usual and customary actual billed charge, and at eighty (80) percent of the usual and customary billed charge for disposable medical supplies; and a home health agency (but not including a publicly operated agency) whose nonaggregated base year costs are below the prospective upper limit for the agency shall receive a prospectively paid cost containment incentive payment. This regulation must be promulgated on an emergency basis to implement the payment revisions in a timely manner. This emergency administrative regulation shall be replaced by an ordinary regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about July 1, 1989.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

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

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: July 14, 1989
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for home health agency services.

Section 1. Payments to Home Health Agencies. (1) The cabinet shall reimburse participating home health agencies on the basis of interim rates set by the cabinet using available Medicare data and methodology as applied to Medicaid covered services, taking into consideration the upper limit shown in Section 2 of this regulation and the various policies and guidelines specified in the Kentucky Medical Assistance Program Home Health Reimbursement Manual, dated July 1, 1989 [1988], which is hereby incorporated by reference. A home health agency (but not including a publicly operated agency) whose nonaggregated base year costs (as shown in the cost report used to set the agency's interim rate) are below the prospective upper limit for the agency shall receive a cost containment incentive payment in accordance with the incentive payment schedule shown in the reimbursement manual; the incentive payment will not be subject to retrospective settlement. The Kentucky Medical Assistance Program Home Health Reimbursement Manual may be reviewed during

regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621.

(2) Payments made at the interim rate (except for incentive payments) will be settled back to actual allowable cost at the end of the facilities' fiscal year, with actual allowable costs not to exceed the amounts that would be allowable taking into consideration the upper limit specified in Section 2 of this regulation. The Medicaid final rates (except for incentive payments) may not exceed federally established upper limits for Medicare.

Section 2. Application of Upper Limits. Publicly operated home health agencies (except [and] new facilities as shown in Section 5 of this regulation) [with less than two (2) full facility fiscal years of operations] will be reimbursed at full allowable cost but are subject to the Medicare upper limits. Payments for other agencies (except [payments for durable medical equipment, as shown in Section 3 of this regulation, and] payments for disposable medical supplies, as shown in Section 4 of this regulation), and incentive payments as shown in Section 1 of this regulation may not exceed a prospective upper limit which will be set at 105 percent of the weighted median of the array of allowable per visit costs of those agencies that will be subject to the upper limits with facilities placed in an urban or rural array based on the facility location for the following cost centers or disciplines: skilled nursing, speech pathology, physical therapy, occupational therapy, medical social services, and home health aid services. A determination as to whether a county is urban or rural will be made taking into account usual standard metropolitan statistical areas. The arrays shall be based on annual cost report data with costs trended through June 30 and indexed for the rate year; the rate year shall begin on July 1 and end on June 30; and the upper limit shall be subject to an annual adjustment to be effective on July 1 of each rate year. Aggregation of costs (i.e., shifting of allowable costs from one cost center to another if the limit is exceeded in one cost center but not in another) will be permitted. For rate years beginning July 1, 1986 and thereafter, the array shall be based on the latest available cost report as of May 31 preceding the rate year.

Section 3. Payments for Durable Medical Equipment. Effective July 1, 1989, home health agencies shall not be reimbursed for durable medical equipment. [The interim payment amount for durable medical equipment shall be determined taking into account Medicaid upper limits on cost for such durable medical equipment, and may include an amount for administrative cost not to exceed twenty (20) percent of the interim payment amount set for the item(s) of durable medical equipment. All participating home health agencies may receive full allowable costs for durable medical equipment, with allowable costs determined taking into account appropriate upper limits.]

Section 4. Disposal medical supplies shall be reimbursed on an interim basis at a percent of allowable billed charges with a settlement to actual costs at the end of the agency's fiscal year.

Section 5. New home health agencies shall be paid seventy (70) percent of the Title XIX maximum rate [an interim budgeted rate basis, with interim payments] not to exceed Medicare upper limits, until a fiscal year end cost report is available. During this initial period, the rate can be adjusted if the provider documents the justification for a rate change by the submittal of a projected cost report. [, with payments settled back to full allowable costs.]

Section 6. Owners' compensation shall be limited as shown in the Home Health Reimbursement Manual.

Section 7. Payments to Out-of-state Home Health Agencies Effective with Regard to Services Provided on or after July 1, 1989. (1) The cabinet shall reimburse participating out-of-state home health agencies at the lower of the Title XVIII maximum payment rate, the Title XIX maximum payment rate, or the agency's actual usual and customary billed charge.

(2) Disposable medical supplies shall be reimbursed at a rate of eighty (80) percent of the actual usual and customary billed charge.

Section 8. [7.] Appeals. Participating home health agencies are provided the following mechanism for a review of program decisions relating to the application of the policies and procedures governing home health agency payments.

(1) A home health agency operator may request reconsideration of a program decision by writing to the Director, Division of Reimbursement and Contracts. This request must be received within forty-five (45) days following transmittal of the audited cost report to the agency or the notification of the agency's prospective rate. The request for workpapers pertaining to audit adjustments to the home health agency's cost report will not extend the forty-five (45) day time limit. The request for appeal shall [must] indicate which adjustments the home health agency wishes to appeal. A blanket request to appeal the cost report will not be accepted. Upon receipt of the request for review, the division will determine the need for a program/vendor conference and will contact the home health agency to arrange a conference if needed. The conference, if needed, shall [must] be held within sixty (60) days of the program's receipt of the home health agency's request for review unless delayed due to extenuating circumstances. Regardless of the program decision, the provider will be afforded the opportunity for a conference if he so wishes for a full explanation of the factors involved and the program decision. Following review of the matter, the director will notify the home health agency of the action to be taken by the division within twenty (20) days of receipt of the request for review or the date of the program/vendor conference, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.

(2) If the Director of Reimbursement and Contracts' decision is unsatisfactory, the home health agency may then appeal the question to a reimbursement review panel established by the Commissioner of the Department for Medicaid

Services which will include one (1) member of the Division of Reimbursement and Contracts, a representative of the Kentucky Association of Home Health Agencies, and a member of the Department for Medicaid Services (but not within the Division of Reimbursement and Contracts) as designated by the commissioner, with the [such] designated member to serve as chairperson. The request for review by the reimbursement review panel must be postmarked within twenty (20) days following the notification of the initial decision by the Director, Division of Reimbursement and Contracts. A date for the reimbursement review panel to convene will be established within twenty (20) days after receipt of a written request for the [such] appeal. The question will be heard by the panel. The panel shall issue a binding decision on the issue within thirty (30) days of the hearing of the issue, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue. In carrying out the intent and purposes of the program the panel may take into consideration extenuating circumstances which must be considered in order to provide for equitable treatment and reimbursement of the provider.

Section 9. [8.] Audits may be performed by either the Medicare or Medicaid program; if audited by both, the Medicaid audit will take precedence over the Medicare audit.

Section 10. [9.] The amendments to this regulation shall be effective with regard to services provided on or after July 1, 1989 [1988].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 27, 1989
FILED WITH LRC: July 14, 1989 at 11 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:036E

This emergency administrative regulation is being amended to make the following changes: rate adjustments are being made for nurse aide training, implementation of universal precautions, and (for intermediate care facilities only) hiring of medical directors, in response to federal mandates; as a program improvement, the latest available cost reports will be used in setting rates; as a program improvement, the hospital based skilled nursing facility upper limits will be frozen at the level in effect on January 1, 1989; as a program improvement, a special upper limit will be set for certified skilled nursing facility brain injury units; and usual required program updates and clarifications have been made. An emergency regulation is necessary to implement these changes in an administratively efficient and timely manner. This regulation differs from the emergency regulation filed on January 6, 1989 in that none of the changes being made in this emergency regulation were shown in the regulation on that date. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about July 1, 1989.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

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

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: July 14, 1989
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for skilled nursing care facility services and intermediate care facility services.

Section 1. Definitions. For purpose of Sections 2 through 6 of this regulation, the following definitions shall prevail unless the specific context dictates otherwise:

(1) "Allowable cost" means that portion of the facility's cost which may be allowed by the cabinet in establishing the reimbursement rate. Generally, cost is considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care and the cost incurred by the facility is within cost limits established by the cabinet, i.e., the allowable cost is "reasonable."

(2) "Ancillary services" means those direct services for which a separate charge is customarily made, and which except for ventilator therapy services are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services are limited to the following:

(a) Legend and nonlegend drugs, including indwelling urethral catheters and syringes, and irrigation supplies and solutions utilized with those catheters regardless of how those supplies and solutions are utilized. Coverage and allowable cost payment limitations are specified in the cabinet's regulation on payment for drugs. Hyperalimentation, when used as the total source of nutrition for a resident, is included as a drug cost.

(b) Physical, occupational and speech therapy.

(c) Laboratory procedures.

(d) X-ray.

(e) Oxygen and other related oxygen supplies.

(f) Respiratory therapy (excluding the routine administration of oxygen) effective September 1, 1988.

(g) Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded only).

(h) Ventilator therapy services, subject to the coverage limitations shown in the reimbursement manual.

(i) Disposable and reusable incontinent briefs, reusable briefs with disposable liners, and disposable or reusable underpads when ordered by a physician.

(3) "Hospital based skilled nursing

facilities" means those skilled nursing facilities so classified by Title XVIII-A.

(4) The "basic per diem cost" is the computed rate arrived at when otherwise allowable costs are trended and adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(5) "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs. The inflation factor shall be included for rates computed on August 3, 1985, and thereafter.

(6) "Incentive factor" means the comparison of the basic per diem cost with the incentive return schedule to arrive at the actual dollar amount of cost containment incentive return to be added to the basic per diem cost.

(7) "Investment factor" means the comparison of the basic per diem cost with the investment return schedule to arrive at the actual dollar amount of investment return to be added to the basic per diem cost.

(8) "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(9) "Maximum payment" means the maximum amount the cabinet will reimburse, on a facility by facility basis, for routine services.

(10) "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(11) "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified such prospective rate shall not be retroactively adjusted, either in favor of the facility or the cabinet.

(12) "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include but are not limited to the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services.

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes are allowable as routine services if generally furnished to all patients.

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, band-aids and tongue depressors.

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a skilled nursing or intermediate care facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment.

(e) Laundry services including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs.

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

(13) For disposable briefs, reusable briefs, reusable briefs with disposable liners, and disposable or reusable underpads provided upon a physician's orders, the per unit product cost in excess of twenty (20) cents, but not in excess of forty (40) cents, shall be considered ancillary cost, with other cost for such products (including all laundry cost) to be considered routine cost. The first six (6) dollars and fifty (50) cents of cost per catheter for indwelling urethral catheters (excluding specialty purpose catheters) shall be considered as allowable ancillary cost with any balance of cost to be considered as allowable routine cost. Indwelling urethral special purpose catheters will be reimbursable as an ancillary at full allowable cost when ordered by a physician.

(14) Effective October 1, 1988, "skilled nursing facility with a mental retardation specialty (SNF/MRS)" means a skilled nursing facility in which at least seventy-five (75) percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation.

Section 2. Reimbursement for Skilled Nursing and Intermediate Care Facilities. All skilled nursing facilities (SNFs) or intermediate care facilities (ICFs) participating in the Title XIX program shall be reimbursed in accordance with this regulation. Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280. A skilled nursing facility desiring to participate in Title XIX shall be required to participate in Title XVIII-A.

Section 3. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which are reasonable and adequate to meet the costs which are required to be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the cabinet (Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual, revised December 20, 1988 which is hereby incorporated by reference) and supplemented by the use of the Title XVIII-A reimbursement principles. The Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.

Section 4. Implementation of the Payment System. The cabinet's reimbursement system is supported by the Title XVIII-A Principles of Reimbursement, with the system utilizing such

principles as guidelines in unaddressed policy areas. The cabinet's reimbursement system includes the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the cabinet on a facility by facility basis, and shall not be subject to retroactive adjustment except as specified in this section, including the provisions contained in subsections (14) and (15) of this section. Prospective rates shall be set annually, and may be revised on an interim basis in accordance with procedures set by the cabinet. An adjustment to the prospective rate (subject to the maximum payment for that type of facility) will be considered only if a facility's increased costs are attributable to one (1) of the following reasons: governmentally imposed minimum wage increases; the direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in regulation or written policy which affects all facilities within the class; or other governmental actions that result in an unforeseen cost increase. The amount of any prospective rate adjustment shall not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs will be classified into two (2) general areas, salaries and other. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility. The state will set a uniform rate year for SNFs and ICFs (July 1 - June 30) by taking the latest [audited] cost data available as of May 16 of each year and trending the facility costs to July 1 of the rate year. (Unaudited, partial year, or budgeted cost data may be used if a full year's audited data is unavailable. Unaudited reports are subject to adjustment to the audited amount[, and will be used when an audited cost report ending within twenty-four (24) months of the 30th of April preceding the rate year is not available]. Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied. Facilities beginning program participation on or after July 1, 1984 whose rates are subject to settlement back to cost will not be included in the arrays until such time as the facilities are no longer subject to cost settlement.) After allowable costs are indexed for inflation for the rate year, freestanding (nonhospital based) facilities will be arrayed and the maximum set at 102 percent of the median for the class (SNF or ICF). Publicly operated skilled nursing and intermediate care facilities classified as institutions for mental diseases will not be subject to the administratively set upper limit and component limitations, although such facilities will be included in the arrays for purposes of establishing the applicable upper limits. In recognition of the higher costs of hospital based SNFs, their upper limit shall be set at [135 percent of the upper limit of all other SNFs for covered services provided on or after July 1, 1988, and at] 125 percent of the upper limit of all other SNFs for covered services provided as of [on or after] January 1, 1989 (plus the adjustments for nurse aide training and universal precautions), and shall remain at that amount through June 30, 1991; effective July 1, 1991, the hospital based SNF upper limit shall be the same as the upper limit for all other nursing facilities [at 115 percent of the upper limit of all other SNFs for covered services provided on or after October 1, 1989, and at 105 percent of the upper limit of all other SNFs for covered services provided on or after July 1, 1990]. For a skilled nursing facility with mental retardation specialty, effective with regard to services provided on or after October 1, 1988, the upper limit shall be set at 120 percent of the maximum payment for freestanding skilled nursing facilities. For skilled nursing facility Medicaid certified units providing preauthorized specialized rehabilitation services for persons with brain injuries, the payment rate shall be usual and customary actual billed charges up to a maximum of $335 per diem. The maximum payment amounts will be adjusted each July 1, beginning with July 1, 1985, so that the maximum payment amount for the prospective uniform rate year will be at 102 percent of the median per diem allowable costs for the class (SNF or ICF) on July 1 of that year. For purposes of administrative ease in computations normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data. For ICF-MRs, there is no administratively established upper limit. To accomplish federally mandated program improvements, effective July 1, 1989, and continuing through June 30, 1991, the allowable per diem cost for each SNF or ICF shall include one (1) dollar and twenty (20) cents for nurse aide training and one (1) dollar and thirty-eight (38) cents for implementation of universal precautions for disease control, and ICFs shall be paid an additional four (4) cents for medical director costs; these allowable cost amounts shall not be subject to adjustment or cost settlement. [Effective January 1, 1987, and continuing through the rate years beginning July 1, 1987, and July 1, 1988, the allowable cost for each facility shall include a patient care labor intensity factor of two and six-tenths (2.6) percent applied to that portion of the facilities' operating costs attributable (based on averages for the class of facility) to labor costs. This allowance is generally intended for the purpose of direct service staff improvements to enhance patient care.]

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy services which shall be paid on a prospective rate basis. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement. Ancillary costs may be subject to maximum allowable cost limits under federal regulations.

Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the cabinet exceeding twenty-five (25) percent of billed charges, or where an evaluation by the cabinet of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent. A refund will be requested from a facility if the amount paid to the facility for legend drugs, covered legend devices and nonlegend drugs, if applicable, exceeds the program's computed maximum allowable cost. The amount of refund will be determined by conducting a statistically accurate sample of the Medicaid patients for the facility's fiscal year. The percentage that a facility is over the computed maximum allowable cost will be multiplied by the amount paid by the program for drugs for the fiscal year under review.

(4) Interest expense used in setting the prospective rate is an allowable cost if permitted under Title XVIII-A principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates will be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relates to providing patient care. The form of such indebtedness may include, but is not limited to, notes, advances and various types of receivable financing;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets will not be considered an allowable cost.

(5) Compensation to owner/administrators will be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function. Compensation includes the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator. Payment for services requiring a licensed or certified professional performed on an intermittent basis will not be considered a part of compensation. "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service. Reasonableness of compensation will be based on total licensed beds (all levels). Compensation for owners and nonowner administrators (except for nonowner administrators of intermediate care facilities for the mentally retarded and dual licensed pediatric facilities) shall not exceed the amounts specified in the Intermediate Care/Skilled Nursing Facility Reimbursement Manual.

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except when it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship will be considered to exist when an individual or individuals possess five (5) percent or more of ownership or equity in the facility and the supplying business; however, an exception to the relationship shall be determined to exist when fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for general intermediate care facilities entering into lease/rent arrangements prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and skilled nursing facilities entering into lease/rent arrangements prior to December 1, 1979, the cabinet will determine the allowable costs of such arrangements based on the general reasonableness of such costs.

(8) The following provisions are applicable with regard to median per diem cost center upper limits:

(a) For facilities (except ICF-MRs) beginning participation in the Medicaid program on or after April 1, 1981, (and classified as newly participating facilities for purposes of this subsection), the following upper limits (within the class) shall be applicable with regard to otherwise allowable per diem costs, by cost center: for nursing services, 125 percent of the median; for dietary services, 125 percent of the median; for capital costs, 105 percent of the median; and for all other costs, 105 percent of the median.

(b) Facilities participating in the Medicaid program prior to April 1, 1981, shall be classified as newly participating facilities (solely for purposes of this subsection) when either of the following occurs on or after April 1, 1981: first, when the facility expands its bed capacity by expansion of its currently existing plant or, second, when a multilevel facility (one providing more than one (1) type of care) converts existing personal care beds in the facility to either skilled nursing or intermediate care beds, and the number of additional or converted personal care beds equals or exceeds (in the cumulative) twenty-five (25) percent of the Medicaid certified beds in the facility as of March 31, 1981; however, as an exception to the conditions specified in this subsection a facility will not be considered as newly participating if it increases its certified bed capacity by no more than a cumulative total of thirty-five (35) beds (on or after April 1, 1981) so long as its new total certified bed capacity does not exceed sixty-five (65) beds. Facilities participating in the Medicaid program prior to April 1, 1981 shall not be classified as newly participating facilities solely because of changes of ownership.

(c) For purposes of application of this subsection the facility classes are basic intermediate care and skilled nursing care. The "median per diem cost" is the midpoint of the range of all facilities' costs (for the class) which are attributable to the specific cost center, which are otherwise allowable costs for the facilities' prior fiscal year, and which are adjusted by trending, indexing and the occupancy factor. The median for each cost center for each class shall be determined annually using the same cost data for the class which was used in setting the maximum payment amount. The Department for Medicaid Services shall notify all participating facilities of the median per diem cost center upper limits currently in effect.

(d) A facility may request that the Reimbursement Review Panel grant a waiver of its status as a newly participating facility based upon a presentation of facts showing that the provider had already incurred a substantial material financial obligation or binding commitment toward building or expanding a facility prior to April 1, 1981. The obtaining of a certificate of need shall not be construed, in itself, to be sufficient to justify approval of a waiver request, and a waiver, if granted, shall be applicable only with regard to that building or expansion for which the waiver was requested and approved.

(e) Intermediate care facilities for the mentally retarded (ICF-MRs) are not subject to the median per diem cost center upper limits shown in this subsection.

(f) Effective with regard to services provided on or after October 1, 1988, skilled nursing facilities with a mental retardation specialty (SNF/MRS) are not subject to the median per diem cost center upper limits shown in this subsection.

(9) Certain costs not directly associated with patient care will not be considered allowable costs. Costs which are not allowable include political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), specified vehicle costs as shown in the Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual, and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs unless such costs are incurred by administrators or owners.

(10) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods will be used for changes of ownership occurring before July 18, 1984:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain is defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale is any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which is usually fair market value. Lease-purchase agreements or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner are not considered sales until legal ownership of the property is transferred.

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis will be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(11) Notwithstanding the provisions contained in subsection (10) of this section, or in any other section or subsection of this regulation or the "Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual," the cost basis for any facility changing ownership on or after July 18, 1984 (but not including changes of ownership pursuant to an enforceable agreement entered into prior to July 18, 1984 as specified in subsection (10)(e) of this section) shall be determined in accordance with the methodology set forth herein for the reevaluation of assets of skilled nursing and intermediate care facilities.

(a) No increase will be allowed in capital costs.

(b) The allowable historical base for depreciation for the purchaser will be the lesser of the allowable historical cost of the seller less any depreciation allowed to the seller in prior periods, or the actual purchase price.

(c) The amount of interest expense allowable to the purchaser is limited to the amount that was allowable to the seller at the time of the sale.

(12) Each facility shall maintain and make available any records (in a form acceptable to the cabinet) which the cabinet may require to justify and document all costs to and services performed by the facility. The cabinet shall have access to all fiscal and service records and data maintained by the provider, including unlimited on-site access for accounting, auditing, medical review, utilization control and program planning purposes.

(13) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and will be used in establishing prospective rates and setting ancillary reimbursement amounts.

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program are to be so indicated with a description and rationale as a supplement to the cost report.

(c) Cabinet approval or rejection of projections or expansions will be made on a prospective basis in the context that if expansions and related costs are approved they will be considered when actually incurred as an allowable cost. Rejection of items or costs will represent notice that such costs will not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval will relate to the substance and intent rather than the cost projection.

(d) When a request for prior approval of

projections or expansions is made, absence of a response by the cabinet shall not be construed as approval of the item or expansion.

(14) The cabinet shall review each year-end cost report to determine the necessity for and scope of an audit in relation to routine and ancillary service cost. If an audit is not performed, the report will be settled without audit. If an audit is indicated, it will be either a limited-scope audit or a full field audit. An audit may be conducted for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; audits may be conducted annually or at less frequent intervals. An audit of ancillary cost will be conducted as needed.

(15) Year-end adjustments of the prospective rate and a retroactive cost settlement will be made when:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser.

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts, effective September 1, 1988.

(16) Reimbursement paid shall not exceed the facility's customary charges to the general public for such services, except in the case of public facilities rendering inpatient services at a nominal charge (which may be reimbursed at the prospective rate established by the cabinet).

(17) The cabinet may develop and utilize methodology to assure an adequate level of care. Facilities determined by the cabinet to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(18) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the cabinet's concurrence).

(19) Effective September 26, 1985 (for services provided on or after September 1, 1985), a participating skilled nursing facility may be paid for care provided to Medicaid eligible patients who meet intermediate care patient status criteria subject to the following criteria or conditions:

(a) The payment shall be made at the upper limit for payments to intermediate care facilities, or the skilled nursing rate for the facility if lower;

(b) The patient is required to be in the skilled nursing facility bed awaiting placement to an intermediate care bed; and

(c) The patient is required to have been reclassified from SNF patient status to ICF patient status; or, alternatively, the patient is required to meet ICF patient status criteria, and the appropriate representative of the Department for Social Services is required to certify that no ICF bed is available and that an emergency exists so that placement in the SNF bed offers the best alternative in the circumstances. Payment made based on the certification that no ICF bed is available and that an emergency exists may be made for no more than thirty (30) days; however, the certification and declaration of emergency may be renewed by the Department for Social Services as appropriate and payment may be made pursuant to such renewal.

Section 5. Prospective Rate Computation. The prospective rate for each facility will be set in accordance with the following:

(1) Determine allowable prior year cost for routine services.

(2) The allowable prior year cost, not including fixed or capital costs, will then be trended to the beginning of the uniform rate year and increased by a percentage so as to reasonably take into account economic conditions and trends. Such percentage increase shall be known as an inflation factor.

(3) The unadjusted basic per diem cost (defined as the unadjusted allowable cost per patient per day for routine services) will then be determined by comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the cabinet. The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates). The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy. The cabinet may impose a lower occupancy rate for newly constructed or newly participating facilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area. The cabinet may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing skilled nursing facility participates in the program under this payment system.

(4) Cost center median related per diem upper limits will then be applied as appropriate to the unadjusted basic per diem cost. The resultant adjusted amounts (and unadjusted amounts, as applicable) will be combined (or recombined) to arrive at the basic per diem cost (defined as the adjusted allowable cost per patient per day for routine services).

(5) To the basic per diem cost shall be added a specified dollar amount for investment risk and an incentive for cost containment in lieu of a return on equity capital, except that no return for investment risk shall be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the investment or incentive return.

(a) Cost incentive and investment schedule for general intermediate care facilities:

(Effective 7-1-89 [7-1-88])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$36.99 & below [$32.99 & below]	$.92	$.58
37.00 - 37.99 [33.00 - 33.99]	$.86	$.50
38.00 - 38.99 [34.00 - 34.99]	$.78	$.41
39.00 - 39.99 [35.00 - 35.99]	$.70	$.32
40.00 - 40.99 [36.00 - 36.99]	$.61	$.21
41.00 - 41.99 [37.00 - 37.99]	$.51	$.09
42.00 - 43.78 [38.00 - 38.61]	$.35	-

Maximum Payment $43.78 [38.61]

(b) Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 7-1-87)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$86.99 & below	$1.38	$.87
87.00 - 92.99	$1.29	$.75
93.00 - 98.99	$1.18	$.62
99.00 -104.99	$1.06	$.47
105.00 -110.99	$ .92	$.31
111.00 -116.99	$ .76	$.13
117.00 -123.49	$ .53	-

(c) Cost incentive and investment schedule for skilled nursing facilities:

(Effective 7-1-89 [7-1-88])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$49.99 & below [$43.99 & below]	$.92	$.58
50.00 - 51.99 [44.00 - 45.99]	.86	.50
52.00 - 53.99 [46.00 - 47.99]	.78	.41
54.00 - 55.99 [48.00 - 49.99]	.70	.32
56.00 - 57.99 [50.00 - 51.99]	.61	.21
58.00 - 59.99 [52.00 - 53.99]	.51	.09
60.00 - 62.32 [54.00 - 56.07]	.35	-

Maximum Payment $62.32 [56.07]*

*The maximum payment for hospital based skilled nursing facilities is set at $75.69 effective July 1, 1988 and $70.09 effective January 1, 1989.

(d) Cost incentive and investment schedule for skilled nursing facilities with mental retardation specialty:

(Effective 7-1-89 [10-1-88])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$56.99 & below [$53.99 & below]	$1.38	$.87
57.00 - 59.99 [54.00 - 55.99]	1.29	.75
60.00 - 62.99 [56.00 - 57.99]	1.18	.62
63.00 - 65.99 [58.00 - 59.99]	1.06	.47
66.00 - 68.99 [60.00 - 61.99]	.92	.31
69.00 - 71.99 [62.00 - 63.99]	.76	.13
72.00 - 74.78 [64.00 - 67.28]	.53	-

Maximum Payment $74.78 [67.28]*

(6) The prospective rate is then compared, as appropriate, with the maximum payment. If in excess of the program maximum, the prospective rate shall be reduced to the appropriate maximum payment amount. The maximum payment amounts have been set to be at or about 102 percent of the median of adjusted basic per diem costs for the class, recognizing that hospital based skilled nursing facilities and, effective October 1, 1988, skilled nursing facilities with a mental retardation specialty have special requirements that are required to be considered. The cabinet has determined that the maximum payment rates shall be reviewed annually against the criteria of 102 percent of the median for the class and that adjustments to the payment maximums will be made effective July 1, 1985 and each July 1 thereafter. This policy shall allow, but does not require lowering of the maximum payments below the current levels if application of the criteria against available cost data should show that 102 percent of the median is a lower dollar amount than has been currently set.

Section 6. Reimbursement Review and Appeal. Participating facilities may appeal cabinet decisions as to application of the general policies and procedures in accordance with the following:

(1) First recourse shall be for the facility to request in writing to the Director, Division of Reimbursement and Contracts, a reevaluation of the point at issue. This request is required to be received within forty-five (45) days following notification of the prospective rate or forwarding of the audited cost report by the program. The director shall review the matter and notify the facility of any action to be taken by the cabinet (including the retention of the original application of policy) within twenty (20) days of receipt of the request for review or the date of the program/vendor conference, if one is held, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.

(2) Second recourse shall be for the facility to request in writing to the Commissioner, Department for Medicaid Services, a review by a

standing review panel to be established by the commissioner. This request is required to be postmarked within twenty (20) days following notification of the decision of the Director, Division of Reimbursement and Contracts. Such panel shall consist of three (3) members: one (1) member from the Division of Reimbursement and Contracts, one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the Department for Medicaid Services (but not within the Division of Reimbursement and Contracts) as designated by the Commissioner, Department for Medicaid Services, with such designated member to act as chairperson of the review panel. A date for the reimbursement review panel to convene will be established within twenty (20) days after receipt of the written request. The panel shall issue a binding decision on the issue within thirty (30) days of the hearing of the issue, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue. In carrying out the intent and purposes of the program the panel may take into consideration extenuating circumstances which are required to be considered in order to provide for equitable treatment and reimbursement of the provider. The attendance of the representative of the Kentucky Association of Health Care Facilities at review panel meetings shall be at the cabinet's expense.

Section 7. Implementation Date. The amendments to this regulation shall be effective with regard to payments for services provided on or after July 1, 1989 [January 1, 1989 except as specified in Sections 1(14), 4(2), 4(8)(f), 5(5)(d) and 5(6) of this regulation and as specified in the incorporated material with regard to respiratory therapy services and services provided by a skilled nursing facility with a mental retardation specialty, which are effective September 1, 1988 and October 1, 1988, respectively].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 27, 1989
FILED WITH LRC: July 14, 1989 at 11 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:045E

This emergency administrative regulation is being amended to change the funding adjustment from $1.55 to $1.11 per unit of service for the mental health center's outpatient clinical payment rate effective July 1, 1989. This action must be taken on an emergency basis so as to ensure correct payments to mental health centers on a timely basis and avoid the excess expenditure of allocated funds. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on January 6, 1989 since this regulation changes the rate from $1.55 to $1.11. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about July 1, 1989.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:045E. Payments for mental health center services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: July 14, 1989
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for mental health center services.

Section 1. Mental Health Centers. In accordance with 42 CFR 447.325, the cabinet shall make payment to Kentucky based (in-state) providers who are appropriately licensed and have met the conditions for participation (including the signing of such contractural arrangements as the cabinet may require of this class of provider) set by the cabinet, on the following basis:

(1) Payment shall be on a prospective basis based on reasonable allowable prior year costs (utilizing the latest audited annual cost report or unaudited report if an audited report is not available) not to exceed usual and customary charges or the upper limits on payments. Allowable costs shall be trended to the beginning of the rate year and indexed for the rate year, so as to more accurately approximate actual costs which will be incurred during the year. (If an unaudited report is used, cost will not be adjusted based on audit.)

(2) Payment amounts shall be determined by application of the "Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement Manual," (revised December 20, 1988) developed and issued by the cabinet, (incorporated by reference to the extent that such policies, guidelines and principles are applicable to Title XIX services and reimbursement, and filed herein), supplemented by the use of Title XVIII reimbursement principles. The Kentucky Medical Assistance Program Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.

(3) Allowable costs shall not exceed customary charges which are reasonable. Allowable costs shall not include the costs associated with political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), the costs of motor vehicles used by management personnel which exceed $15,000 total valuation annually (unless such excess cost is considered as compensation to the management personnel),

and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs.

(4) The prospective rate shall not exceed 110 percent of the median of the reasonable allowable cost for each reimbursable departmental cost center (i.e., inpatient, outpatient, partial hospitalization and personal care) for all participating facilities. For services provided on or after July 1, 1989 [October 1, 1988], a funding adjustment of one (1) dollar and eleven (11) [fifty-five (55)] cents will be added to the outpatient (clinical) per unit rate.

Section 2. Implementation of Payment System. (1) Payments may be based on units of service such as fifteen (15) minute or hourly increments, or at a daily rate, depending on the type of service.

(2) Overpayments discovered as a result of audits may be settled in the usual manner, i.e., through recoupment or withholding.

(3) The vendor shall complete an annual cost report on forms provided by the cabinet not later than sixty (60) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(4) Each community mental health center provider shall make available to the cabinet at the end of each fiscal reporting period, and at such intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet. Notwithstanding this general requirement, the provider need not make available (for purposes of determining Medicaid payment amounts) staff notes or treatment records which show treatment details for non-Medicaid covered services; for such services, the information required shall be limited to a case summary sheet or listing which shows, at a minimum, the type of service provided, the staff member who provided the service, the date of the service, and appropriate identifying information relating to the patient.

(5) Payments due the community mental health center shall be made at reasonable intervals but not less often than monthly.

Section 3. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this regulation for services not covered by 907 KAR 1:044, community mental health center services, nor for that portion of a community mental health center's costs found unreasonable or nonallowable in accordance with the cabinet's "Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement."

Section 4. Reimbursement of Out-of-state Providers. The cabinet shall make payment to out-of-state mental health center providers who are appropriately licensed, participate with their state's Title XIX Medicaid Program, and have met the Kentucky Medical Assistance Program conditions of participation. The payment rate will be the lower of charges, or the facility's rate as set by the state Medicaid Program in the other state, or the upper limit for that type of service in effect for Kentucky providers.

[Section 5. The amendments to this regulation shall be effective with regard to payments for services provided on or after October 1, 1988.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 26, 1989
FILED WITH LRC: July 14, 1989 at 11 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:055E

This emergency administrative regulation is being amended to show that effective with regard to services provided on or after July 1, 1989, primary care centers whose established rates on July 1, 1985 were below the median cost and which currently have an actual cost per medical and nursing service above the median cost established on July 1, 1985 will receive the median cost as their rate. This change is being made to provide for more adequate reimbursement for primary care centers and to ensure the continuation of necessary services for Medicaid recipients. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on January 19, 1989 since that emergency regulation did not show that effective with regard to services provided on or after July 1, 1989, primary care centers whose established rates on July 1, 1985 were below the median cost and which currently have an actual cost per medical and nursing service above the median cost established on July 1, 1985 will receive the median cost as their rate. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about July 1, 1989.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:055E. Payments for primary care center services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: July 14, 1989
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for primary care center services.

Section 1. Primary Care Centers. In accordance with 42 CFR 447.325, the cabinet shall make payment to providers who are appropriately

licensed and have met the conditions for participation set by the cabinet, on the following basis:

(1) Payment shall be made on the basis of reasonable allowable cost.

(2) Payment amounts shall be determined by application of the "Primary Care Center General Policies and Guidelines and Principles of Reimbursement Manual" (revised July [January] 1, 1989, and hereby incorporated by reference) developed and issued by the cabinet, supplemented by the use of title XVIII-A reimbursement principles. The Kentucky Medical Assistance Program Primary Care Center General Policies and Principle of Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.

(3) Allowable costs shall not exceed customary charges which are reasonable.

(4) For services provided prior to July 1, 1985, reimbursement for medical and nursing cost center costs shall be subject to adjustment for a growth allowance. The growth allowance shall be computed for the year beginning each July, and shall be based on a projection of the change in the medical component of the Consumer Price Index over the previous year as applied to the median service cost of medical and nursing services, on a per visit basis, for all participating providers. Increases in medical and nursing center costs in excess of the growth allowance shall be disallowed. For those facilities with medical and nursing cost increases which are less than the growth allowance, the difference between the two (2) shall be reimbursable as a cost containment incentive payment at the time of the usual cost settlement.

(5) For services provided on or after July 1, 1985, the average allowable cost per visit for the medical and nursing services cost center shall not exceed the lesser of actual allowable costs, or charges, or the actual allowable average cost per visit for medical and nursing center services for the facility fiscal year ending prior to July 1, 1985 (not adjusted to the lower of cost or charges) plus an additional growth allowance of twenty (20) cents per visit per month (if such cost is incurred) for each month after the facility's fiscal year end but prior to July 1985; effective with regard to services provided on or after July 1, 1989, facilities whose established rates on July 1, 1985 were below the median cost and which currently have an actual cost for medical and nursing services equal to or exceeding the median cost established on July 1, 1985 will receive the median cost as their rate, and facilities with an actual cost per service which is less than the median will be limited to actual costs. Primary care centers beginning participation on or after July 1, 1985, or which have less than two (2) full years of program participation on that date, shall be reimbursed on the basis of the lower of reasonable allowable costs or charges (as shown in subsections (1) through (3) of this section) for the first two (2) years of participation in the program. For the third and subsequent years, the average allowable cost per visit may not exceed the lower of the facility's actual allowable costs, or charges, or the facility's actual allowable costs (not adjusted to the lower of cost or charges) for the second year of participation.

(6) During the first six (6) months after the implementation of the policy contained in subsection (4) of this section, centers with fiscal year endings occurring in the six (6) month period shall not have medical and nursing center costs disallowed as a result of imposition of the growth allowance upper limit, but shall be entitled to receive any applicable incentive payment.

(7) The amount of any allowable incentive payment determined pursuant to the policy specified in subsection (4) of this section may not exceed the growth allowance, and must be added to allowable costs for application of the lower of costs or charges principle.

(8)(a) Effective January 1, 1989 all primary care centers will be placed on a universal rate year for purposes of upper limits. Except as specified in subsection (9) of this section, the following upper limits shall be applied on a prospective basis: medical and nursing services, 105 percent of the weighted median per visit cost with the upper limit for centers with a teaching component through affiliation with a medical school (University of Kentucky or University of Louisville) set at 135 percent of the weighted median per visit cost effective January 1, 1989, 120 percent effective January 1, 1990, and 105 percent effective January 1, 1991 and thereafter; pharmacy service cost shall be limited to the average amount paid by the Department for Medicaid Services to providers through the pharmacy element of the Medicaid program as determined from the most recent state fiscal year data, trended and indexed; and dental service cost shall be limited to the average amount paid per utilizer by the Department for Medicaid Services to providers through the dental element of the Medicaid program as determined from the most recent state fiscal year data, trended and indexed.

(b) A newly participating center shall not be included in the cost array and shall not be subject to upper limits until the center has one (1) full year of audited data resulting from Medicaid program participation.

(c) For the purpose of calculating interim rates and establishing prospective upper limits, costs from the most recent audited cost report will be used with costs trended to the beginning of the upper limit year (e.g., to January 1, 1989 for the first universal rate year) and indexed for inflation to the end of that year.

(9) As an incentive for cost efficiency, providers which at the beginning of the universal rate year have medical and nursing costs in the lowest one-fourth (1/4) of the array will receive an incentive payment which is set at twenty (20) percent of the average composite interim rate of the incentive eligible group, with the incentive to be paid only on visits which are not in excess of 10,000. The entire interim payment will be considered prospective in nature for the incentive eligible group in that there will be no settlement after audit requiring a payback unless charges are less than payments; to the extent that cost exceeds the interim payments, an upward adjustment will be made to compensate for the additional costs, subject to the upper limits on July 1, 1985 medical and nursing services cost limit. At the time of settlement, the center

shall receive the greater of the interim payment, or actual cost up to the upper limits, not to exceed charges.

(10) Effective with regard to services provided on or after October 1, 1988, the cost of drugs for specified immunizations as shown in 907 KAR 1:054 which are provided free from the Department for Health Services to primary care centers shall be paid by the Department for Medicaid Services to the Department for Health Services upon receipt of notice from the primary care centers that the drugs were used to provide immunizations to Medicaid recipients.

(11) Effective with regard to services provided on or after January 1, 1989, the cost of drugs for specified immunizations as shown in 907 KAR 1:054 shall not be considered an allowable cost even though the drugs are purchased on the open market so long as the drugs could have been obtained free from the Department for Health Services.

Section 2. Implementation of the Payment System. (1) The reimbursement system developed by the cabinet for primary care centers is supported by the Title XVIII-A reimbursement principles which will serve as guidelines for determining reasonable allowable cost in areas not addressed specifically by the cabinet.

(2) The system shall utilize a method whereby primary care providers are paid an interim rate based on a reasonable estimation of current year costs followed by a year end adjustment to actual reasonable allowable costs. When the need can be demonstrated, adjustment to an interim rate will be made.

(3) The vendor shall complete an annual cost report on forms provided by the cabinet not later than sixty (60) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(4) Each primary care center provider shall make available to the cabinet at the end of each fiscal reporting period, and at such intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet.

(5) Interim payments due the primary care center shall be made at reasonable intervals but not less often than monthly.

Section 3. Prohibition against Joint Participation. Dual or joint participation in the medical assistance program by a primary care center is not permitted. When a primary care center elects to participate as such in the medical assistance program it may not participate concurrently under other regular ongoing elements of the medical assistance program, including the rural health clinic services element. In addition, when a center elects to participate as such in the medical assistance program, it is considered to elect participation for all eligible service elements, components, or subunits of the center.

Section 4. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this regulation for services not covered by 907 KAR 1:054, primary care center services, nor for that portion of a primary care center's costs found unreasonable or nonallowable in accordance with the cabinet's "Primary Care Center General Policies and Guidelines and Principles of Reimbursement." In addition, when the utilization review processes of the cabinet find that costs have been incurred through provision of unnecessary medical treatment services, such costs shall be disallowed.

[Section 5. Effective Dates. The provisions of this regulation as amended shall be effective with regard to services provided on or after January 1, 1989.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 26, 1989
FILED WITH LRC: July 14, 1989 at 11 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:450E

This emergency administrative regulation is being prepared to show the criteria for nurse aide training and competency evaluation programs and provide for the establishment and functioning of the nurse aide registry. This action must be taken on an emergency basis to comply with the Omnibus Budget Reconciliation Act of 1987 which requires the establishment and operation of nurse aide training and competency evaluation programs and the nurse aide registry. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be filed on or about July 1, 1989.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:450E. Nurse aide training criteria and registry.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: July 14, 1989
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the nurse aide training and competency evaluation program requirements and specifies the establishment and function of the nurse aide registry.

Section 1. Definitions. The following definitions shall be applicable to this regulation unless the specific context dictates otherwise:

(1) "Nurse aide training and competency evaluation programs" means the program(s) of nurse aide training and competency evaluation for nurse aides required by Title XIX of the Social Security Act to be in place for Title XIX participating nursing facilities (skilled nursing or intermediate care), when the program

is approved by the state in which the nursing facility is located.

(2) "Competency evaluation program" means the competency evaluation program required by Title XIX of the Social Security Act for nurse aides employed by Title XIX participating nursing facilities prior to July 1, 1989, when the program is approved by the state in which the nursing facility is located.

(3) "Nurse aide" means any individual providing nursing or nursing related services to residents in a nursing facility but does not include an individual who is a licensed health professional or volunteers who provide the nursing or nursing-related services without monetary compensation.

(4) "Licensed health professional" means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

(5) "The state approved program" means the nurse aide training and competency evaluation program requirements shown in the manual entitled "Kentucky Department for Medicaid Services Nurse Aide Training and Competency Evaluation Program" (dated July 1989) which is hereby incorporated by reference. Nurse aide training and competency evaluations shall be performed by or for nursing facilities located in the state of Kentucky in accordance with the terms, conditions, and criteria specified in the manual for the state approved program.

Section 2. General Requirements. A participating nursing facility shall not use nurse aides on or after January 1, 1990 for more than four (4) months unless the nurse aide has completed the nurse aide training and competency evaluation program, or the competency program if the individual was used by the facility prior to July 1, 1989 as a nurse aide, or is deemed to meet the competency evaluation prior to January 1, 1989, as specified in the manual for the approved state program.

Section 3. Regular In-service Education and Ongoing Staff Development. Following successful completion of the nurse aide competency evaluation program, each nursing facility is required to provide and document (as specified in the state approved program manual) six (6) hours of ongoing staff development per quarter for each nurse aide.

Section 4. Minimum Curriculum and Content Requirements. The "basic course" of nurse aide training consists of a minimum of forty-five (45) classroom hours for theory and laboratory time and thirty (30) hours of clinical experience for a total of seventy-five (75) hours. Criteria for primary instructors, program coordinators, trainers, resource people, and curriculum content are shown in the manual for the state approved program.

Section 5. Approval, Initial Postapproval Review, and Ongoing Review of Nurse Aide Training Programs. The nurse aide training program may be conducted by means of an Office of Vocational Education program, nursing facility program, community college or university program or a licensed proprietary education program. Each agency wishing to provide nurse aide training must request and receive approval of the agency's training program by the Department for Medicaid Services prior to operating the nurse aide training program in accordance with the criteria shown in the manual for the state approved program. After initial approval, the Department for Medicaid Services shall conduct an initial one (1) year postapproval review. After the one (1) year postapproval review, each program will be monitored as follows:

(1) Approved nurse aide training programs conducted by nursing facilities shall be monitored on site by the Division of Licensing and Regulation, Office of the Inspector General, during the regularly scheduled annual survey for compliance with conditions of participation.

(2) Approved nurse aide training programs conducted by the Office of Vocational Education shall be monitored on site by that office at least every two (2) years; a self-evlauation shall be submitted by the training program to the on-site review agency each year that an on-site review is not performed.

(3) The Department for Medicaid Services shall conduct an on-site review of all other approved nurse aide training programs at least every two (2) years, and the training program provider shall submit to the department a self-evaluation in each year than an on-site review is not performed.

Section 6. Termination of Nurse Aide Training Programs. The Department for Medicaid Services shall terminate from participation in the training program those previously approved nurse aide training programs not meeting minimum requirements and which do not submit an acceptable plan of correction.

Section 7. Final Examination/Competency Evaluation. The Department of Education, Office of Vocational Education, shall be (by agreement with the Department for Medicaid Services) responsible for the final written or oral examination and the skills demonstration aspect of the competency evaluation. The test is validated by the Department of Education to ensure its reflection of the material presented in the training, and the Department of Education has responsibility to maintain the integrity of the test and the individual examinations.

Section 8. State Nurse Aide Registry. The Division of Licensing and Regulation, Office of the Inspector General shall (by agreement with the Department for Medicaid Services) be responsible for establishing and maintaining a registry of all nurse aides who have satisfactorily completed a nurse aide training and competency evaluation program. In addition to the names of individuals having satisfactorily completed the nurse aide training and competency evaluation program, or the competency evaluation program, the registry shall include specific documented findings by the state of individual resident abuse or neglect or misappropriation of resident property by nurse aides listed in the registry (determined in accordance with statutory requirements shown in Section 1919(g) of the Social Security Act), and a brief statement (if any) by the nurse aide disputing the finding(s); a finding may be included on the registry only after the nurse aide has been provided at least

ten (10) days advance notice of the proposed finding and an opportunity for a hearing (if desired) for the nurse aide to rebut allegations. In the case of an inquiry to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of any nurse aide statement of rebuttal in the registry relating to the finding or a clear and accurate summary of such a statement.

Section 9. Reciprocity. A nurse aide who has completed a nurse aide training and competency evaluation program in another state and is on that state's nurse aide registry shall be granted reciprocity in Kentucky if the following conditions are met:

(1) The other state's registry must provide appropriate written documentation showing the individual is on the other state's registry;

(2) An employment record must be provided to the Division of Licensing and Regulation sufficient to verify that the aide has been employed in a nursing home since the training and twenty-four (24) months have not elapsed since the individual worked for pay as a nurse aide; and

(3) There must be no documented findings on the registry of individual resident abuse or neglect or misappropriation of resident funds for the individual on the registry.

Section 10. The manual incorporated by reference in this regulation may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 27, 1989
FILED WITH LRC: July 14, 1989 at 11 a.m.

REGULATIONS AS AMENDED BY ADMINISTRATIVE BODY AND REVIEWING SUBCOMMITTEE

COUNCIL ON HIGHER EDUCATION
(As Amended)

13 KAR 2:020. Guidelines for undergraduate admission to the state-supported institutions of higher education in Kentucky.

RELATES TO: KRS 164.020(3)
STATUTORY AUTHORITY: KRS 13A.100, 164.020(3), 164.030, 164.284
NECESSITY AND FUNCTION: Admission requirements shall be established by the institutions in keeping with adopted policies of the Council on Higher Education. Pursuant to KRS 164.020(3) the council approves the minimum qualifications for admission to the public institutions of higher education. It is the intent of the council that all Kentucky residents shall have available to them an opportunity for higher education appropriate to their interests and abilities. This regulation sets forth the minimum standards and policies of the council related to admission at state-supported institutions of higher education.

Section 1. General. (1) Students from other states and countries will be accepted by Kentucky public institutions providing that nonresident [out-of-state] enrollment does not inhibit the opportunities of Kentucky residents to benefit from the facilities provided. Public institutions of higher learning may establish additional admissions criteria that are in compliance with council policy established pursuant to KRS 164.020(3).

(2) The American Association of Collegiate Registrars and Admissions Officers' Transfer Credit Practices of Educational Institutions shall serve as a reference for the acceptance of transfer credits. Generally, a student dismissed from a college or university shall not be accepted at a Kentucky public institution for the semester following his dismissal. Failure to report enrollment at another institution may result in dismissal and/or loss of credits earned.

[(3) Transcripts for transfer students should bear a stamp showing "entitled to honorable dismissal" for all students entitled to honorable dismissal. In the absence of the stamp on the transcript, the student's status should be checked with the institution from which the student is transferring.]

(3) [(4)] The Council on Higher Education is concerned that the student's articulation from one (1) institution to another be as smooth as possible. It shall be the responsibility of all public institutions to assure that the student is adequately counseled concerning transfer of credit. Consistent with the community college objective of a two (2) year curriculum, transfer from such schools is normally expected at the completion of requirements for the associate degree. Transfer prior to that time, however, may be advisable in specialized programs.

Section 2. Minimum Qualifications for Institutional Admission as First-time Freshmen. [to Freshman Class. High school graduates:]

(1) Kentucky residents who have graduated from high schools that have met the accreditation standards of the Kentucky Department of Education, who have taken the ACT, and who will enroll in college classes for the first time following graduation from high school [attempted no previous college-level work] are generally granted admission to [the] community colleges and [the] community college programs at each university [the individual universities]. The Career Planning Program-Level II (CPP-II) or the ASSET testing program may be substituted for the ACT requirement for adult students, if the institution believes either of these testing instruments is better suited to the needs of adult students. An adult student is defined as an individual who is twenty-one (21) or older. Certain programs, however, may have additional admissions requirements.

(2) Kentucky residents who have graduated from high schools that have met the accreditation standards of the Kentucky Department of Education, who have taken the ACT*, who have completed the minimum educational preparation, and who will enroll in college classes for the first time following graduation from high school [attempted no previous college-level work] have fulfilled [achieved] the minimum [minimal] requirements for admission to baccalaureate programs at each university [the individual universities]. (*The ACT is the preferred admission test for Kentucky public institutions, and applicants are encouraged to take the ACT; however, each institution may accept the SAT in lieu of the ACT for resident and nonresident applicants in an amount not to exceed ten (10) percent of the first-time freshmen admitted to baccalaureate programs.) Each university may establish additional admission criteria to supplement these minimum requirements.

(3) Kentucky residents [Applicants for admission] who have earned a high school equivalency certificate (GED) or who are [and] graduates of high schools that have not met the accreditation standards of the Kentucky Department of Education may be admitted to [the] community colleges or community college programs at each university [the individual universities] upon completion of the ACT [exam]. The Career Planning Program Level II (CPP-II) or the ASSET testing program may be substituted for the ACT requirement for adult students, if the institution believes either of these testing instruments is better suited to the needs of adult students. An adult student is defined as an individual who is twenty-one (21) or older. These same individuals [graduates] may be admitted to baccalaureate programs at each university [the individual universities] by meeting the minimum requirements specified in subsection (2) of this section. [validating satisfactory] Completion of the minimum educational preparation may be validated through the submission of ACT area scores which are deemed adequate by each university. Each university may establish additional admission criteria to supplement these minimum requirements. [requirements on the ACT exam or by meeting the provisions for exceptional admission as detailed in this subsection.]

(4) Nonresidents must meet the same minimum qualifications for admission as Kentucky residents as stated in subsections (1) through (3) of this section and at least one (1) of the following conditions in order to be admitted to

state institutions: [Nonresident graduates of accredited high schools must meet admissions requirements in keeping with policies of the council.]

(a) Graduate in the top fifty (50) percent of their high school class;

(b) Achieve a composite score at the 50th percentile or above for all students taking the ACT or the SAT nationally (the ACT is the preferred admission test for Kentucky public institutions, and applicants are encouraged to take the ACT; however, each institution may accept the SAT in lieu of the ACT for resident and nonresident applicants in an amount not to exceed ten (10) percent of the first-time freshmen admitted to baccalaureate programs); or

(c) Demonstrate through other accepted measures the ability to pursue the college academic program without substantial remedial aid.

(5) If, under extenuating circumstances, students are admitted conditionally without having fulfilled the testing requirement, such students must take the ACT to fulfill this requirement during the first semester of enrollment.

Section 3. Minimum Educational Preparation. (1) Effective for the fall semester of 1987, applicants who have satisfied the minimum qualifications for institutional admission as first-time freshmen and have successfully completed twenty (20) or more approved* high school units including the following minimum academic preparation requirements are eligible for admission to baccalaureate programs at each university [the individual universities]. *(An approved unit is a course of study included in the Program of Studies for Kentucky Schools or offered by a school that has met the accreditation standards of the Kentucky Department of Education.) Each university may establish additional requirements to supplement this minimum educational preparation.

(a) Four (4) units of high school study in English, specifically, **including** [, including] English I (2301), English II (2302), English III (2303), and English IV (2304) or AP English (2307 or 2308). [the equivalent in content;]

(b) Three (3) units of high school study in mathematics, specifically **including** [including] Algebra I (2710), (2722) or (both 2720 and 2721) or Algebra II (2711 or 2723); [and] Geometry (2712 or 2735 or 2732), and one (1) additional mathematics elective. Beginning in 1990-91, the mathematics elective will be limited to predetermined courses which are identified in the Program of Studies for Kentucky Schools: Grades K-12 published by the Kentucky Department of Education. [;]

(c) Two (2) units of high school study in science, specifically **including** [including] either Biology I (2517) or Chemistry I (2521) or Physics I (2532), and one (1) additional science elective. At least one (1) of the science courses must be a laboratory course. Beginning in 1990-91, the science elective will be limited to predetermined courses which are identified in the Program of Studies for Kentucky Schools: Grades K-12. [; and]

(d) Two (2) units of high school study in social studies, specifically **including** [including] World Civilization (2246) and U.S. History (2243) or AP American History (2244).

(e) In addition, college-bound students are encouraged to take, as part of their elective course selections, additional coursework in mathematics, sciences, foreign languages, arts, and computer literacy. Substitutions cannot be made for any course which is identified by a specific program of studies number unless the course in question has been deemed equivalent in content by the Council on Higher Education in consultation with the Department of Education.

(2) Course selections are tied to the Program of Studies for Kentucky Schools: Grades K-12 and the individual course descriptions contained in that document. Adjustments in the minimum educational preparation for college will occur as changes are made in the program of studies. For guidance in the selection of specific courses, counselors should consult the program of studies and Council on Higher Education materials on the precollege curriculum.

(3) [(2)] It is the responsibility of each institution of higher education to determine whether an applicant has met these minimum educational preparation requirements. [Individual institutions may accept evidence of requisite subject area competencies, specifically including ACT or SAT test results, in lieu of the successful completion of the high school courses specified above.]

Section 4. Exceptions to the Minimum Educational Preparation Qualifications. Subject to the requirements and limitations established by the Council on Higher Education, each university [individual universities] shall have the option of admitting by exception first-time freshman applicants to baccalaureate programs who have not met the minimum educational preparation qualifications for admission. Beginning in the fall semester 1987, each university [the individual universities] may grant exceptions to the minimum educational preparation qualifications and admit each academic term a maximum of twenty (20) percent of the total number of applicants admitted to baccalaureate programs as first-time freshmen. First-time freshmen admitted by exception [to the minimum qualifications] shall remove or otherwise satisfy all deficiencies regarding the minimum educational preparation [qualifications] in a manner and time period established by the enrolling university.

Section 5. Special Students. (1) Applicants of superior ability, as demonstrated by exceptional academic achievement, high ACT scores, and social maturity, may be granted early admission to the freshman class.

(2) At the discretion of the institution, applicants unable to meet college entrance requirements may be admitted to college classes for which they are qualified.

(3) Kentucky residents sixty-five (65) [years of age] or older who are admitted to state-supported institutions shall have all registration and tuition charges waived. However, an institution may limit admission of these students if classes are filled, or if their admission necessitates additional classes.

Section 6. Admission with Advanced Standing. (1) Applicants who have attended another accredited college or university may be admitted with advanced standing in accordance with admissions requirements established by each institution. An institution may have additional

requirements for nonresidents.
(2) Lower division academic courses offered for undergraduate credit at any accredited Kentucky community college are transferable for academic credit to state-supported universities. Lower division academic courses are those offered for undergraduate credit at the freshman and sophomore level or normally counted toward requirements for an associate degree. Usually numbered 100 to 299, these are introductory in nature and require no significant prerequisites. Determination of course level shall be made by the governing boards of the public universities and filed with the Council on Higher Education.
(3) The number of semester hours earned at the community college level which will be applied toward meeting requirements for a baccalaureate degree will depend upon the degree being pursued and the transfer practices of the receiving institution. In cases where educational objectives have changed, students may take additional courses at a community college after having completed the associate degree requirements. In this event, the college to which the student plans to transfer should be consulted.
(4) Although each public university has the responsibility for determining its degree requirements, it normally takes two (2) additional academic years for a community college transfer student to complete baccalaureate degree requirements.
(5) Credits presented from institutions not [fully] accredited may be accepted only when validated by advanced work at [in] the receiving institution and/or by examination at the discretion of the institution.

Section 7. General Policies on Nonresident [Policy on Out-of-state] Enrollment. [(1) The following general policy statements were amended to establish the limitation on enrollment of out-of-state professional students in state-supported institutions, as well as conditions to be met by nonresident students entering the state institutions.]
(1) [(a) The] Nonresident [(out-of-state)] enrollment in the school of [law,] medicine[, and dentistry] at [the] state-supported institutions operating those programs is limited to no more than ten (10) percent of the total headcount enrollment in each program.
(2) [(b)] Institutions which waive the nonresident [out-of-state] surcharge for nonresident [out-of-state] students will continue to count those students as nonresident [out-of-state] students for purposes of this policy and reporting to the council.
[(c) Nonresident students must meet the same admission requirement as resident students and at least one (1) of the following conditions in order to be admitted to the state institutions:]
[1. Graduate in the top fifty (50) percent of their high school class;]
[2. Score in the 50th percentile or above for all students taking the ACT test nationally;]
[3. Demonstrate through other accepted measures the ability to pursue the college academic program without substantial remedial aid.]
[(2) Nonresident students failing to meet the minimum educational preparation requirements as stated in Section 3 of this regulation are eligible for admission under the exceptions policy stated in Section 4 of this regulation.]

GARY S. COX, Executive Director
APPROVED BY AGENCY: May 9, 1989
FILED WITH LRC: May 9, 1989 at 2 p.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(As Amended)

601 KAR 1:005. Safety regulations.

RELATES TO: KRS Chapters 138, 281, Title 49, Code of Federal Regulations, Part 390-397
STATUTORY AUTHORITY: KRS 138.665, 281.600, 281.726, 281.730, 281.750, Title 49, Code of Federal Regulations, Part 390-397
NECESSITY AND FUNCTION: This regulation sets out safety procedures to be followed by motor carriers operating in the Commonwealth of Kentucky.

Section 1. Definitions. (1) "Farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private motor carrier is using the vehicle to transport agricultural products from his farm or to transport farm machinery or farm supplies to his farm. The transportation of hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 601 KAR 1:025, Transporting hazardous materials, permit, is not included in this definition.
(2) "Daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.
(3) "Load limit" means the rated seating capacity for which a passenger-carrying vehicle is licensed plus twenty-five (25) percent of the rated seating capacity.

Section 2. (1) All commercial motor vehicles operated for-hire or in private carriage, interstate or intrastate, except those listed in subsection (2) of this section shall be governed by the following Motor Carrier Safety Regulations adopted and issued by the United States Department of Transportation [relating to the following subjects]:
(a) Title 49, Code of Federal Regulations Part 390, General, excluding Part 390.5, effective April 24, 1989 is adopted without change [November 15, 1988];
(b) Title 49, Code of Federal Regulations, Part 391, Qualifications of Drivers, effective April 24, 1989, is incorporated by reference [adopted] with changes [November 15, 1988 except that Part 391.15(c) is adopted as effective on June 12, 1986];
(c) Title 49, Code of Federal Regulations, Part 392, Driving of Motor Vehicles, effective November 15, 1988, is incorporated by reference [adopted] with changes [except that Part 392.5(a)(2) is as adopted as effective on August 19, 1987];
(d) Title 49 Code of Federal Regulations, Part 393, Parts and Accessories Necessary for Safe Operation, with a latest effective date of March 7, 1989 (includes Part 393.1 which was amended by the U.S. Department of Transportation on March 24, 1989 with an effective date of November 15, 1988) is adopted without change;
(e) Title 49, Code of Federal Regulations, Part 394, Notification, Recording and Reporting

of Accidents, effective November 15, 1988 is adopted without change;

(f) Title 49, Code of Federal Regulations, Part 395, Hours of Service of Drivers, effective November 15, 1988 is adopted without change;

(g) Title 49, Code of Federal Regulations, Part 396, Inspection, Repair and Maintenance, effective November 15, 1988 is adopted without change; and

(h) Title 49, Code of Federal Regulations, Part 397, Transportation of Hazardous Materials; Driving and Parking Rules, effective November 15, 1988 is adopted without change. [; Title 49, CFR Parts 391 and 392 are incorporated by reference as amended. Title 49, CFR Parts 390 excluding 390.5 and 393-397 are adopted without change.]

(2) The following exemptions and exceptions to compliance with the provisions of subsection (1) of this section are adopted:

(a) City buses, suburban buses, taxicabs, motorcycles and motor vehicles primarily designed for carrying passengers and having provisions for not more than eight (8) passengers and the driver are not required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation.

(b) Vehicles owned by the federal government, a state government, a county government, a city government, or a board of education and vehicles operating in interstate commerce which are specifically excluded by Title 49, Code of Federal Regulations, Part 390 are not required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation.

(c) Motor vehicles which are used exclusively in intrastate commerce and exclusively in farm-to-market agricultural transportation when operated during daylight hours by a private motor carrier are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B, relative to lighting device requirements. They are, however, required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(d) Motor vehicles which are used exclusively in intrastate commerce and exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility which is located at a point not more than fifty (50) air miles from the harvest area when operated during daylight hours are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B relative to lighting devices requirements. They are, however, required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

Section 3. [(1)] Title 49, Code of Federal Regulations, Part 390.5, Definitions, effective November 15, 1988, except that the definitions of "alcohol concentration," "conviction," and "driving a commercial motor vehicle while under the influence of alcohol" are excluded, is incorporated by reference for the purposes of application to 49 Code of Federal Regulations Parts [Sections] 391-397.

[(2) 49 Code of Federal Regulation Parts 391 and 392 are incorporated by reference as amended.]

Section 4. A summary of the content of each federal regulation governing motor carrier safety 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 5. Buses. Buses shall be maintained in a clean and sanitary condition so that the health of passengers will not be impaired. Seats shall 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 shall be acquainted with the routes traveled and schedules maintained, so that the passengers will not be subjected to unnecessary delays. All operators shall 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 shall be so placed as not to interfere with the driver or with the safety and comfort of passengers. These items shall be protected from the weather but shall not be carried in the aisles or in such position as to block exits or doorways on the bus.

Section 6. Overcrowding of Passenger Vehicles. No bus operated by an authorized carrier, except city or suburban buses, shall transport passengers in excess of its load limit. No passenger shall be permitted to occupy the rear door-well of any bus vehicle that is equipped with a rear door-well.

Section 7. Out of Service Sticker. If 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 to the vehicle 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 a vehicle in violation of the out of service notice affixed to it shall constitute a separate violation of these regulations.

Section 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 40622 [40601, or obtained by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402].

JEROME L. LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: May 8, 1989
FILED WITH LRC: May 12, 1989 at 2 p.m.

PUBLIC PROTECTION & REGULATION CABINET
Kentucky State Racing Commission
(As Amended)

810 KAR 1:001. Definitions.

RELATES TO: KRS 230.210 to 230.360
STATUTORY AUTHORITY: KRS 230.260 [Chapter 13A]
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation is to define the terms used in the commission's [rules and] regulations.

Section 1. Definitions. [The following words and phrases, irrespective of literal meaning as defined in recognized dictionaries, have assumed special meaning and connotations as used in racing, and in the context of these rules, shall be construed as having the following special meaning:]

(1) "Added money" means cash, exclusive of trophy or other award, added by the association to stakes fees paid by subscribers to form the total purse for a stakes race.

(2) "Age" means the number of years since a horse was foaled, reckoned as if such horse was foaled on January 1 of the year in which such horse was foaled.

(3) "Arrears" means all sums due by a licensee as reflected by his account with the horsemen's bookkeeper, including subscriptions, jockey fees, forfeitures, and any default incident to these rules.

(4) "Association" means any person, or persons, or legal entity, required to be licensed under KRS 230.300 to conduct a race meeting, and when used herein, the association conducting a race meeting where such rule is applicable.

(5) "Authorized agent" means any person currently licensed as an agent for a licensed owner principal by virtue of notarized appointment of agency lodged with the commission.

(6) "Betting interest" means a single horse, or more than one (1) horse joined as a "mutuel entry" or joined in the "mutuel field," on which a single pari-mutuel wager may be placed.

(7) "Bleeder" means any horse known to have bled internally or from its nostrils during a workout or race.

(8) "Breeder" means **the** owner of the dam of a horse at the time such horse was foaled. A horse is "bred" at the place of its foaling.

(9) "Claiming race" means any race in which every horse running therein may be transferred in conformity with these rules.

(10) "Closing" means **the** time published by the association after which entries for a race will not be accepted.

(11) "Commission" means the Kentucky State Racing Commission. "Commissioner" is a member of the commission.

(12) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight. "Racing day" is a day on which races are conducted. "Calendar days" **means** [are those] consecutive days counted irrespective of number of "racing days."

(13) "Declaration" means **the** withdrawal of a horse entered in a race prior to time of closing of entries therefor in conformance with these **administrative regulations** [rules].

(14) "Disciplinary action" means **action** [that] taken by the stewards or the commission for a [rule] violation **of an administrative regulation** and can include suspension, revocation, voidance of a license or ejection or exclusion from association grounds, or assessment of a forfeiture, or reprimand, or any combination thereof.

(15) "Disqualification" means an order of the stewards or **the** commission revising the order of finish of a race.

(16) "Entry" means the act of nominating a horse for a race in conformance with these **administrative regulations.** [rules. (See "mutuel entry.")]

(17) "Equipment" means accouterments other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(18) "Exhibition race" means a race between horses of diverse ownership for which a purse is offered by the association, but on which no pari-mutuel wagering is permitted.

(19) "Field, or mutuel field" means a single betting interest involving more than one (1) horse formed when the number of horses starting in a race exceeds the numbering capacity of the totalizator, and the highest numbered horse within the numbering capacity of the totalizator and all horses of a higher number are grouped in the "mutuel field."

(20) "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative order of the stewards or **the** commission.

(21) "Handicap race" means a race in which the weights to be carried by the horses therein are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered therein. A "free handicap" **means** [is] a handicap for which no nominating fee is required to be weighted, but an entrance or starting fee may be required for starting therein.

(22) "Horse" means a thoroughbred registered as such with the Jockey Club in New York and [when used in these rules to designate] any thoroughbred irrespective of age or sex designation.

(23) "Ineligible" means a horse or person not qualified under these rules or conditions of a race to participate in a specified racing activity.

(24) "Jockey" means a rider currently licensed to ride in races as a jockey, or apprentice jockey, or amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(25) "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(26) "Licensee" means a person or association that has been duly issued a currently valid license to participate in racing in this Commonwealth.

(27) "Maiden" means:

(a) A horse which has never won a race on the flat at a recognized meeting in any country;

(b) A "maiden" which was disqualified after finishing first remains a "maiden;" and

(c) Race conditions referring to "maidens" shall be interpreted as meaning "maidens" at the time of starting.

(28) "Match race" means a race between two (2) horses, for which no other horses are eligible.

(29) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of racing. A meeting shall begin [, beginning] at 10 a.m. of the first racing day and extend[ing] through a period ending one (1) hour after the last scheduled race of the last day. [(See "Recognized meeting.")]

(30) "Month" means calendar month.

(31) "Mutuel entry" means a single betting interest involving two (2) or more [or more] horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership [or training] so that a wager on one (1) horse joined in a "mutuel entry" is a wager on all horses joined in the same "mutuel entry."

(32) "Mutuel field" means the same as "field." [(See subsection (19) of this section.)]

(33) "Nominator" means the person in whose name a horse in entered for a race. Nomination is a subscription or entry of a horse in a stakes or early closing race.

(34) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for such horse.

(35) "Place":

(a) When used in the context of a single position in the order of finish in a race, means second.

(b) [;] When used in the context of pari-mutuel wagering, a "place" wager means [is] one involving a payoff on a betting interest which finished first or second in a race.

(c) [;] when used in the context of multiple positions in the order of finish in a race, "place or placing" means finishing first, or second, or third. [(See also, "Unplaced.")]

(36) "Post" means the starting point of a race.

(37) "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(38) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(39) "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

(40) "Purse" means the gross cash portion of the prize for which a race is run.

(41) "Purse race" means any race for which entries close less than seventy-two (72) hours prior to its running, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(42) "Race" means a running contest between thoroughbreds, ridden by jockeys, over a prescribed course free of obstacles or jumps, at a recognized meeting, during regular racing hours, for a prize.

(43) "Racing official" means a racing commissioner, commission staff as duties require, and all association racing department employees, as duties require.

(44) "Recognized meeting" means any meeting with regularly scheduled races for thoroughbreds on the flat, licensed by and conducted under rules promulgated by a governmental regulatory body, to include foreign countries which are regulated by a racing authority which has reciprocal relations with the Jockey Club and whose race records can be provided an association by the Jockey Club.

(45) "Registration certificate" means the document issued by the Jockey Club of New York certifying as to the name, age, color, sex, pedigree, and breeder of a horse as registered by number with the Jockey Club. It [;] shall be deemed to refer also to the document known as a "racing permit" issued by the Jockey Club in lieu of a "registration certificate" when a horse is recognized as a thoroughbred for racing purposes in the United States, but is not recognized as a thoroughbred for breeding purposes insofar as registering its progeny with the Jockey Club.

(46) "**Administrative regulations** [Rules]" when used in the plural, shall be deemed to mean all current administrative regulations [rules] promulgated by the commission; when used in the singular, shall be deemed to be confined to the numbered administrative regulation [rule], and subparagraphs thereof, wherein such mention is made.

(47) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(48) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries therefor in conformance with these administrative regulations and rulings [rules].

(49) "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(50) "Secretary" means the duly appointed and currently serving secretary of the commission.

(51) "Specimen" means a sample of blood, urine, or saliva taken or drawn from a horse for chemical testing.

(52) "Stakes" means all fees paid by

subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as may be required by the conditions of such race. These [, such] fees to be included in the purse.

(53) "Stakes race" means a race which closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse, or a race for which horses are invited by an association to run for a guaranteed purse of $50,000 or more without payment of stakes.

(54) "Stewards" means duly appointed racing officials with powers and duties specified [set out] in 810 KAR 1:004 serving at a current meeting in this Commonwealth.

(55) "Starter" means a horse in a race when the starting-gate doors open in front of it at the moment the starter dispatches the horses for a race.

(56) "Thoroughbred racing" means [the conduct of] running contests between horses:

(a) [, each of which is] Registered with the Jockey Club of New York;

(b) [and] Certified as having a thoroughbred pedigree; and

(c) [each of which is] Ridden by a jockey. Thoroughbred racing shall be [, such conduct being] licensed by a governmental regulatory body.

(57) "Unplaced" means not among the first three (3) horses finishing a race.

(58) "Walkover" means a race in which the only starter or all starters represent single ownership.

(59) "Weigh in" means the presentation of a jockey to the clerk of scales for weighing after a race.

(60) "Weigh out" means the presentation of a jockey to the clerk of scales for weighing prior to a race.

(61) "Weight for age" means the standard assignment of pounds to be carried by horses in races at specified distances during specified months of the year, scaled according to the age of the horse as set out in 810 KAR 1:014(12).

(62) "Workout" means the training exercise of a horse on the training track or main track of an association during which the [such] horse is timed for speed over a specified distance.

(63) "Year" means twelve (12) consecutive months beginning with January and ending with December.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: March 30, 1989
FILED WITH LRC: April 12, 1989 at 9 a.m.

PUBLIC PROTECTION & REGULATION CABINET
State Racing Commission
(As Amended)

810 KAR 1:011. Pari-mutuel wagering.

RELATES TO: KRS 230.210 to 230.360
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation is to outline the requirements for the operation of pari-mutuel wagering.

Section 1. Pari-mutuel System of Wagering Required. [Each association licensed to conduct racing in this state may permit wagering only on races conducted by such association on the grounds of such association; no association may accept wagers on races conducted elsewhere by another association.] [All] [such] Permitted wagering shall be under the pari-mutuel system, employing an electric totalizator approved by the commission. All systems of wagering other than pari-mutuel, such as bookmaking and auction-pool selling, are prohibited. [and] Any person participating or attempting to participate in prohibited wagering shall be [ejected or] excluded from association grounds.

Section 2. Totalizator Required. Each association shall install and operate during its race meeting an electric totalizator approved by the commission. Such totalizator shall be tested daily under the supervision of the commission to insure its proper working order.

Section 3. Records to be Maintained. The pari-mutuel manager shall maintain complete records of all wagering so the commission may upon review ascertain for any race: The opening line and subsequent odds fluctuations, the amount, and at which window, wagers were placed on any betting interest, and such other information as the commission may from time to time require. A copy of such wagering records shall be retained by each association and safeguarded for a period not less than two (2) years and may not be destroyed without permission of the commission.

Section 4. Calculation and Distribution of Pools. The only pari-mutuel wagering pools permitted in this state shall be for win, place, show, daily double, exacta, quinella, and other such wagering approved by the commission as allowed by statute, each with separate and independent calculation and distribution. From each pool there shall be deducted by each association the commission as provided by KRS 138.515, with the remainder being the net pool for distribution as payoffs to ticket holders. Each association shall present the specific procedures to be used for each type of wagering in their application for dates. Any further changes or additions shall [must] be submitted in writing to the commission for approval. [as follows:]

[(1) Win pool. The amount wagered on the horse or betting interest which finished first is deducted from the net pool, the balance remaining being the profit; the profit is divided by the amount wagered on the horse or betting interest finishing first, such quotient being the profit per dollar wagered to win; payoff includes return of amount wagered and profit thereon.]

[(a) In the event of a dead heat for first involving horses of two (2) different betting interests, the win pool is distributed as if a place pool; if involving horses of three (3) different betting interests, the win pool is distributed as if a show pool.]

[(b) In the event no win ticket is sold on the horse which finishes first, the net win pool is distributed to holders of win tickets on the horse finishing second.]

[(2) Place pool. The amounts wagered to place on the first two (2) horses to finish are deducted from the net pool to determine the

profit; the profit is divided into two (2) equal amounts; one-half (1/2) of the profit is divided by the amount wagered to place on the first finisher, such quotient being the profit per dollar wagered to place on the first finisher; and one-half (1/2) of the profit is divided by the amount wagered to place on the second finisher, such quotient being the profit per dollar wagered to place of such second finisher; payoffs include return of amount wagered and profit thereon as to each of the first two (2) finishers.]

[(a) In the event of a dead heat for first: between horses representing the same betting interest, the place pool is distributed as if a win pool; if between horses representing two (2) different betting interests, the place pool is distributed as if one (1) betting interest finished first and the other finished second; if between horses representing three (3) different betting interests, the place pool is distributed as if a show pool.]

[(b) In the event of a dead heat for second: between horses representing the same betting interest, the place pool is distributed as if no dead heat occurred; if between horses representing two (2) or more different betting interests, the profit is divided in half, with one-half (1/2) allocated for wagers to place on the horse which finished first, and other half divided equally so as to allocate one-fourth (1/4) of the profit on the net place pool for wagers to place on each of two (2) horses finishing in a dead heat for second, or one-sixth (1/6) of the profit for wagers to place on each of three (3) horses finishing in a dead heat for second.]

[(c) In the event the first and second finishers comprise a single betting interest, the place pool is distributed as if a win pool.]

[(d) In the event no place ticket is sold on a horse which finishes first or second, then the horse which finished third shall replace that horse in the distribution of wagers in the place pool.]

[(3) Show pool. The amounts wagered to show on the first three (3) horses to finish are deducted from the net pool to determine the profit; the profit is divided into three (3) equal amounts; one-third (1/3) of the profit is divided by the amount wagered to show on the first finisher, such quotient being the profit is divided by the amount wagered to show on the second finisher, such quotient being the profit per dollar wagered to show on such second finisher; and one-third (1/3) of the profit is divided by the amount wagered to show on the third finisher, such quotient being profit per dollar wagered to show on such third finisher; payoffs include return of amount wagered and profit thereon as to each of the first three (3) finishers.]

[(a) In the event of a dead heat for first: between two (2) horses involving different betting interest, or three (3) horses involving three (3) different betting interests , the show pool is distributed as if no dead heat occurred; if between two (2) horses involving the same betting interest two-thirds (2/3) of the profit is allocated to wagers to show on the coupled betting interest, and one-third (1/3) allocated to wagers to show on the other horse among the first three (3) finishers; if between three (3) horses involving one (1) betting interest, the show pool is distributed as if a win pool.]

[(b) In the event of a dead heat for second: between two (2) horses involving two (2) different betting interests, the show pool is distributed as if no dead heat occurred; if between horses involving the same betting interest, two-thirds (2/3) of the profit shall be allocated to wagers to show on the coupled betting interest, and one-third (1/3) allocated to wagers to show on the horse finishing first; if between three (3) horses involving two (2) or three (3) betting interests, one-third (1/3) of the profit is allocated to wagers to show on the horse finishing first, and the remaining two-thirds (2/3) of the profit is divided equally by the number of betting interests finishing in a dead heat for second for proportionate distribution on wagers to show for each such betting interest finishing in a dead heat for second.]

[(c) In the event of a dead heat for third: between horses involving the same betting interests, the show pool is distributed as if no dead heat occurred; if between horses involving two (2) or more betting interests, two-thirds (2/3) of the profit shall be allocated to wagers to show on the first two (2) finishers, and the remaining one-third (1/3) is divided equally by the number of betting interests finishing in a dead heat for third for proportionate distribution on wagers to show for each such betting interest finishing in a dead heat for third.]

[(d) In the event the first three (3) horses to finish comprise one (1) betting interest, the show pool shall be distributed as a win pool. In the event two (2) horses coupled as a single betting interest finish first and second, or first and third, or second and third, two-thirds (2/3) of the profit shall be allocated to wagers to show on the other horse among the first three (3) finishers.]

[(e) In the event one (1) horse coupled in the betting by reason of being in the mutuel field or part of a mutuel entry finishes first or second, and another horse included in the same betting interest finishes in a dead heat for third: one-half (1/2) of the profit in the show pool shall be allocated to wagers on such field or entry, one-third (1/3) of the profit in the show pool shall be allocated to wagers on the horse finishing first or second, and the remaining one-sixth (1/6) of such profit shall be allocated to wagers on the horse finishing in a dead heat for third with such field or entry.]

[(f) In the event only two (2) horses finish, the show pool, if any, shall be distributed as if a place pool; if only one (1) horse finishes, the place and show pools, if any, shall be distributed as if a win pool; if no horse finishes, all money wagered on such race shall be refunded upon presentation and surrender of pari-mutuel tickets sold thereon. In the event no show ticket is sold on a horse which finishes first, or second, or third, then, the horse which finished fourth shall replace that horse in the distribution of wagers in the show pool.]

[(4) Daily double pool. The amount wagered on the winning combination, such being the horse or betting interest which finishes first in the first daily double race, is deducted from the net pool to determine the profit; the profit is divided by the amount wagered on the winning combination, such quotient being the profit per dollar wagered on the winning daily double combination; payoff includes the amount wagered

and profit thereon.]

[(a) In the event of a dead heat for first involving two (2) different betting interests, in one (1) of the two (2) daily double races, the daily double pool is distributed as if a place pool, with half the profit allocated to wagers combining the single winner of one (1) daily double race and one (1) of the betting interests involved in the dead heat in the other daily double race, with the other half of the profit allocated to wagers combining the single winner of one (1) daily double race and the other betting interest involved in the dead heat in the other daily double race.]

[(b) In the event of dead heats for first involving different betting interests in each of the daily double races, resulting in four (4), or six (6), or nine (9), winning combinations for proportionate allocation for each such winning daily double wager.]

[(c) In the event no daily double ticket is sold combining the horse or betting interest which finishes first in one (1) of the daily double races, the daily double pool is distributed as if win pool with the profit allocated to wagering combinations which include the horse or betting interest which finished first in one (1) of the daily double races.]

[(d) In the event no daily double ticket is sold combining the horse or betting interests which finishes first in both the first and second race of the daily double, then the winning combination for distribution of the daily double profit shall be that combining the horses or betting interests which finished second in each of the daily double races.]

[(e) If after daily double wagering has commenced and a horse not coupled with another as a betting interest in the first race of the daily double is excused by the stewards or is prevented from racing because of failure of the starting-gate to open properly, then daily double wagers combining such horse shall be deducted from the daily double pool and refunded upon presentation and surrender of daily double tickets thereon.]

[(f) If, prior to closing of the daily double wagering, a scheduled starter in the second half of the daily double which is not coupled in the betting with another horse is excused by the stewards, then daily double wagers combining such horse shall be deducted from the daily double pool and refunded upon presentation and surrender of daily double tickets thereon.]

[(g) If after the first race of the daily double has been run, and a horse not coupled with another as a betting interest in the second race of the daily double is excused by the stewards or prevented from racing because of failure of the starting-gate door to open properly, then daily double wagers combining the winner of the first daily double race with such horses prevented from racing in the second daily double race shall be allocated consolation payoffs:]

[1. Consolation daily double payoffs shall be determined by dividing the net daily double pool by the amount wagered combining the winner of the first daily double race with every horse or betting interest scheduled to start in the second daily double race, such quotient being the consolation payoff per dollar wagered combining the winner of the first daily double race with such horse prevented from racing in the second daily double race;]

[2. Such consolation payoffs shall be deducted from the net daily double pool before calculation and allocation of wagers on the winning daily double combination.]

[(h) If for any reason the first daily double race is cancelled or declared "no race" by the stewards, then the entire daily double pool shall be refunded upon presentation and surrender of daily double tickets thereon. If for any reason the second daily double race is cancelled or declared "no race" by the stewards after the first daily double race is declared official, then the net daily double pool shall be distributed to wagering combinations which include the horse or betting interest which finished first in the first daily double race.]

[(i) If no daily double ticket is sold requiring distribution, then the entire daily double pool shall be refunded upon presentation and surrender of daily double tickets thereon.]

[(5) Quinella pool. The amount wagered on the winning combination, such being the first two (2) finishers irrespective of which horse finishes first and which horse finishes second, is deducted from the net pool to determine the profit; the profit is divided by the amount wagered on the winning combination, such quotient being the profit per dollar wagered on the winning quinella combination; payoff includes the amount wagered and profit thereon.]

[(a) In the event of a dead heat for first: between horses involving two (2) different betting interests, the net quinella pool is distributed as if no dead heat occurred; if between horses involving three (3) different betting interests, the net quinella pool is distributed as if a show pool and is allocated to wagers combining any of the three (3) horses finishing in a dead heat for first.]

[(b) In the event of a dead heat for second: between horses involving two (2) different betting interests, the net quinella pool is distributed as if a place pool and is allocated to wagers combining the first finisher with either horse finishing in a dead heat for second; if between horses involving three (3) different betting interests, the net quinella pool is distributed as if a show pool, and allocated to wagers combining the first horse with each of the three (3) horses finishing in a dead heat for second;]

[(c) In the event horses representing a single betting interest finish first and second, the net quinella pool shall be allocated to wagers combining such single betting interest with the horse or betting interest which finishes third.]

[(d) In the event no quinella ticket is sold combining:]

[1. The first finisher with one (1) of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the first finisher with the other horse finishing in a dead heat for second;]

[2. The first finisher with either of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the two (2) horses which finished in the dead heat for second;]

[3. The first finisher with either of the horses finishing in a dead heat for second, or combining with two (2) horses which finished in a dead heat for second, then the net quinella pool is distributed as if a show pool is allocated to wagers combining any of the first three (3) finishers with any other horses.]

[4. The first two (2) finishers, then the net quinella pool shall be distributed as if a place pool and is allocated to wagers combining the first finisher with any other horses, and wagers combining the second finisher with any other horse.]

[5. Horses or betting interest as would require distribution, then the entire quinella pool shall be refunded upon presentation and surrender of quinella tickets thereon.]

[(6) Exacta pool. The exacta pool is a contract by the purchaser of a ticket combining two (2) horses in a single race, selecting the two (2) horses that will subsequently finish first and second in that race. Payment of the ticket shall be made only to the purchaser who has selected the same order of finish as officially posted.]

[(a) The exacta is not a "parlay" and has no connection with or relation to the win, place and show betting and will be calculated as an entirely separate pool.]

[(b) If no ticket is sold on the winning combination of an exacta pool, the net pool shall be distributed equally between holders of tickets selecting the winning horse to finish first and/or holders of tickets selecting the second place horse to finish second.]

[(c) If no ticket is sold that would require distribution of an exacta pool to winner as above defined, the association shall make a complete and full refund of exacta pool.]

[(d) In case of a dead heat between two (2) horses for first place, the net exacta pool shall be calculated and distributed as a place pool to holders of tickets of the winning combinations. In case of a dead heat between two (2) horses for second place, the exacta pool shall be figured as a place pool, the holders of tickets combining the winning horse and the two (2) horses finishing second participating in the payoff.]

[(e) In the event of a dead heat for second place, if no ticket is sold on one (1) of the two (2) winning combinations, the entire net pool shall be calculated as a win pool and distributed to those holding tickets on the other winning combination. If no tickets combine the winning horse with either of the place horses in the dead heat, the exacta pool shall be calculated and distributed as a place pool to holders of tickets representing any interest in the net pool.]

[(f) In the event of any entry finishing first and second, the net exacta pool shall be distributed to holders of tickets selecting the entry to win combined with the horse finishing third.]

(1) [(7)] Refunds. For each type of wagering, the association shall provide the procedures for refunds in writing to the commission at the time the request for the pool is made and the commission shall approve such procedures before implementation.

[(a) If after win, place, or show wagering has commenced, a horse not coupled with another as a betting interest is excused by the stewards or is prevented from racing because of failure of the starting-gate door to open properly, the wagers on such horse shall be deducted from the win, place, and show pools, as the case may be, and refunded upon presentation and surrender thereof. If more than one (1) horse represents a single betting interest by reason of coupling as a mutuel entry or mutuel field, such single betting interest being the sole subject of a wager or part of a combination in a daily double, exacta or quinella wager, then there shall be no refund unless all of the horses representing such single betting interest are excused by the stewards and/or are prevented from racing horses because of failure of the starting-gate doors to open properly.]

[(b) If after exacta and quinella wagering has commenced, a horse not coupled with another as a betting interest is excused by the stewards or is prevented from racing because of failure of the starting-gate to open properly, then exacta and quinella wagers combining such horse with any other horse or betting interest shall be deducted from the exacta and quinella pool and refunded upon presentation and surrender of exacta and quinella tickets thereon.]

(2) [(8)] Race cancelled. For each type of wagering involving more than one (1) race, the association shall submit for commission approval the procedures to be used in the event a race is cancelled. [If for any reason a race is cancelled or declared "no race" by the stewards after wagering has commenced on such race, then all wagering thereon shall be refunded upon presentation and surrender of pari-mutuel tickets thereon; except as to daily double wagers upon cancellation of the second daily double race, which shall be distributed as provided under subsection (4)(h) of this section.]

(3) [(9)] Totalizator breakdown. In the event of an irreparable breakdown of the totalizator during the wagering on a race, the wagering on that race shall be declared closed and the payoff shall be computed on the sums wagered in each pool up to the time of the breakdown.

Section 5. Minimum Wager and Payoff. The minimum wager to be accepted by any licensed association shall be two (2) dollars. The minimum payoff on a two (2) dollar wager shall be two (2) dollars and twenty (20) cents. However, in the event of a minus pool, the minimum payoff for a two (2) dollar wager shall be two (2) dollars and ten (10) cents.

Section 6. Minors Prohibited from Wagering. No minor shall be permitted by any licensed association to purchase or cash a pari-mutuel ticket.

Section 7. Odds or Payoffs Posted. Approximate odds, based on win pool betting for finishing first for each betting interest, shall be posted on one (1) or more boards or television screens within view of the wagering public, at intervals of not more than ninety (90) seconds. If daily double wagering is conducted, before off-time of the second daily double race, the possible payoff for each two (2) dollar daily double wager combining the winner of the first daily double race with every horse or betting interest in the second daily double race; excepting that, in the event of a dead heat for first in the first daily double race, or a scheduled starter in the second daily double race is excused so as to cause a consolation daily double pool, then posting of all possible payoffs shall not be mandatory, but the association shall make every effort to compute such daily double prices and advise the public of same by posting or public-address announcement as soon as possible and prior to the running of the second daily

double race.

Section 8. Betting Explanation. Each association shall cause to be published in the daily race program a general explanation of pari-mutuel betting and an explanation of each type of betting pool offered. The [; such] explanation also shall be posted in conspicuous places about the association grounds so as to adequately inform the public and [. Such explanation] shall be submitted to the commission [state steward] prior to publication for approval [so as to insure an absence of conflict with these rules].

Section 9. Prior Approval Required for Betting Pools. Each association desiring to conduct more than nine (9) betting races on a single day, or desiring to offer exotic [daily double, exacta or quinella] wagering, shall first apply therefor in writing to the commission and obtain specific approval of the [as to] number of betting races and type of wagering to be offered on a single day.

Section 10. Pools Dependent Upon Entries. (1) On each type of wagering not already described in subsections (2) and (3) of this section, the association shall request in writing the procedures for each pool as a function of entries and the commission shall make the final determination. [Unless the commission approves a prior written request from the association to alter wagering opportunities for a specific race, each association shall offer win, place, and show wagering on all programmed races involving six (6) or more betting interests].

(2) If horses representing five (5) or fewer betting interests qualify to start in a race, [then] the association may prohibit show wagering on that race; if horses representing four (4) or fewer betting interests qualify to start in a race, [then] the association may prohibit both place and show wagering on that race.

(3) If[, by reason of] a horse is [being] excused by the stewards after wagering has commenced or a horse is prevented from racing because of failure of a starting-gate door to open properly, the number of actual starters representing different betting interests is:

(a) Reduced to five (5), [then] the association may cancel show wagering on that race and the entire show pool shall be refunded upon presentation and surrender of show tickets thereon;

(b) Reduced to four (4) or fewer, [then] the association may cancel both place and show wagering on that race and the entire place pool and show pool shall be refunded upon presentation and surrender of such place and show tickets thereon.

Section 11. Pari-mutuel Ticket Sales. (1) No pari-mutuel tickets shall be sold except by a licensed [the] association [conducting the races on which such wagers are made,] and the same shall be sold only at regular ["seller"] windows properly designated by signs showing the type and denomination of tickets to be sold at such windows. No pari-mutuel ticket shall [may] be sold after the totalizator has been locked and no association shall be responsible for ticket sales entered into but not completed by issuance of a ticket before the totalizator has been locked.

(2) Any claim by a person that he has been issued a ticket other than that which he requested, shall [must] be made before he [such person] leaves the [seller] window and before the totalizator is locked.

(3) After purchasing a ticket and after leaving a ticket window, a person shall not be entitled to enter for issuance an incorrect ticket, or claim refund or payment for tickets discarded, or lost, or destroyed, or mutilated beyond identification.

(4) Payment on valid pari-mutuel tickets shall be made only upon presentation and surrender thereof to the association where the [such] wager was made within two (2) years following the running of the race on which the [such] wager was made. Failure to present any such ticket within two (2) years shall constitute a waiver of the right to receive payment thereon.

(5) Payment of valid pari-mutuel tickets shall be made on the basis of the order of finish as [purposely] posted on the infield results board and declared "official" by the stewards. A [; any] subsequent change in the [such] order of finish or award of purse money that [as] may result from a subsequent ruling by the steward or commission, shall not [in no way] affect the pari-mutuel payoff.

(6) The association shall be responsible for the correctness of all payoff prices posted as "official" on the infield results board. If an error is made in posting the payoff figures on the public board, and ascertained before any tickets are cashed thereon, the [then such] posting error shall [may] be corrected accompanied by a public address announcement, and only the correct amounts shall be used in the payoff, irrespective of the initial error on the public board.

(7) Prior to posting payoffs, the pari-mutuel manager shall require each of the computer printout sheets (calculating sheets) of such race to be proven by the computer (calculator) and the winners verified. Such proof shall show the amounts for commission, breakage, and payoffs, which added together shall equal the total pool. All pay slips are to be checked with computer printout sheets (calculating sheets) as to winners and prices before being issued to cashiers, and all board prices are to be rechecked with the computer printout sheet (calculator) before released to the public.

(8) Whenever the recapitulation of the sales registered by each ticket issuing machine subsequently proves that the actual amount in the pool, or pools, is less than the amount used in calculating the payoff, the [such] deficiency shall be deposited in the pool or pools by the association. If [Should] the recapitulation of sales prove that the actual amount in the pool or pools, is greater than the amount used in calculating the payoff due to a mechanical error of the totalizator, the [such] error resulting in underpayment to the public, then the aggregate of the [such] underpayments shall be paid into the corresponding pool of the next race or races, in such amounts as may be determined by the state steward and the pari-mutuel manager. If any such error should occur in computing the daily double pool, the underpayment shall be added to the daily double pool of the following day. Overpayments and underpayments subsequently

discovered upon recapitulation after the close of a meeting may be adjusted, and any underpayment resulting from such final adjustment shall be paid to the Department of Revenue.

Section 12. Betting Interests Involving more than One (1) Horse. When two (2) or more horses entered for the same race are determined by the commission [stewards] to have common ties through ownership [or training] and are joined by the commission [stewards] as a "mutuel entry," the [such] mutuel entry shall become a single betting interest and a wager on one (1) horse in a mutuel entry shall be a wager on all horses in the same mutuel entry. When the number of horses competing in a race exceeds the numbering capacity of the totalizator, the racing secretary shall assign the highest pari-mutuel numbers to horses so that the highest numbered horse within the numbering capacity of the totalizator, together with horses of higher numbers, shall be grouped in the "mutuel field" as a single betting interest, and a wager on one (1) horse in the mutuel field shall be a wager on all horses in the same mutuel field.

Section 13. Emergency Situation. In the event any emergency arises in connection with the operation of the pari-mutuel department not provided for by these rules, [then] the pari-mutuel manager shall make an immediate decision and shall by the quickest means possible notify the state steward and render a full report to the commission.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: March 9, 1989
FILED WITH LRC: March 10, 1989 at 1 p.m.

PUBLIC PROTECTION & REGULATION CABINET
Kentucky State Racing Commission
(As Amended)

810 KAR 1:013. Entries, subscriptions and declarations.

RELATES TO: KRS 230.210 to 230.360
STATUTORY AUTHORITY: KRS 230.260 [13A.350]
NECESSITY AND FUNCTION: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this regulation is to outline requirements for entry, subscription and declaration of horses in order to race.

Section 1. Definitions. (1) "Declaration" means the withdrawal of a horse from a race, before closing, by the owner, trainer, or person deputized by either.
(2) "Scratch" means the withdrawal of a horse from a race, after closing, by the owner, trainer, or person deputized by either.

Section 2. [1.] Entering Required. A [No] horse shall not be qualified to start in any race unless it [such horse] has been and continues to be duly entered therein. Entries or subscriptions for any horse, or the transfer of same, may be refused or cancelled by the association without notice or reason given therefor.

Section 3. [2.] Procedure for Making Entries. (1) All entries, subscriptions, declarations, and scratches shall be filed [lodged] with the racing secretary and shall not be considered as having been made until received by the racing secretary. The racing secretary [who] shall maintain a record of the time of receipt of same for a period of one (1) year.

(2) An [Every] entry shall [must] be in the name of a [such] horse's licensed owner, as completely disclosed and registered with the racing secretary under these administrative regulations [rules], and made by the owner, or trainer, or a licensed authorized agent of the [such] owner or trainer.

(3) An [Every] entry shall [must] be in writing, except that an entry may be made by telephone to the racing secretary, but shall [must] be confirmed in writing if requested by [should] the stewards, the racing secretary, or an assistant to the racing secretary [so request].

(4) An [Every] entry shall clearly designate the horse [so] entered. When entered for the first time during a meeting, every horse shall be designated by name, age, color, sex, sire, and dam, as reflected by its [such horse's] registration certificate.

(a) A [No] horse shall not [may] race unless correctly identified to the satisfaction of the stewards as being a horse duly entered.

(b) Establishing identity of a horse shall be the responsibility of its owner, and of any other person seeking to identify it. [In establishing identity of a horse, responsibility shall be borne by any person attempting to identify such horse as well as the owner of such horse,] All such persons shall be [being] subject to appropriate disciplinary action for incorrect identification.

(c) An [Every] entry shall clearly state [any and] all medications, drug, or substances which the horse shall receive as prerace treatment. Medications, drugs, or substances shall be categorized into two (2) sections and shall be designated as follows: NSAID (nonsteroidal anti-inflammatory) shall be designated by (B); and [any and] all bleeder medications shall be designated by (L). Horses racing for the first time with either of the above categories shall be clearly designated with (1).

(5) No alteration, except an error corrected with the permission of the stewards, shall [may] be made in an entry after the closing of entries[, but an error may be corrected with permission of the stewards].

(6) A [No] horse shall not [may] be entered in two (2) races to be run on the same day.

(7) A [No] horse which has not started in the past ninety (90) days shall not be permitted to start unless it has at least one (1) published workout within twenty (20) days of entry at a distance satisfactory to the stewards of the meeting. If [In the event that] a horse has done the requisite workout, but through no fault of the trainer, such workout does not appear in the past performances, it [the horse] shall be permitted to start and the correct workout shall be publicly displayed on the bulletin boards where photo-finishes are shown at least fifteen (15) minutes prior to the

first race and for the duration of the day's racing. [Additionally,] Such workouts shall be displayed on the television monitors and tote board for fifteen (15) minutes prior to the first race. A [No] horse which has never started shall not be entered until the trained has produced satisfactory evidence to indicate to the starter that it has been adequately schooled from the starting gate.

Section 4. [3.] Stabling Requirement. No entry shall be accepted for any horse not stabled on association grounds where such race is to be run, unless its stabling elsewhere has been approved by the commission in its approved off-track stable list.

Section 5. [4.] Limitation as to Spouses. An [No] entry in a [any] race shall not be accepted for a horse owned wholly or in part by, or trained by, a person whose husband or wife is under license suspension at time of such entry. [; except that,] If the license of a jockey has been suspended for a routine riding offense, [then] the stewards may waive this rule as to the duly licensed husband or wife or such suspended jockey.

Section 6. [5.] Mutuel Entries. (1) [All] Horses entered in the same race and trained by the same trainer shall be joined as a mutuel entry and single betting interest; except as provided in subsection (5) of this section.

(2) [All] Horses entered in the same race and owned wholly, or in part by the same owner or spouse thereof, shall be joined as a mutuel entry and single betting interest.

(3) [(2)] No more than two (2) horses having common ties through ownership or training [as] to be joined as a mutuel entry shall [may] be entered in a purse race. When making such double entry of horses owned wholly, or in part by the same owner or spouse thereof, a preference for one (1) of the horses shall [must] be made.

(4) [(3) In no case may] Two (2) horses having common ties through ownership shall not start in a purse race to the exclusion of a single interest. In purse races where [in which] the number of starters is limited to ten (10) or less, [no] two (2) horses having common ties through training shall not [may] start to the exclusion of a single entry.

(5) In approved races, permission may be granted by the commission to uncouple mutuel entries of horses sharing common ties through training, which are owned by different owners.

Section 7. [6.] Subscriptions. (1) Nominations to or entry of a horse in a stakes race is a subscription. Any subscriber to a stakes race may transfer or declare a [such] subscription prior to closing.

(2) Joint subscriptions and entries may be made by any one (1) of the joint owners of a horse. [, and] Each [such] owner shall be jointly and severally liable for all payments due thereon.

(3) Death of a horse, or a mistake in its entry when the [such] horse is eligible, shall [does] not release the subscriber or transferee from liability for all stakes fees due thereon. [No] Fees paid in connection with a subscription to a stakes race that is run shall not be refunded, "except as otherwise stated in the conditions of a stakes race."

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry thereunder. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.

(5) When a horse is sold privately, or sold at public auction, or claimed, stakes engagements for it [such horse] shall be transferred automatically with the [such] horse to its new owner. [; except that,] If the [such] horse is transferred to a person whose license is suspended or otherwise unqualified to race or enter it, the [such horse, then such] subscription shall be void as of the date of such transfer.

(6) All stakes fees paid toward a stakes race shall be allocated to the winner thereof unless otherwise provided by the condition for the [such] stakes race. If [In the event] a stakes race is not run for any reason, all [such] subscription fees paid shall be refunded.

Section 8. [7.] Closing. (1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for such races. If a race is not split, an [no] entry, subscription, or declaration shall not be accepted after [such] closing time. If a purse race fails to fill, or in case of an emergency, the racing secretary may extend the closing time, provided the approval of a steward has been obtained. [; except that in event of an emergency, or if a purse race fails to fill them the racing secretary may, with the approval of a steward, extend such closing time.]

(2) When [If] the hour of closing is not specified for stakes races, [then] subscriptions and declarations therefor may be accepted until midnight of the day of closing; provided, they are received in time for compliance with every other condition of such race.

(3) Entries which have closed shall be complied without delay by the racing secretary and along with declarations, shall be posted.

Section 9. [8.] Number of Starters in a Race. (1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and extensions thereof approved by the commission as can be positioned across the width of the track at the starting point for such race. The [; and such] maximum number of starters further shall be limited by the number of horses which, in the opinion of the stewards, considering the safety of the horses and riders, and the distance from the start to the first turn, can be afforded a fair and equal start.

(2) At tracks measuring less than a mile in circumference, no more then ten (10) horses shall [may] start in any race without consent of the stewards, and no more than twelve (12) horses shall [may] start without approval of the commission.

(3) A [Any] claiming race in the printed condition book for which eight (8) or more horses representing different betting interests

are entered shall [must] be run. All other purse races in the printed condition book for which six (6) or more horses representing different betting interests are entered shall [must] be run.

(4) If a [any] purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (3) of this section to be run, [then] the association may cancel or declare off such race. The names of all horses entered therein shall be publicly posted in the office of the racing secretary not later than 1 p.m. the same day.

Section 10. [9.] Split or Divided Races. (1) If [In the event] a race is cancelled or declared off, the association may split any race programmed for the same day and which may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) When a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice thereof not less than fifteen (15) minutes before such races are closed in order [so as] to grant time for the making of additional entries to such split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions therefor were made, and in the absence of specific prohibition of such conditions:

(a) Horses originally joined as a mutuel entry may be placed in different divisions of a split race unless the person making such multiple entry, at the time of such entry indicates such coupling of horses is not to be uncoupled when such race is split.

(b) Division of entries in any split stakes race may be made according to age, or sex, or both.

(c) Entries for any split race not divided by any method provided in this regulation [above by this rule], shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of such split race.

Section 11. [10.] Post Positions. Post positions for all races shall be determined by lot, drawn in the presence of those making the entries for the [such] race. Post positions in split races also shall be redetermined by lot in the presence of those making the entries for the [such] split race. The racing secretary shall assign pari-mutuel numbers for each starter to conform with the post position drawn, except when a race included two (2) or more horses joined as a single betting interest.

Section 12. [11.] Also-eligible List. (1) If the number of entries for a race exceeds [exceeded] the number of horses permitted to start, [in such race] as provided by Section 9 [8] of this regulation, [then] the names of no more than [as many as] eight (8) horses entered but not drawn into such race as starters shall be posted on the entry sheet as "also-eligible" to start.

(2) After a horse has [any horses have] been excused from a race at scratch time, a new drawing shall be taken as to horses on the also-eligible list, [, and] The starting and post position of [such] horses drawn from the also-eligible list shall be determined by the sequence drawn, unless otherwise stipulated in the published conditions of the race.

(3) An [Any] owner or trainer of a [any] horse on the also-eligible list who does not wish to start the [such] horse in a [such] race shall [so] notify the racing secretary prior to scratch time for the [such] race. The [and such] horse shall forfeit any preference to which it may have been entitled.

(4) When [Where] entries are closed two (2) racing days prior to the running of a race, a [any] horse on an also-eligible list that [, and which also] has been drawn into a race as a starter for the succeeding day, shall not permitted to run in the race for which it had been listed as also-eligible.

Section 13. [12.] Preferred List; Stars. (1) The racing secretary shall maintain a list of horses which were entered but denied an opportunity to race because they were eliminated from a race programmed in the printed condition book either by overfilling or failure to fill. The racing secretary shall submit for approval of the commission at least thirty (30) days prior to the opening date of a race meeting a detailed description of the manner in which preference will be allocated.

(2) No preference shall be given a horse otherwise entitled thereto for a race if it [such horse] also is entered for a race on the succeeding day.

Section 14. [13.] Arrears. Unless approved by the racing secretary, a horse shall not be entered or raced unless its owner has paid all stakes fees owed. [No horse may be entered or raced if the owner thereof is in arrears as to any stakes fees due by such owner; except with the approval of the racing secretary.]

Section 15. [14.] Declarations. Declarations [Withdrawal of a horse from a race before closing thereof by the owner or trainer or person deputized by either, such being known as a "declaration,"] shall be made in the same [manner as to] form, time, and procedure as required [provided] for the making of entries. Declarations [and scratches] are irrevocable. No declaration fee shall be required by any licensed association.

Section 16. [15.] Scratches. Scratches are irrevocable and [Withdrawal of a horse from a race after closing thereof by owner or trainer or person deputized by either, such being known as a "scratch,"] shall be permitted [only] under the following conditions:

(1)(a) Except as provided in paragraph (b) of this subsection, a horse may be scratched from a stakes race for any reason at any time up until fifteen (15) minutes prior to post time for the race preceding such stakes race by the filing in writing of such intention with the racing secretary. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel manager, and shall cause public announcement of same to be made. [, unless]

(b) If a list of also-eligibles has been drawn, [in which case] scratches shall [must] be filed at the regular scratch time as posted by the racing secretary. Thereafter,

a horse shall not be excused [, and no horse will be excused thereafter] without a valid physical reason. [Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel manager, and shall cause public announcement of same to be made.]

(2) A [No] horse shall not [may] be scratched from a purse race unless:

(a) The [without] approval of the stewards has been obtained; and

(b) [unless such] Intention to scratch has been filed in writing with the racing secretary, or his assistant, at or before the time conspicuously posted as "scratch time." A scratch of one (1) horse coupled in a mutuel entry in a purse race must be made at or before the posted scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time therefor.

(3) In purse races, horses that are physically disabled or sick shall be permitted to be scratched first. If:

(a) [Should] Horses representing more than ten (10) betting interests in either of the two (2) daily double races; or

(b) Horses representing mire than eight (8) betting interests in any other purse race, remain in after horses with physical excuses have been scratched, [then] owners or trainers may be permitted at scratch time to scratch horses without physical excuses. Scratches down to such respective minimum numbers for such races may be made. [,] This privilege shall [to] be determined by lot if an excessive number of owners or trainers wish to scratch their horses.

(4) Entry of a [any] horse which has been scratched, or excused from starting by the stewards, because of a physical disability or sickness shall not be accepted until the expiration of three (3) calendar days after it [such horse] was scratched or excused.

Section 17. Official Publication Statistics. [16.] In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form and the monthly chart books, or corresponding official publications of any foreign county, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: March 30, 1989
FILED WITH LRC: April 12, 1989 at 9 a.m.

PUBLIC PROTECTION & REGULATION CABINET
Kentucky State Racing Commission
(As Amended)

810 KAR 1:050. Steeplechase racing.

RELATES TO: KRS 230.361
STATUTORY AUTHORITY: KRS 230.215
NECESSITY AND FUNCTION: To regulate conditions on which steeplechase races shall be conducted when there is pari-mutuel wagering.

Section 1. Definitions. (1) "Steeplechase race" means a running contest between thoroughbred horses, ridden by jockeys, over a prescribed course which may include obstacles or jumps and which is conducted at a racing association licensed by the Kentucky State Racing.

(2) For steeplechase races, "recognized meeting" means any meeting with regularly scheduled races for thoroughbreds, licensed by and conducted under administrative regulations [rules] promulgated by a governmental regulatory body, to include foreign countries which are regulated by a racing authority which has reciprocal relations with the Jockey Club and whose race records can be provided an association by the Jockey Club.

(3) A foreign substance is defined as all substances except those which exist naturally in the untreated horse at normal physiological concentration, and substances or metabolites thereof, which are contained in equine feeds or feed supplements, do not contain pharmacodynamic or chemotherapeutic agents, and do not interfere with the detection of prohibited foreign substances.

Section 2. All steeplechase races on which pari-mutuel wagering is conducted shall be in accord with this regulation [and the "Rules of Racing L"] and all other provisions of KAR Title 810 [and the "Rules of Racing"] except as noted in the sections of this regulation.

Section 3. For steeplechase races, "maiden" means a horse which, at the time of starting, has never won a race at a recognized meeting, except as follows:

(1) In the races on the flat, a horse is still a maiden although the winner of a steeplechase.

(2) In a steeplechase, a horse is still a maiden although the winner of a flat race.

Section 4. For steeplechase races, a horse shall be considered a "starter" immediately upon the assistant starter dropping the flag.

Section 5. For steeplechase races, the "weight for ages" schedule in 810 KAR 1:014, Section 1(12) [and the "Rules of Racing XIV" Section 1(12)] shall not apply. Each association desiring to conduct steeplechase races shall submit to the commission for its approval a "weight for ages schedule for steeplechase races" as a part of its application for race dates.

Section 6. For steeplechase races, 810 KAR 1:006, Section 33 [and the "Rules of Racing VI", Section 33] shall not apply.

Section 7. For steeplechase races, 810 KAR 1:012, Section 7 [and the "Rules of Racing XII", Section 7] shall not apply.

Section 8. For steeplechase racing 810 KAR 1:012, Section 9(3) [and the "Rules of Racing XII", Section 9(3)] shall not apply.

Section 9. Notwithstanding other provisions of KAR Title 810 [and the "Rules of Racing"], spurs shall be allowed for steeplechase races.

Section 10. For steeplechase races, the provisions of 810 KAR 1:013, Section 3 [and the "Rules of Racing XIII", Section 3] shall not apply.

Section 11. Notwithstanding the provisions of 810 KAR 1:018 [and "Rules of Racing XVIII",] for steeplechase races, no horse participating in any race shall carry in its body any foreign substance. [A foreign substance is defined as all substances except those which exist naturally in the untreated horse at normal physiological concentration, and substances or metabolites thereof, which are contained in equine feeds or feed supplements, do not contain pharmacodynamic and/or chemotherapeutic agents, and do not interfere with the detection of prohibited foreign substances.]

Section 12. For steeplechase races, stewards shall serve from one (1) minute after midnight on the day before entries are made until one (1) minute before midnight on the day after the last racing day of the race meeting for which they are appointed; provided, in the event a dispute or controversy arises during a race meeting which is not settled at the conclusion of the race meeting, then the power of the stewards shall be extended over the period necessary to resolve the matter, or until the matter is referred or appealed to the commission.

Section 13. For steeplechase races, 810 KAR 1:009, Section 4(1) and (2) [and the "Rules of Racing IX", Section 4(1) and (2)] shall not apply. For such steeplechase races, the apprentice allowance shall be ten (10) pounds until he has ridden a winner, seven (7) pounds until he has ridden an additional four (4) winners; five (5) pounds until he has ridden ten (10) winners.

Section 14. For steeplechase races, the Jockey Club registration certificate of each horse must be filed with the horse identifier within one (1) hour after the horse's arrival on the grounds.

Section 15. For steeplechase races, 810 KAR 1:014, Section 1(11) [and "Rules of Racing XIV", Section 1(11)] shall not apply and ten (10) pounds is the limit of overweight any horse is permitted to carry with the exception of when the rider is an amateur, in which case there is no limit.

LYLE G. ROBEY, Chairman
APPROVED BY AGENCY: March 30, 1989
FILED WITH LRC: April 12, 1989 at 9 a.m.

PUBLIC PROTECTION & REGULATION CABINET
Harness Racing Commission
(As Amended)

811 KAR 1:085. Conduct of racing.

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 the conduct of racing.

Section 1. An [No] owner, trainer, driver, attendant of a horse, or any other person shall not use improper language to an official or member or employee of the commission, or be guilty of any improper conduct toward such officers or judges, or persons serving under their orders.

Section 2. An [No] owner, trainer, driver, [or] attendant of a horse, or any other person shall not threaten, strike, insult, ridicule, annoy, embarrass, make unwelcome sexual advances toward, request sexual favors from, engage in verbal or physical conduct of a sexual nature with, use force or intimidation of any kind against, an owner, trainer, driver or attendant of a horse, or permit, force, aid or encourage another person to commit or engage in any of the foregoing prohibited offenses. [, at any time or place may under any circumstance either threaten, strike, insult, ridicule, annoy, embarrass, make unwelcome sexual advances toward, request sexual favors from, engage in verbal or physical conduct of a sexual nature with, use force or intimidation of any kind or nature against, any other owner, trainer, driver or attendant of a horse, or permit, force, aid or encourage any other person to commit or engage in any of the foregoing prohibited offenses.] [shall commit an assault, or an assault and battery, upon any driver who shall drive in a race, or shall threaten to do bodily injury to any such driver or shall address to such driver language outrageously insulting.]

Section 3. An [If any] owner, trainer, or driver of a horse shall not threaten or join with others in threatening not to race, or not to declare in, because of the entry of a certain horse [or horses,] or a particular stable, thereby compelling or attempting [trying] to compel the race secretary to reject certain eligible entries. Such actions [it] shall be immediately reported to the commission. [and the] Offending parties may be suspended pending a hearing and thereafter if such [said] action was unjustified.

Section 4. An [No] owner, agent, or driver, who has entered a horse shall not [thereafter] demand of the track a bonus of money or other special award or consideration as a condition for starting the horse.

Section 5. An [No] owner, trainer or driver of a horse shall not:
(1) Bet or cause another [any other] person to bet on his behalf on a [any other] horse in a [any] race in which [there shall start] a horse owned, trained or driven by him starts, or which he [in anywise] represents or handles in any manner or in which he has an interest; or
(2) [. No such person shall] Participate in exacta, quinella or other multiple pool wagering on a race in which such horse starts except [other than] the daily double.

Section 6. Duty to Report Fraudulent Proposal. If a [any] person is [shall be] approached with an [any] offer or promise of a bribe, or a wager, or with a request or suggestion for a bribe, or for an [any] improper, corrupt or fraudulent act in relation to racing, or that a [any] race shall be conducted otherwise than fairly and honestly, he [it] shall [be the duty of such person to] report the details thereof immediately to the presiding judge.

Section 7. [Any] Misconduct on the part of a licensee, fraudulent in its nature or injurious to the character of the turf, [although not specified in these rules,] is forbidden. A [Any] person [or persons] who, individually or in concert with one another, shall fraudulently and corruptly, [by any means] affect or attempt to affect the outcome of a [any] race, or affect or attempt to affect a false registration or commit any other act injurious to the sport, shall be guilty of a violation.

Section 8. If two (2) or more persons [shall] combine and confederate together in any manner, regardless of where they [the said persons] may be located, for the purpose of violating any of these administrative [rules and] regulations and [shall] commit an [some] act in furtherance of said purpose and plan, it shall constitute a conspiracy and a violation.

Section 9. When [In any case where] an oath is administered by judges, representative of the commission, [or] a notary public, or any other person legally authorized to administer oaths, and a [if the] party knowingly swears falsely or withholds information pertinent to the investigation, he shall be fined, suspended, or both, or expelled.

Section 10. Financial Responsibility. A [Any] participant who shall accumulate unpaid obligations, or default in obligations, or issue drafts or checks that are dishonored or payment refused, or otherwise display financial irresponsibility reflecting on the sport, may be denied a license or may be suspended by the commission.

Section 11. Nerved Horses. [All] Horses that have been nerved shall be so designated on the United States Trotting Association registration certificate and the eligibility certificate and be certified by a practicing veterinarian. It is the responsibility of the owner of the horse at the time the horse is nerved to see that this information is placed on the registration certificate and the eligibility certificate. [All] Horses that have been nerved prior to the adoption of this regulation shall [rule must] also be certified and it is [will be] the responsibility of the owner or trainer of the [such] horse to see that such information is carried on the registration certificate. A [No] trainer or owner shall not [will] be permitted to enter or start a horse that is high nerved. Low nerved horses may be permitted to start providing this information is published on the bulletin board in the racing secretary's office.

Section 12. Spayed Mares. The fact that a mare has been spayed shall [must] be noted on the registration certificate, the eligibility certificate and any program when the [such] mare races. It is [shall be] the owner's responsibility to report the fact that the mare has been spayed to the United States Trotting Association and return its papers for correction.

Section 13. A [Any] violation of any of the provisions of this administrative regulation [rule] shall be punishable by a fine, suspension or both, or by expulsion.

Section 14. An [No] owner, trainer, driver, attendant or other person representing a horse which has previously tested positive for Equine Infectious Anemia shall not knowingly cause it [said horse] to be declared into any race. An [; and no] owner, trainer, driver, attendant or other person shall not transfer, or attempt [seek] to [bring about the] transfer, [of] such a horse without first notifying the prospective purchaser or transferee of the fact that the horse had previously tested positive for Equine Infectious Anemia.

JAY SPURRIER, Chairman
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: March 10, 1989
FILED WITH LRC: April 14, 1989 at noon

PUBLIC PROTECTION & REGULATION CABINET
Harness Racing Commission
(As Amended)

811 KAR 2:065. Registration; racing requirements.

RELATES TO: KRS 230.610 to 230.770
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: To regulate conditions under which Arabian, quarter horse and appaloosa racing shall be conducted in Kentucky. The function of this regulation is to outline the requirements for horses entered to be raced.

Section 1. Registration Required. A [No] horse shall not [may] be entered or raced in this state unless:

(1) Duly registered and named in the registry office of the American Quarter Horse Association of Amarillo, Texas or Appaloosa Horse Club, Inc., Moscow, Idaho; and

(2) [unless] The registration certificate or racing permit issued by the American Quarter Horse Association or Appaloosa Horse Club, Inc., for the [such] horse is on file with the racing secretary. [; except, however,] The stewards may for good cause, in their discretion, waive this requirement if the horse is otherwise correctly identified to the steward's satisfaction.

Section 2. Ringers Prohibited. (1) A [No] horse shall not [may] be entered or raced in this state designated by a name other than the name under which it [such horse] is currently registered with the American Quarter Horse Association of Amarillo, Texas or Appaloosa Horse Club, Inc., Moscow, Idaho. If [In the event] a horse's name is changed by the American Quarter Horse Association or Appaloosa Horse Club, Inc., its [such horse's] former name shall be shown parenthetically in the daily race program the first three (3) times it [such horse] races after such name change.

(2) A [No] person shall not [at any time] cause or permit the correct identity of a horse to be concealed or altered, nor shall he [any person] refuse to reveal the correct identity of a horse he owns, or which is in his care, to a racing official or member of the regular news media.

(3) A [No] horse shall not race in this state without a legible lip tattoo number applied by agents of the American Quarter Horse Association of Amarillo, Texas or Appaloosa Horse Club, Inc., Moscow, Idaho. [; except, however,] The stewards may for good cause, in their discretion, waive this requirement if the horse is otherwise correctly identified to the steward's satisfaction. The stewards shall require that a horse without a lip tattoo number be lip tattooed within a reasonably practical time.

(4) A [No] horse shall not [may] be entered or raced in this state if previously involved in a "ringer" case, and:

(a) [to the extent that:] A person having control of the [such] horse knowingly entered or raced the [such] horse while designated by a name other than the name under which it [such horse] was registered with the American Quarter Horse Association or Appaloosa Horse Club, Inc.; or

(b) The [such] person having control of such horse participated in or assisted in the entry or racing of some other horse under the name registered as belonging to the [such] horse in question.

Section 3. Denerving. (1) A [Any] horse on which a neurectomy has been performed shall have this [such] fact designated on its registration certificate or racing permit. It shall be the joint responsibility of the practicing veterinarian who performed the operation and the trainer of such denerved horse to insure that this [such] fact is designated on the registration certificate or racing permit.

(2) A high nerved [Any] horse whose ulnar, radial, or median nerve has been either blocked or removed (known as high nerved), or whose volar or plantar nerve has been blocked or removed bilaterally, shall not be entered or raced in this state.

(3) A [Any] horse whose volar or plantar nerve has been removed unilaterally or which has had a posterior digital neurectomy (known as low nerve), may be permitted to race provided the [such] denerving has been reported by the trainer to the stewards, and this [such] horse has been approved for racing by the association veterinarian prior to being entered for a race.

(4) If [In the event] a horse races in violation of this section [rule] and participates in the purse distribution, [then] no protest thereon shall [will] be considered unless submitted in writing to the stewards within forty-eight (48) hours after the [such] race.

(5) If [In the event] a horse races in violation of this section [rule] and is claimed, [then] no protest thereon shall [will] be considered unless the successful claimant submits the [such] protest in writing within forty-eight (48) hours requesting the claim be voided. If [Should] the claim is [be] voided, the horse shall be returned to the owner who started it [such horse] in the [such] race, and the claim price shall be returned to the claimant.

(6) A list of all denerved horses shall be posted in the racing secretary's office. A [No] person shall not report a horse as having had a neurectomy when in fact it [such horse] has not.

Section 4. Bleeders. A [Any] horse known to have bled from its nostrils during a race or workout shall [may] not be entered or raced without prior approval for racing by the association veterinarian. If [In the event] a horse bleeds a second time, it [such horse] shall be placed on the veterinarian's list and prohibited from racing for a minimum of six (6) months. If [; in the event] a horse bleeds a third time, it [such horse] shall be [thereafter] prohibited from racing in this state.

Section 5. Health Certificate Required. A [No] horse shall not [may] be stabled on association grounds unless, within ten (10) days of arrival on association grounds, it [such horse] has been examined by an accredited practicing veterinarian who certifies:

(1) [as to] The identity of the [such] horse;

(2) Temperature at time of examination; [and]

(3) That to the best of his knowledge and belief the [such] horse is free from any infectious or contagious disease or exposure thereto and observable extoparasites; and

(4) Further certifies [as to] such other matters as may be required from time to time by the Kentucky State Veterinarian in Frankfort. Notice of this requirement shall accompany stall applications and be included in the condition book.

Section 6. Workouts. A [No] horse shall not [may] be scheduled in the paddock, or taken onto a track on association grounds for training or workout, other than during normal training hours posted by the association, without special permission of the stewards.

Section 7. Removal from Association Grounds. A [No] horse shall not [may] be removed from association grounds without prior approval of the stewards and unless released by the racing secretary. A [No] dead or sick horse shall not [may] be removed from association grounds without prior approval of the commission veterinarian.

Section 8. Age Restrictions. A [No] quarterhorse or appaloosa horse five (5) years of age or older shall not [may] be entered or raced in a race restricted to maidens. An [No] Arabian horse six (6) years of age or older shall not [may] be entered or raced in a race restricted to maidens. A [No] horse thirteen (13) years of age or older shall not [may] be entered or raced.

Section 9. Fillies and Mares Bred. A [Any] filly or mare that has been covered by a stallion shall be so reported to the racing secretary prior to being entered in a race. A list of all fillies and mares so reported, showing the names of stallions to which they have been bred, shall be posted in the racing secretary's office. A [No] filly or mare that has been covered by a stallion shall not [may] be entered in a claiming race unless a written release from the stallion owner is attached to its [such filly or mare's]

registration certificate indicating that the stallion service fee has been paid or satisfied.

Section 10. Serviceable for Racing. A [No] horse shall not [may] be entered or raced if it [that]:
(1) Is not in serviceable, sound racing condition. The stewards may at any time cause a horse on association grounds to be examined by a qualified person.
(2) Is posted on a veterinarian's list, or steward's list, or starter's list or is suspended, in any racing jurisdiction.
(3) Has been administered any drug in violation of 811 KAR 2:095.
(4) Is blind or has seriously impaired vision in both eyes.
(5) Is not correctly identified to the satisfaction of the stewards.
(6) Is owned wholly or in part by, or is trained by, an ineligible person.

Section 11. Equipment. (1) Whips and blinkers shall [must] be used consistently on a horse. Permission to change use of any equipment used on a horse in its last previous start shall [must] be obtained from the stewards. A horse's tongue shall [must] be tied down during a race with a clean bandage or gauze, if needed. A horse's bridle shall not [may] weigh [no] more than two (2) pounds. [;] War bridles are prohibited. A [No] horse shall not [may] race in ordinary training shoes. [;] Bar shoes may be used for racing only with permission of the stewards.
(2) Use on a horse either in a race or workout of any goading device, or chain, or spurs, or electrical or mechanical device, or appliance other than the ordinary whip which could be used to alter the speed of such horse, is prohibited.
(3) A [No] whip [shall be used] that weighs more than one (1) pound or is longer than thirty (30) inches with one (1) popper shall not be used. [No] Stingers or projections extending through the hole of a popper or any metal part on a whip shall not be permitted. Indiscriminate or brutal use on a horse of an ordinary whip, as determined by the stewards in their sole discretion, is prohibited.

Section 12. Sex Alteration. An [Any] alteration in the sex of a horse shall [must] be reported by its [such horse's] trainer to the racing secretary promptly. [, and] The racing secretary shall note this fact [same] on the [such] horse's registration certificate.

JAY SPURRIER, Chairman
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: April 14, 1989
FILED WITH LRC: April 14, 1989 at noon

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(As Amended)

904 KAR 3:060. Administrative disqualification hearings and penalties.

RELATES TO: KRS 194.050
STATUTORY AUTHORITY: KRS Chapter 13A, 194.050, 7 CFR 273.15, FNS/Sero Regulations Supplement, 273.15-a-1 (82-14) (7-28-82); 7 CFR 273.16, FNS/Sero Regulations Supplement, 273.16-a-1 (83-5) (12-15-82) [7 CFR Part 270 through 280]
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program as prescribed by the Food Stamp Act of 1977, as amended and applicable federal regulations and interpretations thereof [7 CFR Part 270 through 280]. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the procedures used by the cabinet to determine when an act of intentional program violation has occurred and appropriate penalties which shall be applied.

Section 1. Administrative Disqualification Hearings. An administrative disqualification hearing shall be initiated by the cabinet whenever it has documented evidence to prove that a household member has committed an act of intentional program violation. An administrative disqualification hearing may be initiated regardless of the current eligibility of the individual. For purposes of determining if an act of intentional program violation, as defined in 7 CFR 273.16(c), has been committed, the act shall consist of having intentionally:
(1) Made a false or misleading statement, or misrepresented, concealed, or withheld facts; or
(2) Committed any act that constitutes a violation of the Food Stamp Act, the food stamp regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp coupons or ATP's.

Section 2. Disqualification Hearing Procedures. The cabinet shall provide state level administrative disqualification hearings in accordance with 7 CFR 273.16(e) which shall be heard by the fair hearing officials. Hearings shall be conducted by an impartial official(s) who did not have any personal stake or involvement in the case, who was not directly involved in the initial determination that the household member had committed intentional program violation, and was not the immediate supervisor of the case worker who took the action.
(1) The powers and duties of the hearing official shall be the same as those specified in 904 KAR 3:070, Section 12.
(2) The household's rights during the hearing shall be the same as those specified in 904 KAR 3:070, Section 13.
(3) The hearing decision shall comply with provisions specified in 904 KAR 3:070, Section 14(1).
(4) At the hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.
(5) Within ninety (90) days of the date the household member is notified in writing that a hearing has been scheduled, the cabinet shall conduct the hearing, arrive at a decision and notify the household member of the decision. The household member or representative is entitled to one (1) postponement not to exceed thirty (30) days, provided that the request is made at least ten (10) days in advance of the date of the scheduled hearing. If a hearing is

postponed, the above time limits shall be extended for as many days as the hearing is postponed.

Section 3. Advance Notice of Disqualification Hearing. The cabinet shall provide written notice to the household member suspected of intentional program violation at least thirty (30) days in advance of the date a hearing initiated by the cabinet has been scheduled. The notice shall be sent certified mail - addressee only - return receipt requested and shall contain:

(1) The date, time, and place of the hearing;

(2) The charge(s) against the household member;

(3) A summary of the evidence, and how and where the evidence may be examined;

(4) A warning that the decision shall be based solely on information provided by the Food Stamp Office if the household member fails to appear at the hearing;

(5) A statement that the household member or representative shall have ten (10) days from the date of the scheduled hearing to present good cause for failure to appear;

(6) A warning that a determination of intentional program violation shall result in a six (6) month disqualification for the first violation, a twelve (12) month disqualification for a second violation, and permanent disqualification for the third violation, and a statement of which penalty is applicable to the case scheduled for a hearing;

(7) A listing of the household member's rights as contained in 904 KAR 3:070, Section 13;

(8) A statement that the hearing shall not preclude the state or federal government from prosecuting the household member for intentional program violation in a civil or criminal court action, or from collecting the overissuance;

(9) A statement advising a household member, if there are individuals or organizations which provide free legal representation, of the availability of this service.

Section 4. Scheduling the Disqualification Hearing. The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional program violation. A telephonic hearing may be conducted, when the applicant or recipient consents, including all of the parties and their witnesses who shall testify under oath or affirmation. Parties to a telephonic hearing who wish to introduce documents or written materials into the record at the hearing shall immediately mail copies of such documents to the hearing officer and to the opposing party. Failure to provide both the hearing officer and the opposing party with copies of such evidence may result in the exclusion of this evidence from the record. If the household member or its representative does not appear for a face-to-face or telephonic [the] hearing, the state agency shall determine whether proper advance notice was received by the household member. If there is no proof that the household member received or refused a timely notice of the hearing, the hearing shall not be conducted. The claim is annotated in the following manner: Order to Remove from Docket. The hearing process is again initiated when the household member is located and another notice can be provided to that member. However, when the agency has sufficient evidence to verify that the household member either received or refused such notice, the hearing shall be conducted. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional program violation was committed based on clear and convincing evidence. If the household member is found to have committed an intentional program violation but a hearing official later determined that the household member or representative had good cause as defined in 904 KAR 3:070, Section 9, for not appearing, the previous decision shall no longer remain valid and the cabinet shall conduct a new hearing. The hearing official who originally ruled on the case may conduct the new hearing. The household member shall have ten (10) days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.

Section 5. Participation While Awaiting a Disqualification Hearing. A pending hearing shall not affect the individual's or the household's right to be certified and participate in the program. Since the cabinet cannot disqualify a household member for intentional program violation until the hearing official or a court of appropriate jurisdiction finds that the individual has committed intentional program violation or the individual has signed a waiver of right to an administrative disqualification hearing, or the individual has signed a disqualification consent agreement, the cabinet shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household.

Section 6. Disqualification Hearing Decision. The hearing official shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed and intended to commit intentional program violation as defined in Section 1 of this regulation. Decisions of the hearing official shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent handbook section and corresponding FNS regulation and respond to reasoned arguments made by the household member or representative. An official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the hearing proceeding, shall be retained by the cabinet. This record shall also be available to the household or its representative during work hours for copying and inspection.

Section 7. Notification of Disqualification Hearing Decisions. The cabinet shall notify the household member in writing of hearing decisions as specified below:

(1) If the hearing finds that the household member did not commit intentional program violation, the cabinet shall provide a written notice which informs the household member of the decision.

(2) If the hearing finds that the household member committed intentional program violation, the cabinet shall provide written notice to the household member. This notice shall be provided prior to disqualification. The notice shall

inform the household member of the disqualification and when the disqualification will take effect. If the individual is no longer participating, the notice shall inform the individual that the period of disqualification will be deferred until such time as the individual again applies for and is determined eligible for program benefits. A list of the household member's rights shall also be printed on the notice of the hearing decision. A notice shall also be provided to the remaining household members, if any, informing them of the allotment they will receive during the disqualification period or that they may reapply because their certification period has expired. A written demand letter shall also be sent to the remaining household members explaining the repayment requirements.

Section 8. Waiver Disqualification Hearings. Individuals accused of intentional program violation shall be allowed to waive their rights to an administrative disqualification hearing and shall be handled in accordance with 7 CFR 273.16(f).

Section 9. Deferred Adjudication. Individuals accused of intentional program violation shall be allowed to sign disqualification consent agreements in cases of deferred adjudication and shall be handled in accordance with 7 CFR 273.16(h).

Section 10. Intentional Program Violation Disqualification Penalties. Individuals found through an administrative disqualification hearing to have committed an intentional program violation, or individuals who have signed a waiver of right to an administrative disqualification hearing, or individuals who have signed a disqualification consent agreement, or individuals found guilty by a court of appropriate jurisdiction shall be ineligible to participate for six (6) months for the first violation, twelve (12) months for the second violation, or permanently for the third violation. The disqualification period for a nonparticipant shall be deferred until such time as he applies for and is determined eligible for program benefits. Once a disqualification period is imposed, it shall continue uninterrupted, regardless of any subsequent determinations of eligibility/ineligibility of the disqualified member's household. Court ordered disqualifications may be imposed separate and apart from any action taken by the cabinet. In cases where the determination of intentional program violation is reversed by a court, the cabinet shall reinstate the individual, if eligible, and restore any benefits that were lost as a result of the disqualification. Individuals found guilty of intentional program violation by a court of appropriate jurisdiction shall be disqualified for the period of time specified by that court. If the court fails to specify or address a disqualification period for the intentional program violation, the cabinet shall impose a disqualification period consistent with the time periods set forth in this section and in accordance with 7 CFR 273.16(g)(2). The cabinet shall disqualify only the individual convicted of intentional program violation and not the entire household. The remaining household members shall agree to make restitution within thirty (30) days of the date the cabinet's demand letter is mailed, in accordance with established procedures for cash or coupon repayment. If the household does not agree to make restitution or after having agreed to make restitution fails to do so, allotment reduction shall be imposed on the household's monthly allotment. The cabinet shall inform the household in writing of the disqualification penalties for committing intentional program violation at each time it applies for benefits.

Section 11. Appeal Rights of the Household. No further administrative appeal procedure exists after an administrative disqualification hearing finds that an intentional program violation was committed or an individual has waived his right to an administrative disqualification hearing. The determination of intentional program violation made by a disqualification hearing official shall not be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay by a court of appropriate jurisdiction or other injunctive remedy.

Section 12. The provisions contained in this regulation shall become effective, in accordance with 272.1(g), July 1, 1989 [September 1, 1988].

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 5, 1989
FILED WITH LRC: June 6, 1989 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(As Amended)

904 KAR 3:070. Fair hearings.

RELATES TO: KRS 194.050
STATUTORY AUTHORITY: KRS Chapter 13A, 194.050, 7 CFR 273.15, FNS/Sero Regulations Supplement, 273.15-a-1 (82-14) (7-28-82); 7 CFR 273.16, FNS/Sero Regulations Supplement, 273.16-a-1 (83-5) (12-15-82)
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a Food Stamp Program as prescribed by the Food Stamp Act of 1977, as amended and applicable federal regulations and interpretations thereof [7 CFR [Part] 270 and 280]. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the fair hearing procedures used by the cabinet to administer the Food Stamp Program.

Section 1. Availability of Hearings. The cabinet shall provide a fair hearing to any household aggrieved by any action of the cabinet which affects the participation of the household in the Food Stamp Program, unless [except that if] the household has already had a fair hearing on the amount of an overissuance/claim as a result of consolidation of the administrative disqualification hearing and a fair hearing. [,] In accordance with 7 CFR 273.16(e)(1), the household shall not be entitled to another hearing on that issue. The cabinet shall provide

state level fair hearings conducted by state level hearing officers which shall be carried out at the local level. A telephonic hearing may be conducted, when the applicant or recipient consents, including all of the parties and their witnesses who shall testify under oath or affirmation. Parties to a telephonic hearing who wish to introduce documents or written materials into the record at the hearing shall immediately mail copies of such documents to the hearing officer and to the opposing party. Failure to provide both the hearing officer and the opposing party with copies of such evidence may result in the exclusion of this evidence from the record.

Section 2. Timely Action on Hearing Requests. The cabinet shall acknowledge all hearing requests, conduct a hearing, and issue a decision within sixty (60) days of a request for a fair hearing. Decisions which result in an increase in household benefits shall be reflected in the coupon allotment within ten (10) days of the receipt of the hearing decision. [even if] The cabinet shall [must] provide [a] supplementary [ATP/]coupons or otherwise provide the household with an opportunity to obtain the allotment outside the normal issuance cycle . However, the cabinet may take longer than ten (10) days if it elects to make the decision effective in the household's normal issuance cycle if [, provided that] the issuance shall [will] occur within sixty (60) days from the household's request for the hearing. Decisions which result in a decrease in household benefits shall be reflected in the next scheduled issuance following receipt of the hearing decision.

Section 3. Agency Conference. The cabinet shall offer an agency conference to households adversely affected by the cabinet's action. The household shall be advised that an agency conference is optional and shall [will] in no way delay or replace the fair hearing process. An agency conference may lead to an informal resolution of the dispute. However, a fair hearing shall [must] still be held unless the household makes a written withdrawal of its request for a hearing. The agency conference is to be attended by the case worker, his[/her] supervisor, and the household member [and/]or representative. An agency conference for households contesting a denial of expedited service shall be scheduled within two (2) working days, unless the household requests that it be scheduled later or states no agency conference is wanted.

Section 4. Group Hearings. The cabinet may respond to a series of individual requests for fair hearings by conducting a single group hearing. Hearing cases may be consolidated only where individual issues of fact are not disputed and if the sole issue is one of federal law, regulation or policy. In all group hearings, the policies governing hearings shall [must] be followed. Each individual client shall be permitted to present his[/her] own case or be represented by legal counsel or other spokesperson.

Section 5. Postponement of Hearings. Households may request and are entitled to receive a postponement of the scheduled hearing. The postponement shall not exceed thirty (30) days from the date of the postponement request and the time limit for action on the decision may be extended for as many days as the hearing is postponed.

Section 6. Notification of Rights to Request a Hearing. At the time of application the cabinet shall notify each household in writing of its right to a hearing, of the method by which a hearing may be requested and that its case may be presented by a household member or a representative, such as a legal counsel, a relative, a friend or other spokesperson. In addition, at any time the household expresses to the cabinet that it disagrees with the cabinet's action, it shall be reminded in writing of the right to request a fair hearing. If there is an individual or organization available that provides free legal representation, the household shall be informed in writing of the availability of that service.

Section 7. Request for Hearings. Any household member shall have the right to request a hearing on any action by the cabinet which affects the participation of the household in the program and which occurred in the prior ninety (90) days. Action by the cabinet shall include a denial of a request for restoration of any benefits lost more than ninety (90) days but less than a year prior to the request. In addition, at any time within a certification period a household may request a fair hearing to dispute its current level of benefits.

Section 8. The Cabinet's Responsibilities on Hearing Request. A request for a hearing is defined as a clear expression, oral or written, by the household or its representative to the effect that it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired. If it is unclear from the household's request what action it wishes to appeal, the cabinet may request the household to clarify its grievance. The freedom to make a request for a hearing shall not be limited or interfered with in any way.

(1) Upon request, the cabinet shall make available, without charge, the specific materials necessary for a household or its representative to determine whether a hearing should be requested or to prepare for a hearing. Upon request, the cabinet shall also help a household with its hearing request. If a household makes an oral request for a hearing, the cabinet shall complete the procedures necessary to start the hearing process. Households shall be advised of any legal services available that can provide representation at the hearing.

(2) The cabinet shall expedite hearing requests from households, such as migrant farmworkers, that plan to move from the jurisdiction of the hearing official before the hearing decision shall [would] normally be reached. Hearing requests from these households shall be processed faster than others if necessary to enable them to receive a decision and restoration of benefits, if the decision so indicates, before they leave the area.

Section 9. Denial or Dismissal of a Fair Hearing Request. The cabinet shall not deny or dismiss a request for a hearing unless:

(1) The request is not received within the time period specified in Section 7 of this regulation.

(2) The client or his[/her] representative withdraws in writing a request for a hearing at any time prior to the release of the hearing officer's decision.

(3) The household or its representative fails to appear to the scheduled hearing without good cause, as defined below:

(a) The household member was away from home during the entire filing period; or

(b) The household member is unable to read or to comprehend the notice; or

(c) The household member moved and a delay resulted in receiving inadequate notice; or

(d) Serious illness of a household member; or

(e) The delay was no fault of a household member; or

(f) The household member did not receive the notice.

Section 10. Continuation of Benefits. Households which request a fair hearing within the period provided on the notice of adverse action shall be allowed to continue participation in the program on the basis authorized immediately prior to notice of adverse action if [provided] its certification period has not expired unless the household specifically waives continuation of benefits. If the adverse notice period ends on a weekend or holiday, and a request for a fair hearing and continuation of benefits is received the day after the weekend or holiday the state agency shall consider the request timely received. If the household fails to request a hearing within the notice period for good cause, benefits shall be reinstated on the prior basis. When benefits are reduced or terminated due to a mass change, participation on the prior basis shall be reinstated only if the issue is that food stamp eligibility or benefits were improperly computed or that federal law or regulation is being misapplied or misinterpreted by the cabinet. Once continued or reinstated, benefits shall not be reduced or terminated prior to the receipt of the official hearing decision unless:

(1) The certification expires. The household may reapply and may be determined eligible for a new certification period with a benefit amount as determined by the cabinet; or

(2) The hearing officer makes a preliminary determination in writing and at the hearing, that the sole issue is one of federal law or regulation and no questions of fact are [is] involved; or

(3) A change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending and the household fails to request a hearing after the subsequent notice of adverse action; or

(4) A mass change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending; or

(5) The household or representative fails to appear at the hearing without good cause. Attendance is not required at a group hearing.

Section 11. Notification of Time and Place of Hearing. The time, date and place of the hearing shall be arranged so that the hearing is accessible to the household. At least ten (10) days prior to the hearing, advance written notice shall be provided to all parties involved to permit adequate preparation of the case. However, the household may request less advance notice to expedite the scheduling of the hearing. The notice shall:

(1) Advise the household or representative of the name, address, and phone number of the person to notify if [in the event] it is not possible for the household to attend the scheduled hearing.

(2) Specify that the cabinet shall [will] dismiss the hearing request if the household or its representative fails to appear for the hearing without good cause.

(3) Include the cabinet's procedures and any other information that [would] provides the household with an understanding of the proceedings and that [would] contributes to the effective presentation of the household's case.

(4) Explain that the household or representative may examine the case file prior to the hearing.

Section 12. Hearing Official. The cabinet shall designate a hearing official who does not have any personal stake or involvement in the case; was not directly involved in the initial determination of the action which is being contested; was not the immediate supervisor of the case worker who took the action and is an employee of the cabinet. The power and duties of the hearing official shall be as follows:

(1) Administer oaths or affirmations;

(2) Insure that all relevant issues are considered;

(3) Request, receive and make part of the record all evidence determined necessary to decide the issues being raised;

(4) Regulate the conduct and course of the hearing consistent with due process to insure an orderly hearing;

(5) Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the cabinet;

(6) Subpoena relevant and useful information or individuals;

(7) Provide a hearing record and recommendation for final decision by the hearing authority; or, if the hearing official is the hearing authority, render a hearing decision in the name of the cabinet in accordance with Section 14 of this regulation.

Section 13. Rights During Hearing. During the hearing process the household or its representative shall [must] be given adequate opportunity to:

(1) Examine all documents and records to be used at the hearing at anytime during working hours before the date of the hearing as well as during the hearing. The contents of the case file including the application form and documents of verification used by the cabinet to establish the household's ineligibility or eligibility and allotment shall be made available, provided that confidential information such as the names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal prosecutions, is protected from release. If requested by the household or its representative, the cabinet shall provide a free copy of the portions of the case file that are relevant to the hearing. Confidential information that is protected from release and

other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.

(2) Present the case or have it presented by a legal counsel or other person.

(3) Bring witnesses, friends or relatives.

(4) Advance arguments without undue interference.

(5) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.

(6) Submit evidence to establish all pertinent facts and circumstances in the case.

Section 14. Hearing Decisions. (1) Decisions of the hearing officer shall comply with federal law and regulation and will be based on the hearing record. The recording of testimony and exhibits, and an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for a final decision by the hearing authority. This record shall be retained in accordance with 904 KAR 3:050, Section 6. This record shall also be available to the household or its representative during working hours for copying and inspection.

(2) A decision by the hearing authority shall be binding on the cabinet and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent manual section and corresponding federal regulation. The decision shall become a part of the record.

(3) The household and the local office shall each be notified in writing of: the decision; the reasons for the decision; the available appeal rights; and that the household's benefits <u>shall</u> [will] be issued or terminated as decided by the hearing authority. The notice shall also state that an appeal may result in a reversal of the decision.

(4) After notification of a hearing decision which upholds the cabinet's action, the household shall be notified of the right to pursue judicial review of the decision. In addition, the household shall be notified of the right to appeal their case to the appeal board in accordance with Section 16 of this regulation.

Section 15. Implementation of Hearing Decision. The cabinet shall insure that all final hearing decisions are reflected in the household's coupon allotment within the time limits specified in Section 2 of this regulation.

(1) When the hearing authority determines that a household has been improperly denied program benefits or has been issued a lesser allotment than was due, lost benefits shall be provided to the household. The cabinet shall restore benefits to households which are leaving the county before the departure <u>if</u> [whenever] possible. If benefits are not restored prior to the household's departure, the county shall forward an authorization for benefits to the household or to the county if known. The county shall accept an authorization and issue the appropriate benefits whether the authorization is presented by the household or received directly from another county.

(2) When the hearing authority upholds the cabinet's action, a claim against the household for any overissuances shall be prepared.

Section 16. Appeal Board. Households dissatisfied with the hearing officer's decision may appeal to the appeal board within twenty (20) days from the date of the hearing decision. Within forty-five (45) days of receipt of the request for an appeal of a fair hearing decision, the cabinet shall ensure that the review is conducted, and that a decision is reached. The decision shall be reflected in the coupon allotment within ten (10) days of the decision.

Section 17. Judicial Review. Households aggrieved by the appeal board's decision shall have the right to appeal this decision to the court of appropriate jurisdiction.

Section 18. Provisions contained in this regulation shall become effective <u>July 1, 1989</u> [April 1, 1983].

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 5, 1989
FILED WITH LRC: June 6, 1989 at 11 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH JULY 15, 1989

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 July 14 [June 15], 1989 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
1.2 News Media
1.4 The operation of Contracted Adult Correctional Facilities
1.6 Extraordinary Occurrence Reports
1.9 Institutional Duty Officer
1.11 Population Counts and Reporting Procedures
1.12 Operation of Motor Vehicles by Corrections Cabinet Employees
2.1 Inmate Canteen
2.2 Warden's Fund (Amended 7/14/89)
2.10 Surplus Property
3.1 Code of Ethics
3.12 Institutional Staff Housing
4.2 Staff Training and Development
4.3 Firearms and Chemical Agents Training
6.1 Open Records Law
7.2 Asbestos Abatement
8.4 Emergency Preparedness
9.1 Use of Force
9.3 Transportation of Convicted Offenders
9.4 Transportation of Inmates to Funerals or Bedside Visits
9.6 Contraband
9.7 Storage, Issue and Use of Weapons Including Chemical Agents
9.8 Search Policy
9.9 Transportation of Inmates
9.10 Security Inspections
9.11 Tool Control
9.15 Institutional Entry and Exit Policy and Procedures
9.18 Informants
9.19 Found Lost or Abandoned Property
10.2 Special Management Inmates
10.3 Safekeepers
10.4 Special Needs Inmates [(Amended 6/15/89)]
11.2 Nutritional Adequacy of the Diet for Inmates
11.3 Special Diet Procedures
13.1 Pharmacy Policy and Formulary
13.2 Health Maintenance Services
13.3 Medical Alert System
13.4 Health Program Audits
13.5 Acquired Immune Deficiency Syndrome
13.6 Sex Offender Treatment Program
14.2 Personal Hygiene Items
14.4 Legal Services Program (Amended 7/14/89)
14.6 Inmate Grievance Procedures
15.1 Hair and Grooming Standards
15.2 Offenses and Penalties [(Amended 6/15/89)]
15.3 Meritorious Good Time
15.5 Restoration of Forfeited Good Time
15.6 Adjustment Procedures and Programs (Amended 7/14/89) [(Amended 6/15/89)]
16.1 General Inmate Visiting Procedure
16.2 Inmate Correspondence
16.3 Telephone Calls
16.4 Inmate Packages
17.1 Inmate Personal Property
17.2 Assessment Center Operations
17.3 Controlled Intake of Inmates
18.4 Classification of the Inmate
18.5 Custody/Security Guidelines
18.6 Classification Document
18.7 Transfers
18.8 Guidelines for Transfers Between Institutions
18.9 Out-of-state Transfers (Amended 7/14/89)
18.10 Preparole Progress Reports
18.11 Kentucky Correctional Psychiatric Center Transfer Procedures
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13 Population Categories
18.15 Protective Custody
19.1 Government Services Projects
19.2 Community Services Projects
20.1 Study Release
20.6 Vocational Study Release
22.1 Privilege Trips
25.1 Gratuities
25.2 Public Official Notification of Release of an Inmate (Amended 7/14/89)
25.3 Prerelease
25.4 Inmate Furloughs
25.6 Community Center Program
25.7 Expedient Release
25.8 Extended Furloughs
27-01-01 Probation and Parole Procedures
27-02-01 Duties of Probation and Parole Officers
27-03-01 Workload Formula Supervisor/Staff Ratio
27-05-01 Testimony, Court Demeanor and Availability of Legal Services
27-06-01 Availability of Supervision Services
27-06-02 Equal Access to Services
27-07-01 Cooperation with Law Enforcement Agencies
27-09-01 Kentucky Community Resources Directory
27-10-01 Advanced Supervision
27-11-01 Intensive Supervision
27-12-01 Supervision: Case Classification
27-12-02 Risk/Needs Assessment
27-12-03 Initial Interview (Amended 7/14/89)
27-12-04 Conditions of Regular Supervision/Request for Modification
27-12-05 Releasee's Report
27-12-06 Grievance Procedures for Offenders
27-12-07 Employment, Education/Vocational Referral
27-12-08 Supervision Plan
27-12-09 Casebook
27-12-10 Guidelines for Monitoring Supervision Fee

27-12-11	Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
27-12-12	Other Financial Obligations (Not Ordered by Releasing Authority)
27-12-13	Community Service Work
27-12-14	Client Travel Restrictions
27-13-02	Alcohol Detection
27-14-01	Interstate Compact Transfers
27-14-02	Interstate Compact Out-of-state Probation and Parole Violation
27-15-01	Supervision Report; Violations, Unusual Incidents
27-16-01	Search; Seizure; Chain of Custody; Disposal of Evidence
27-17-01	Absconder Procedures
27-18-01	Probation and Parole Issuance of Detainer/Warrant
27-19-01	Preliminary Revocation Hearing
27-20-01	Division of Probation and Parole Controlled Intake Program
27-20-02	Prisoner Intake Notification
27-20-03	Prisoner Status Change
27-21-01	Apprehension and Transportation of Probation and Parole Violators
27-22-01	Fugitive Unit - Apprehensions
27-22-02	Fugitive Unit - Transportation of Fugitives
27-23-01	In-state Transfer
27-24-01	Closing Supervision Report
27-24-02	Reinstatement of Clients to Active Supervision
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
28-01-01	Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments) [(Amended 6/15/89)]
28-01-02	Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03	Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure) [(Amended 6/15/89)]
28-01-04	Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules) [(Amended 6/15/89)]
28-01-05	Probation and Parole Investigation Reports (Computation of Jail Custody Credit) [(Amended 6/15/89)]
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
28-02-01	Expedient Release Program
28-03-01	Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
28-04-01	Furlough Verifications
28-05-01	Out-of-state Investigations

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: July 14, 1989
FILED WITH LRC: July 14, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 23, 1989 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: 2532 employees of the Corrections Cabinet, 7688 inmates, 18,671 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.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:030. Kentucky State Reformatory.

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 July 14 [June 15], 1989 and hereinafter should be referred to as Kentucky State Reformatory Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

KSR 01-00-09 Public Information and News Media Relations
KSR 01-00-10 Entry Authorization for All Cameras and Tape Recorders Brought into the Institution
KSR 01-00-14 Extraordinary Occurrence Report
KSR 01-00-15 Cooperation and Coordination with Oldham County Court
KSR 01-00-19 Personal Service Contract Personnel
KSR 01-00-20 Consent Decree Notification to Inmates (Amended 7/14/89)
KSR 02-00-01 Inmate Canteen
KSR 02-00-03 Screening Disbursements from Inmate Personal Accounts
KSR 02-00-11 Inmate Personal Accounts
KSR 02-00-12 Institutional Funds and Issuance of Checks
KSR 04-00-02 Staff Training and Development
KSR 05-00-01 Officers' Daily Housing Security and Safety Log
KSR 05-00-02 Research Activities
KSR 05-00-03 Management Information Systems
KSR 06-00-01 Inmate Master File
KSR 06-00-02 Records Audit
KSR 06-00-03 Kentucky Open Records Law and Release of Psychological/ Psychiatric Information
KSR 07-00-02 Institutional Tower Room Regulations
KSR 07-00-04 Handling of PCB Articles and Containers
KSR 07-00-05 Proper Removal of Transformers
KSR 07-00-06 Asbestos Abatement
KSR 08-00-07 Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family
KSR 08-00-08 Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery
KSR 08-00-09 Emergency Preparedness Training
KSR 08-00-10 Hazardous Chemicals and Material Safety Data Sheet
KSR 09-00-04 Horizontal Gates/Box 1 Entry and Exit Procedure
KSR 09-00-05 Gate I Entrance and Exit Procedure
KSR 09-00-09 Contraband, Dangerous Contraband and Search Policy (Amended 7/14/89)
KSR 09-00-14 Use of Force
KSR 09-00-21 Crime Scene Camera
KSR 09-00-22 Collection, Preservation, and Identification of Physical Evidence
KSR 09-00-23 Drug Abuse Testing
KSR 09-00-25 Inmate Motor Vehicle Operator's License
KSR 09-00-26 Contraband Outside Institutional Perimeter
KSR 09-00-27 Construction Crew Entry/Exit
KSR 09-00-28 Restricted Areas
KSR 09-00-29 Transportation of Inmates (Added 7/14/89)
KSR 10-00-01 Unit D - Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation, Time and Attendance, and Unit Personnel Records
KSR 10-00-02 Unit D - General Operational Procedures
KSR 10-00-03 Unit D - Inmate Tracking System and Records System
KSR 10-00-04 Unit D - Administrative Segregation
KSR 10-00-05 Unit D - Disciplinary Segregation
KSR 10-00-06 Unit D - Protective Custody
KSR 10-00-07 Unit D - Geriatrics
KSR 10-00-08 Unit D - Safekeepers
KSR 10-00-09 Unit D - Hold Ticket Residents
KSR 10-00-10 Unit D - Inmate Legal Access
KSR 10-00-11 Unit D - Behavior Problem Control
KSR 10-00-12 Unit D - Designated Staff Visits
KSR 10-00-13 Unit D - Property Room Access
KSR 11-00-01 Meal Planning for the General Population [(Amended 6/15/89)]
KSR 11-00-02 Special Diets
KSR 11-00-03 Food Service Inspections
KSR 11-00-04 Dining Room Dress Code for Inmates
KSR 11-00-06 Health Standards/Regulations for Food Service Employees
KSR 11-00-07 Early Chow Line Passes for Medically Designated Inmates
KSR 12-00-01 Inmate Summer Dress Regulations
KSR 12-00-02 Sanitation and General Living Conditions
KSR 12-00-03 State Items Issued to Inmates
KSR 12-00-07 Regulations for Inmate Barbershop
KSR 13-00-01 Identification of Mentally Retarded Inmates
KSR 13-00-02 Hospital Operations, Rules and Regulations
KSR 13-00-03 Medication for Inmates Leaving Institution Grounds
KSR 13-00-04 Medical and Dental Care
KSR 13-00-06 Infection Control
KSR 13-00-07 Referral of Inmates Considered to Have Severe Emotional Disturbances
KSR 13-00-08 Institutional Laboratory Procedures
KSR 13-00-09 Institutional Pharmacy Procedures
KSR 13-00-10 Requirements for Medical Personnel
KSR 13-00-11 Preliminary Health Evaluation and Establishment of Inmate Medical Record
KSR 13-00-12 Vision Care/Optometry Services
KSR 13-00-14 Periodic Health Examinations for Inmates
KSR 13-00-15 Medical Alert System
KSR 13-00-16 Suicide Prevention and Intervention Program
KSR 14-00-01 Inmate Rights
KSR 14-00-02 A/C Center and Unit D Inmate Access to Legal Aide Services
KSR 14-00-04 Inmate Grievance Procedure
KSR 14-00-05 Inmate Marriages
KSR 14-00-06 Inmate Legal Aides
KSR 15-00-01 Operational Procedures and Rules and Regulations for Unit A, B, and C
KSR 15-00-02 Regulations Prohibiting Immate Control or Authority Over Other Inmate(s)
KSR 15-00-04 Restoration of Forfeited Good Time
KSR 15-00-05 Differential Status for SU (QUIT) Inmates
KSR 15-00-06 Inmate I.D. Cards
KSR 15-00-07 Inmate Rules and Discipline - Adjustment Committee Procedures
KSR 15-00-08 Firehouse Living Area
KSR 16-00-01 Visiting Regulations
KSR 16-00-02 Inmate Correspondence and Mailroom Operations
KSR 16-00-03 Inmate Access to Telephones

KSR 17-00-01	Housing Unit Assignment - Assessment/Classification Center
KSR 17-00-03	Notifying Inmates' Families of Admission and Procedures for Mail and Visiting
KSR 17-00-04	Assessment/Classification Center Operations, Rules and Regulations
KSR 17-00-05	Dormitory 10 Operations
KSR 17-00-06	Identification Department Admission and Discharge Procedures
KSR 17-00-07	Inmate Personal Property
KSR 17-00-08	Repair of Inmate Owned Appliances by Outside Dealers [(Added 6/15/89)]
KSR 18-00-04	Returns from Other Institutions
KSR 18-00-05	Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill
KSR 18-00-06	Classification and Special Notice Form
KSR 19-00-01	Inmate Work Incentives
KSR 19-00-02	On-the-job Training Program
KSR 19-00-03	Safety Inspections of Inmate Work Assignment Locations
KSR 20-00-01	Vocational School Referral and Release Process
KSR 20-00-03	Academic School Programs
KSR 20-00-04	Criteria for Participation in Jefferson Community College Program
KSR 20-00-08	Integration of Vocational and Academic Education Programs
KSR 21-00-01	Legal Aide Office and Law Library Services and Supervision
KSR 21-00-02	Inmate Library Services
KSR 21-00-03	Library Services for Unit D
KSR 22-00-03	Inmate Organizations
KSR 22-00-07	Inmate News Magazine
KSR 23-00-02	Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 23-00-03	Religious Programming
KSR 25-00-01	Discharge of Residents to Hospital or Nursing Home
KSR 25-00-02	Violations of Law or Code of Conduct by Inmates on Parole Furlough
KSR 25-00-03	Preparole Progress Report

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: July 14, 1989
FILED WITH LRC: July 14, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 23, 1989 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: 559 employees of the Kentucky State Reformatory, 1361 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the 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.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:050. Luther Luckett Correctional Complex.

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 July 14 [May 15], 1989 and hereinafter should be referred to as Luther Luckett Correctional Complex 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.

LLCC 01-08-01	Institutional Legal Assistance
LLCC 01-09-01	Public Information and News Media Access
LLCC 01-12-01	Duty Officer Responsibilities
LLCC 02-01-02	Fiscal Management: Accounting Procedures
LLCC 02-01-03	Fiscal Management: Agency Funds
LLCC 02-01-04	Fiscal Management: Insurance
LLCC 02-03-01	Fiscal Management: Audits
LLCC 02-06-01	Property Inventory
LLCC 02-07-01	Screening Disbursements from Inmate Personal Accounting
LLCC 08-01-01	Offender Records
LLCC 08-04-01	Storage of Expunged Records
LLCC 08-05-01	Psychological and Psychiatric Reports
LLCC 10-03-09	Duties and Responsibilities of Building 1 and 2 Officer

LLCC 11-03-01	LLCC Population Categories
LLCC 11-07-01	Adjustment Procedures for Minor Rule Violations
LLCC 11-09-01	Rules and Regulations of the Unit
LLCC 11-13-01	Inmate Dress and Use of Access Areas
LLCC 11-15-01	Postparole Furloughs
LLCC 11-16-01	Restoration of Forfeited Good Time
LLCC 11-18-02	Use of Monitor Telephone
LLCC 11-19-01	Unit Shakedowns/Control of Excess Property
LLCC 11-20-01	Program Services for "Special Needs"/Mentally Ill Inmates
LLCC 12-01-01	Special Management Inmates
LLCC 12-01-02	Disciplinary Segregation Time Calculation (WTR)
LLCC 12-04-01	Guidelines for (7E) PC Unit/General Living Conditions
LLCC 13-01-01	Dining Room Guidelines
LLCC 13-04-01	Food Service: Meals
LLCC 13-04-02	Food Service: Menu, Nutrition and Special Diets
LLCC 13-05-02	Medical Screening of Food Handlers
LLCC 13-06-01	Food Service: Inspections and Sanitation
LLCC 13-07-01	Food Service: Purchasing, Storage and Farm Products
LLCC 13-08-01	OJT Food Service Training Placement
LLCC 14-01-01	Sanitation, Living Condition Standards, and Clothing Issue
LLCC 14-05-01	Institutional Inspections
LLCC 15-01-01	Health Maintenance Services; Sick Call and Pill Call
LLCC 15-02-01	Mental Health/Psychological Services
LLCC 15-03-01	Pharmacy
LLCC 15-03-02	Use of Psychotropic Medications
LLCC 15-04-01	Dental Services
LLCC 15-05-02	Licensure and Training Standards
LLCC 15-06-02	Specialized Health Services
LLCC 15-06-03	Emergency Medical/Dental Care Services
LLCC 15-06-04	First Aid/CPR Training Program
LLCC 15-06-05	Suicide Prevention and Intervention Program
LLCC 15-07-01	Health Records
LLCC 15-08-01	Special Diets
LLCC 15-12-01	Special Needs Unit
LLCC 15-14-01	Informed Consent
LLCC 15-15-01	Medical Restraints
LLCC 15-16-01	Health Education/Special Health Programs
LLCC 15-17-01	Serious and Infectious Diseases
LLCC 16-01-01	Inmate Rights and Responsibilities
LLCC 16-02-01	Inmate Grievance Procedure
LLCC 16-03-01	Inmate Legal Services [(Amended 5/15/89)]
LLCC 17-01-01	Due Process/Disciplinary Procedure
LLCC 18-01-01	Inmate Correspondence (Amended 7/14/89)
LLCC 18-01-02	Issuance of Legal Mail to Inmate Population
LLCC 18-02-01	Inmate Visiting
LLCC 18-02-03	Extended Visit and Furloughs
LLCC 18-02-04	Meritorious Visits
LLCC 18-03-01	Entry and Identification of Visitors for Inmate Visitation
LLCC 18-03-03	Inmate Visiting (DSU/ASU)
LLCC 20-01-01	Personal Property Control
LLCC 20-02-01	Authorized Inmate Personal Property (Amended 7/14/89)
LLCC 20-03-01	Unauthorized Items
LLCC 20-04-02	Inmate Canteen
LLCC 20-05-01	Inmate Control of Personal Funds
LLCC 20-05-02	Storage and Disposition of Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
LLCC 20-06-01	Procedure for Sending Appliances to Outside Dealers for Repair
LLCC 21-02-01	Classification/Security Levels
LLCC 21-03-01	Classification Process
LLCC 22-01-01	OJT/Job Assignments
LLCC 23-01-01	Academic School
LLCC 26-01-01	Religious Services
LLCC 28-01-01	Privileged Trips
LLCC 28-03-01	Temporary Release/Community Center Release
LLCC 28-04-01	Preparole Progress Report
LLCC 28-04-02	Parole Eligibility Dates

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: July 14, 1989
FILED WITH LRC: July 14, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 23, 1989 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: 291 employees of the Luther Luckett Correctional Complex, 968 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the 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.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:060. Northpoint Training Center.

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 July [April] 14, 1989 and hereinafter should be referred to as Northpoint Training Center Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

NTC 01-03-01	Organization and Assignment of Responsibilities
NTC 01-05-01	Extraordinary Occurrence Reports
NTC 01-10-01	Legal Assistance for Staff
NTC 01-11-01	Political Activities of Merit Employees
NTC 01-15-01	Establishment of the Warden as Chief Executive Officer
NTC 01-17-01	Relationships with Public, Media and Other Agencies
NTC 02-02-02	Warden's Participation in the Agency Budgeting Process
NTC 02-03-01	Fiscal Management: Audits
NTC 02-04-01	Internal Control and Monitoring of Accounting Procedures [(Amended 4/14/89)]
NTC 02-07-02	Chapel Fund
NTC 02-08-01	Inmate Canteen
NTC 02-10-01	Insurance Coverage
NTC 02-12-01	Inmate Personal Accounts
NTC 04-01-01	Training and Staff Development
NTC 04-04-01	Firearms and Chemical Agents Training
NTC 06-01-01	Offender Records (Amended 7/14/89)
NTC 06-01-02	Records - Release of Information (Amended 7/14/89)
NTC 06-01-03	Taking Offender Record Folders onto the Yard (Amended 7/14/89)
NTC 08-05-01	The Fire and Safety Officer
NTC 08-05-02	Fire Procedures
NTC 08-05-03	Fire Prevention
NTC 08-05-04	Storage of Flammables and Dangerous Chemicals and Their Use
NTC 08-07-01	Safety Standards
NTC 10-01-01	Special Management Inmates (SMU)
NTC 10-02-01	Security Guidelines for Special Management Inmates
NTC 10-03-01	Protective Custody
NTC 11-03-01	Food Services: General Guidelines
NTC 11-04-01	Food Service: Meals
NTC 11-04-02	Menu, Nutrition and Special Diets
NTC 11-05-02	Health Standards/Regulations for Food Service Employees
NTC 11-06-01	Inspections and Sanitation
NTC 11-07-01	Purchasing, Storage and Farm Products
NTC 12-01-01	Institutional Inspections
NTC 12-02-01	Personal Hygiene for Inmates; Clothing and Linens
NTC 12-02-02	Issuance of Personal Hygiene Products
NTC 13-01-01	Emergency Medical Care Plan
NTC 13-01-02	Emergency and Specialized Health Services
NTC 13-02-01	Administration and Authority for Health Services
NTC 13-03-01	Sick Call and Pill Call
NTC 13-04-01	Utilization of Pharmaceutical Products
NTC 13-05-01	Dental Services
NTC 13-06-01	Licensure and Training Standards
NTC 13-07-01	Provisions for Health Care Delivery
NTC 13-08-01	Medical and Dental Records
NTC 13-09-01	Special Diets
NTC 13-11-01	Inmate Health Screening and Evaluation
NTC 13-12-01	Special Health Care Programs
NTC 13-17-01	Inmates Assigned to Health Services
NTC 13-19-01	Mental Health Care Program
NTC 13-19-03	Suicide Prevention and Intervention Program
NTC 13-20-01	Infectious Disease
NTC 13-21-01	Vision Care/Optometry Services
NTC 13-22-01	Informed Consent
NTC 13-23-01	Special Needs Inmates
NTC 14-01-01	Legal Services Program
NTC 14-01-02	Video Viewing of Trials
NTC 14-02-01	Inmate Grievance Procedure
NTC 14-03-01	Inmate Rights and Responsibilities
NTC 14-03-02	Board of Claims
NTC 14-04-01	Inmate Search Policy
NTC 15-01-01	Restoration of Forfeited Good Time
NTC 15-02-01	Due Process/Disciplinary Procedures
NTC 15-02-02	Extra Duty Assignments
NTC 15-02-03	Hearing Officer
NTC 15-03-01	Rules for Inmates Assigned to Outside Detail
NTC 15-03-02	Rules and Regulations for General Population Dormitories
NTC 15-04-01	Inmate Identification
NTC 16-01-01	Mail Regulations
NTC 16-02-01	Visiting
NTC 16-02-02	Extended and Special Visits
NTC 16-02-03	Honor Dorm Visiting [(Amended 4/14/89)]
NTC 16-03-01	Inmate Furloughs
NTC 16-05-01	Telephone Use and Control
NTC 17-01-01	Personal Property Control [(Amended 4/14/89)]
NTC 17-01-02	Authorized Inmate Personal Property [(Amended 4/14/89)]
NTC 17-01-03	Unauthorized Inmate Property [(Amended 4/14/89)]
NTC 17-01-04	Disposition of Unauthorized Property
NTC 17-03-01	Assessment/Orientation
NTC 18-01-01	Preparole Progress Report
NTC 18-02-01	Classification
NTC 18-02-02	Classification - 48 Hour Notification
NTC 18-03-01	Special Notice Form
NTC 18-05-01	Transfers of Inmates
NTC 18-05-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center
NTC 19-01-01	Inmate Work Program
NTC 19-01-03	Temporary Leave from Job Assignment
NTC 19-02-01	Correctional Industries
NTC 19-02-02	Guidelines for Correctional Industries
NTC 20-01-01	Academic School Program
NTC 20-02-01	Vocational School
NTC 20-02-02	Live Work Projects in Vocational School Classes
NTC 21-01-01	Library Services

NTC 22-03-01	Conducting Inmate Organizational Meetings and Programs
NTC 23-01-01	Religious Services [(Amended 4/14/89)]
NTC 24-04-01	Honor Status
NTC 24-05-01	Unit Management
NTC 25-01-01	Release Preparation Program
NTC 25-01-02	Temporary Release/Community Center Release
NTC 25-01-03	Graduated Release
NTC 25-02-01	Funeral Trips and Bedside Visits [(Amended 4/14/89)]
NTC 25-03-01	Inmate Release Procedure (Amended 7/14/89)
NTC 26-01-01	Citizen Involvement and Volunteer Services Program

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: July 14, 1989
FILED WITH LRC: July 14, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 23, 1989 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: 307 employees of the Northpoint Training Center, 920 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the 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.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:130. Western Kentucky Farm Center.

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 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 [May 15], 1989 and hereinafter should be referred to as Western Kentucky 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.

WKFC 01-09-01	Duty Officers, External and Internal Inspections, and Staff Tours
WKFC 02-01-01	Inmate Funds
WKFC 02-00-03	Invoice/Voucher Processing
WKFC 02-00-06	Purchasing Procedures [(Amended 5/15/89)]
WKFC 02-01-01	Inmate Funds
WKFC 02-02-01	Agency Funds and Accounting Procedures
WKFC 02-08-01	Property Receipt and Inventory Procedures
WKFC 04-01-01	Travel Reimbursement for Official Business in Attendance at Professional Meetings
WKFC 04-02-01	Employee Training and Development
WKFC 04-04-01	Educational Assistance Program
WKFC 05-01-01	Research, Consultants, and Student Interns
WKFC 06-00-01	Offender Records and Information Access [(Amended 5/15/89)]
WKFC 06-00-02	Court Orders, Orders of Appearance, Warrants, Detainers, Etc. [(Amended 5/15/89)]
WKFC 09-00-01	Drug Abuse Testing
WKFC 10-02-01	Special Management Inmate(s)
WKFC 11-00-02	Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements
WKFC 11-00-03	Food Service Inspections, Sanitation, Purchasing, Storage, and Corrections Cabinet Farm Products
WKFC 11-02-01	Food Service General Guidelines
WKFC 11-02-02	Food Service Security
WKFC 11-03-01	Food Service Meals, Menus, Nutrition and Special Diets
WKFC 12-01-01	Inmate Clothing
WKFC 13-00-01	Special Health Programs
WKFC 13-01-01	Use of Pharmaceutical Products
WKFC 13-02-01	Health Care Services
WKFC 14-00-01	Inmate Rights and Responsibilities
WKFC 14-04-01	Legal Services Program
WKFC 14-06-01	Inmate Grievance Procedure
WKFC 15-01-01	Hair and Grooming Standards
WKFC 15-03-01	Meritorious Good Time
WKFC 15-05-01	Restoration of Forfeited Good Time
WKFC 16-01-01	Visiting Policy and Procedures [(Amended 5/15/89)]

WKFC 16-02-01	Inmate Correspondence
WKFC 16-03-01	Inmate Access to Telephones
WKFC 16-04-01	Inmate Packages [(Amended 5/15/89)]
WKFC 17-01-01	Inmate Personal Property [(Amended 5/15/89)]
WKFC 17-02-01	Inmate Reception and Orientation
WKFC 18-01-01	Structure, Guidelines, and Functions of the Classification Committee
WKFC 18-13-01	Meritorious Housing
WKFC 19-03-01	Inmate Wage Program (Amended 7/14/89)
WKFC 19-04-01	Work/Program Assignments
WKFC 20-04-01	Academic Education Program(s)
WKFC 20-03-01	Vocational Education Program(s)
WKFC 22-00-01	Inmate Recreation and Leisure Time Activities
WKFC 22-00-02	Inmate Clubs & Organizations
WKFC 23-00-01	Religious Services
WKFC 25-01-01	Gratuities
WKFC 25-02-01	Inmate Release Process
WKFC 25-03-01	Prerelease Programs
WKFC 26-01-01	Volunteer Services Program

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: July 14, 1989
FILED WITH LRC: July 14, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 23, 1989 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: 86 employees of the Western Kentucky Farm Center, 325 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the 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.

JUSTICE CABINET
Department of State Police
(Proposed Amendment)

502 KAR 45:010. Definitions.

RELATES TO: KRS 16.040, 16.050
STATUTORY AUTHORITY: KRS 16.050, 16.080
NECESSITY AND FUNCTION: KRS 16.040 and 16.050 provide that the Commissioner of the Kentucky State Police and the State Police Personnel Board may adopt such regulations as necessary to assure appointment of qualified officers to the department. This regulation establishes the definitions to be utilized in the administrative regulations concerning the selection process.

Section 1. As employed in these regulations, unless the context requires otherwise, the following words and phrases have the following meanings:
(1) "Department" means the Department of State Police.
(2) "Commissioner" means the Commissioner of the Department of State Police.
(3) "Board" means the State Police Personnel Board.
(4) "Officer" means any member of the Department of State Police who has successfully completed the prescribed course of instruction at the State Police Academy and who possesses the powers of a peace officer.
(5) "Cadet trooper" means any officer employee of the Department of State Police from the time of appointment until successful completion of the course of training at the State Police Academy and the taking of the oath of office.
(6) "Register" means the official list of persons eligible for appointment to the position of cadet trooper placed in rank order according to approved guidelines.
(7) "Appointment" means selection of a person from the register to be employed as a cadet trooper.
(8) "Candidate" means an applicant for employment who has successfully completed all phases of the selection process and whose name is placed on the register from which appointments will be made.
(9) "Applicant" means a person who has filled out an application for employment as a cadet trooper with the agency.

W. MICHAEL TROOP, Secretary
APPROVED BY AGENCY: June 26, 1989
FILED WITH LRC: June 26, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1989 at 10 a.m. at Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 20, 1989, 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: Lieutenant Thomas P. Hazlette, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Lieutenant Thomas P. Hazlette

(1) Type and number of entities affected: All cadets in the KSP Academy.

(a) Direct and indirect costs or savings to those affected: No fiscal impact.

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 impact.

(2) Effects on the promulgating administrative body: Amends definition which is in conflict with another regulation.

(a) Direct and indirect costs or savings: No fiscal impact.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No impact.

(3) Assessment of anticipated effect on state and local revenues: No fiscal impact.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 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? This regulation is applicable to all cadets equally and will be applied uniformly.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Proposed Amendment)

601 KAR 1:045. Application for [and] certificate filing.

RELATES TO: KRS Chapter 281

STATUTORY AUTHORITY: KRS 281.600, 281.620

NECESSITY AND FUNCTION: The statutes require the Department of Vehicle Regulation to accept applications for operating authority by motor carriers. This regulation provides general rules for the filing of applications for [and] certificates with the Department of Vehicle Regulation.

Section 1. (1) General rules. All [other] applications made in accordance with KRS 281.620(1) shall be made on the forms prescribed and furnished by the Department of Vehicle Regulation and shall be accompanied by the [a] filing fee of twenty-five (25) dollars. All applications and exhibits shall be filed with the answers typewritten or printed legibly in ink. [Applications for determination of public convenience and necessity or for the authorization of extension of operations beyond the existing statutory suburban area need not be accompanied by a filing fee.] All applications and exhibits, except those relating to the establishment of initial rates or fares or changes in existing rates or fares shall be filed in duplicate. All applications relating to rates and fares shall be made in accordance with 601 KAR 1:050. Each question shall [must] be fully answered and all instructions of [with] the application shall be read and the applicant shall comply [complied] with them.

(2) Each applicant shall furnish the following information in addition to any other required by the [applicable] application form:

(a) Applicant's name and address;

(b) Whether applicant is prepared to file proof of the insurance required by KRS 281.655. [, except] When the application is for a determination of public convenience and necessity for city bus service pursuant to KRS 281.635; for abandonment of a certificate, route or service; or for extension of the statutory suburban area the applicant shall not be required to file proof of insurance; and

(c) The structure and type [form] of the applicant's business organization and detailed information in regard to the business [thereto].

(3) Each applicant shall furnish the following exhibits, set forth separately and attached to the application form in addition to any others required by the [applicable] application form:

(a) Applicant's financial statement prepared in accordance with 601 KAR 2:010, unless the application is for determination of public convenience and necessity of city bus service pursuant to KRS 281.635, or for an extension of the suburban area of a city; and

(b) Name and address of applicant's process agent if applicant is a nonresident.

(4) [(c)] All applications shall [must] be sworn to by the applicant or a responsible official acting for the applicant.

(5) No hearing shall be called or authority issued based upon an incomplete application.

Section 2. Renewal Applications. All renewal applications shall [must] be made on the forms prescribed and furnished by the department and shall be accompanied by the [a] filing fee prescribed by KRS 281.650 [of twenty-five (25) dollars for each certificate or permit desired to be renewed]. All renewal applications and exhibits shall be filed with the answers typewritten or printed legibly in ink. Each question shall [must] be fully answered and all instructions of [with] the application shall [must] be read and the applicant shall comply [complied] with them. No certificate or permit shall be renewed based upon an incomplete application. A certificate or permit which has been revoked shall [will] not be renewed. If [Where] a certificate or permit has been altered or amended, it may only [will] be renewed as altered or amended. A certificate or permit which has been suspended shall [will] not be

renewed until after the termination of the suspension period.

Section 3. (1) Merger and reissuance of certificates. If a merger of motor carriers occurs in accordance with KRS 281.630(9), the department may upon its own motion, or at the request of a carrier, in instances where a [such] carrier holds two (2) or more certificates, call a hearing and issue proper orders merging the [said] several certificates into one (1) certificate, and in the same proceeding may make any [necessary] modification of the wording of the [said] certificate to eliminate unnecessary duplications, to clear up ambiguities and to show present highway numbers if they [where same] have been changed.

(2) Applications for merger and reissuance of certificates shall be in petition form signed and sworn to by the person submitting it. The [same. Such] petition shall contain the [applicable] information required by 601 KAR 1:040 and be accompanied by the [applicable] exhibits required by 601 KAR 1:040 [said regulations], except that the financial statement may be omitted. The petition shall set out the present wording of all certificates involved and shall also contain the proposed wording for the reissued certificate which shall conform, as far as practicable, to the style and method used by the Interstate Commerce Commission.

(3) Nothing herein shall be so construed as to require a hearing where a [such] hearing, in the commissioner's judgment, is not necessary. It shall be completely within the discretion of the commissioner whether a hearing on an application for merger and reissuance is necessary, and, if so, the time and place for the hearing to be held [same].

JEROME LENTZ, Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: July 3, 1989
FILED WITH LRC: July 7, 1989 at 11 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on August 22, 1989 at 11 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 August 17, 1989 so notify this agency. 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 comment 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 administrative regulation. If the hearing is cancelled, written comments will only be accepted until August 17, 1989. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: 30,000 motor carrier firms required to file applications for certificates.
(a) Direct and indirect costs or savings to those affected: None, as a result of changes to this administrative regulation.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None, as a result of changes to this administrative regulation.
(2) Effects on the promulgating administrative body: None, as a result of changes to this administrative regulation.
(a) Direct and indirect costs or savings: None, as a result of changes to this administrative regulation.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None - Section 2 had to be amended because of a change to KRS 281.650.
(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: In addition to the change mandated by the change in KRS Chapter 281, format changes were made to comply with KRS Chapter 13A.
TIERING: Was tiering applied? Yes.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Proposed Amendment)

603 KAR 5:110. Permits for moving mobile homes.

RELATES TO: KRS 189.270
STATUTORY AUTHORITY: KRS 189.270
NECESSITY AND FUNCTION: KRS 189.270 authorizes the Department of Highways to issue permits for the movement of house trailers exceeding legal dimensions. This regulation establishes the permit application procedures within the Transportation Cabinet and establishes movement [determines] requirements necessary in the interest of highway safety.

Section 1. Definitions. (1) "Daylight hours" means the period of a day from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset. However, it does not include any time when atmospheric conditions such as heavy rain, snow, sleet or fog render visibility lower than is ordinarily the case during that period of the day.

(2) "National holiday" means New Year's Day, Memorial Day (as observed on the last Monday in May), Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(3) "House trailer" means a mobile home or manufactured home but not a modular home.

Section 2. Permit Application. (1) Application for a permit to move a house trailer on a Kentucky highway shall only be made to the Department of Vehicle Regulation, Division of Motor Carriers, Frankfort, Kentucky.

(2) A single trip permit application or request shall specify the make of the towing vehicle, the vehicle's license number and state of registration, name and address of the owner, dates of travel and specific routes of travel requested.

(3) An annual permit application or request shall specify the make, rated capacity, vehicle identification number, license number and state of registration, and name and address of the owner of the towing vehicle. In addition, it shall specify whether the motor carrier operating the towing vehicle is a for-hire or private carrier and the routes of travel requested.

Section 3. Permit Required. (1) [1.] No house trailer of a width greater than eight and one-half (8 1/2) feet shall be towed on any highway listed in 603 KAR 5:070, Section 2(2)(b) nor shall any house trailer with a width greater than eight (8) feet be towed on any other Kentucky highway [on any highway governed by KRS 189.221, or eight and one-half (8 1/2) feet on any highway governed by KRS 189.222 or with a combined length of house trailer and towing vehicle greater than sixty (60) feet, shall be towed upon any Kentucky highway] unless, and until, a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers.

(2) No house trailer with a combined length of house trailer and towing vehicle greater than sixty (60) feet shall be towed upon any Kentucky highway unless, and until, a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers.

[Section 2. Permits may be issued for single trips on all overdimensional house trailers. At the option of owners as set forth in Section 3 of this regulation, an annual permit may be issued to authorize the movement of house trailers not exceeding twelve (12) feet in width. Registration and capacity of towing vehicles for house trailers in excess of the allowed legal width shall be the same as noted in Section 3 of this regulation. Single trip permits will be issued for a period of not more than ten (10) calendar days.]

Section 4. [3.] Annual Permits. (1) An annual permit shall not be issued for the movement of a house trailer in excess of twelve (12) feet in width.

(2) A movement of a house trailer under the provisions of an annual permit shall be on highways specified on the annual permit.

(3) Annual permits for the movement of house trailers [not exceeding twelve (12) feet in width on specified highways as indicated on the permit] may be issued only to dealers and manufacturers located within the Commonwealth of Kentucky; to certificated motor carriers who are properly licensed as motor carriers [such] by the Department of Vehicle Regulation; and to private owner-residents of Kentucky for movements of their personally owned house trailers. [No annual permit shall be issued for the movement of a house trailer in excess of twelve (12) feet in width.]

(4) Each towing vehicle for house trailers greater than the legal width shall be registered in Kentucky for a gross weight of not less than 22,000 pounds, have dual wheels on the rear and be rated at least one and one-half (1 1/2) ton capacity.

(5) An annual permit shall not be issued or used for the movement of a house trailer if the length of the house trailer and towing unit combined exceeds ninety-five (95) feet in length. [Towing vehicles for house trailers greater than twelve (12) feet wide must have a minimum of 185 horsepower, shall have a minimum of two (2) ton capacity, and shall be licensed for a gross weight equal to the combined weight of the towing vehicle and the house trailer.]

Section 5. Single Trip Permits. (1) A single trip permit shall be valid for no more than ten (10) days.

(2) A single trip permit shall not be issued for any unit, including towing vehicle and house trailer combined, which exceeds ninety-five (95) feet in length or fourteen (14) feet in width exclusive of usual and ordinary overhang.

(3) A single trip permit shall specify the highways to be used in the movement of the house trailer.

Section 6. Permit Costs. [4.] The issuance cost of an annual or a single trip permit, as set forth in KRS 189.270, shall apply to the towing vehicle and the cost shall [will] not be prorated. [A permit shall not be issued for any unit, including towing vehicle and house trailer combined, which exceeds ninety-five (95) feet in length or fourteen (14) feet in width exclusive of usual and ordinary overhang. Single trip permits will specify the highway to be used for a trip.]

[Section 5. All permits shall be issued by the Division of Motor Carriers, Department of Vehicle Regulation, Frankfort, Kentucky.]

Section 7. [6.] Escort Vehicles and Lighting Requirements. (1) One (1) lead escort vehicle is required for the movement of house trailers greater than the legal width but not exceeding twelve (12) feet wide on all two (2) lane highways [except on sections of toll roads which may be two (2) lanes].

(2) When a house trailer more than twelve (12) feet wide is moved, one (1) escort shall be required in the rear of each house trailer on highways with four (4) or more lanes. On highways of two (2) lanes, two (2) escort vehicles shall be required for each house trailer, one (1) in front and one (1) in the rear.

(3) Escort vehicles, both front and rear, shall [may] be required [on some highways] where highway conditions dictate the need.

(4) Red flags at least twelve (12) inches [by twelve (12) inches] square shall [must] be displayed on both sides of the front bumper of the lead escort and on both sides of the rear of

a following escort.

(5) Amber flashing lights may be used on both the escort and towing vehicles if the unit's width does not exceed twelve (12) feet. If the house trailer exceeds twelve (12) feet in width, all escort vehicles shall have an amber flashing light on the roof and the house trailer shall be equipped with four (4) amber flashing lights located on each front and rear corner of the house trailer spaced not less than six (6) feet above the roadway.

(6) All overdimensional mobile homes and towing vehicles shall be marked and lighted in accordance with those requirements set forth in 601 KAR 1:005. All running lights shall be on while the unit is in motion.

[Section 7. All single trip permit forms and requests shall specify the make of towing vehicle, the vehicle's license number and state of registration, name and address of the owner, dates for travel and the specific routes of travel. Requests and permit forms for annual permits shall specify the make of towing vehicle, rated capacity, serial number, license number, and whether the carrier is a for-hire or private carrier.]

Section 8. Duplicate Permits. A duplicate permit which is needed to replace a lost or destroyed annual permit or to transfer the permit to another towing vehicle may be obtained from the Division of Motor Carriers[, Frankfort, Kentucky] by the payment of ten (10) dollars.

Section 9. Route Deviation. Prior [departmental] approval shall be secured from the Division of Motor Carriers[, Frankfort, Kentucky] for any house trailer hauled under an annual permit which deviates from the routes prescribed in the permit issued for the towing vehicle.

Section 10. Presentation of Permits. Permits shall be carried in the towing vehicles at all times and shall be presented, upon request, to any law enforcement officer or any authorized personnel of the Department of Vehicle Regulation for inspection.

Section 11. Permit Validity. (1) Permits are valid during only daylight hours as defined in Section 1 of this regulation [only], from Monday through Saturday noon, except for those periods before, during and after national [the following] holidays[: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day]. In connection with these holidays, travel is not permitted from noon of the day preceding the national holiday [day] until daylight of the next permissible day. If the national holiday occurs on Sunday or Monday the restricted period shall [will] extend from noon of the preceding Friday to daylight of the following Tuesday.

(2) Permits for movement of house trailers more than twelve (12) feet in width are not valid on Saturday. In addition, in Jefferson, Fayette, Boone, Kenton and Campbell Counties they are only valid between the hours of 9 a.m. and 3 p.m. and from 6 p.m. to sundown, local prevailing time.

(3) If satisfactory proof of an emergency is furnished the Division of Motor Carriers, moves may be authorized during the restricted hours. [The term "daylight hours" means the period from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset, but it does not include such period or part thereof when atmospheric conditions render visibility lower than is ordinarily the case during such daylight hours.]

[Section 12. Single trip permits for moves involving house trailers more than twelve (12) feet wide may be issued by the Division of Motor Carriers, Frankfort, Kentucky 40622. The permit fee shall be as described in KRS 189.270.]

Section 12. Movement on Two (2) or Four (4) Lanes. [13.] Moves of house trailers more than twelve (12) feet wide shall [will] be limited to highways of four (4) or more lanes and to [a reasonable distance of two (2) lane highways to reach the unit's ultimate destination. The definition of a reasonable distance from a four (4) lane highway to the unit's ultimate destination is defined in the sense that the Department of Vehicle Regulation will in its best judgment designate] the shortest and best two (2) lane route designated by the Department of Vehicle Regulation, Division of Motor Carriers to be used to the unit's ultimate destination. The department shall deny movements on any routes deemed unsuitable for move.

Section 13. Weather Conditions. [14.] Moves of house trailers more than twelve (12) feet wide cannot be made on any highway when wind velocity exceeds twenty-five (25) MPH or when adverse weather conditions would cause these [prohibit such] moves to be dangerous. House trailers that exceed twelve (12) feet in width shall not be moved when the road is partially or fully covered by sleet, snow, or ice or when visibility is unduly impaired by rain, sleet, snow, fog, etc. [No house trailer greater than twelve (12) feet is permitted to move on any two (2) lane road when the pavement is wet. The current standards of traffic safety, based on traffic volumes, require that moves of house trailers twelve (12) feet wide or more be permitted only on weekdays during daylight hours with the exception of movement within or through Jefferson, Fayette, Boone, Kenton, and Campbell Counties where movements are to be restricted to between the hours of 9 a.m. and 3 p.m. and 6 p.m. to sundown.]

Section 14. Breaks. [15. When house trailers more than twelve (12) feet wide are moved, one (1) escort shall be required in the rear on highways with four (4) or more lanes and one (1) escort vehicle, both front and rear, on other highways. Escort vehicles shall have an amber flashing light on the roof. The house trailer shall be equipped with four (4) amber flashing lights located on each front and rear corner of the house trailer spaced not less than six (6) feet above the roadway. All running lights must be on while in motion.] The number, type, size and design of brake assemblies required to assist the towing vehicle in controlling and stopping a house trailer shall be sufficient to assure that the maximum stopping distance from an initial velocity of twenty (20) miles per hour does not exceed forty (40) feet. House trailers which are not equipped with brakes on all axles shall certify that the towing unit has sufficient brake assembles to meet the braking

distance specified in this section. This [herein. Such] certification shall be in the form of a manufacturer's statement, documented technical data, or adequate engineering analysis or its equivalent, specifying that the braking distance requirement has been met. This [Such] certificate shall be carried in the towing unit at all times and shall [must] be presented upon request, to any law enforcement officer.

Section 15. Speed Limit. [16.] The speed limit for the movement of house trailers greater than twelve (12) feet wide on interstate highways is forty-five (45) MPH. On other highways the speed limit is thirty-five (35) MPH, unless posted minimum speed exceeds this, then the speed limit may be increased to the minimum posted speed.

JEROME L. LENTZ, Commissioner
O. GILBERT NEWMAN, State Highway Engineer
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: July 3, 1989
FILED WITH LRC: July 10, 1989 at 11 a.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on August 22, 1989 at 10 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 August 17, 1989 so notify this agency. 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 comment 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 administrative regulation. If the hearing is cancelled, written comments will only be accepted until August 17, 1989. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: 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: All applicants for overdimensional mobile home permits.
(a) Direct and indirect costs or savings to those affected: Movement of 14-foot wide house trailers will be allowed when a road is only wet. This will result in fewer delays for mobile home manufacturers. The cost savings cannot be established but is a savings in the interest which must be paid on loans for inventory stacking up on a lot. For each two weeks of wet weather it would be about $12,000. It further makes the manufacturers not situated on a 4-lane highway competitive with those that are.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None as a result of this amendment to the regulation.
(2) Effects on the promulgating administrative body: None as a result of this amendment to the regulation.
(a) Direct and indirect costs or savings: NA
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: NA
(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 when spokespersons for the mobile home industry pointed out that many of Kentucky's contiguous states allow movement of mobile homes on wet pavement without a noticeable adverse effect on safety.
(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: NA
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: NA
(6) Any additional information or comments: Proposed change would allow movement of 14-foot wide mobile homes on wet pavement. Other changes are grammatical changes to bring the regulation into compliance with the format requirements of KRS Chapter 13A.
TIERING: Was tiering applied? Yes

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services

702 KAR 1:115. Annual in-service training of district board members.

RELATES TO: KRS 160.180
STATUTORY AUTHORITY: KRS 156.070, 160.180
NECESSITY AND FUNCTION: KRS 160.180 provides that all local school board members must complete an established number of hours of in-service training annually, based on the number of years of experience, and that the State Board for Elementary and Secondary [of] Education shall identify the criteria for fulfilling such requirements. This regulation establishes standards for the annual in-service training of district board members.

Section 1. The annual in-service requirements for all district school board members shall be, for all calendar years after 1989 [1987], as follows:
(1) Twelve (12) hours training for school board members with zero to three (3) years of experience.
(2) Eight (8) hours training for school board members with four (4) to seven (7) years of experience.
(3) Four (4) hours training for school board members with eight (8) or more years of experience.
(4)(a) Newly appointed or elected school board members who take office after June 30th of a particular year shall be entitled, upon appropriate request, to an extension of time under Section 5 of this regulation within which to acquire a maximum number of unacquired hours equal to the difference between the required number of hours and one (1) hour per month for

each full month actually served during the year, and such extensions may extend no longer than through the remainder of the term being served or the next two (2) calendar years, whichever is longer.

(b) Newly appointed or elected members who take office prior to July 1, but on or after March 1, of a particular year may be granted an extension of time under Section 5 of this regulation, in appropriate cases and for an appropriate period of time not to exceed two (2) calendar years, within which to obtain the balance of any required, but unacquired in-service hours for the initial year of new service. Any such extension to acquire hours shall not exceed the difference between the required number of hours and one (1) hour per month for each full month actually served during the year.

Section 2. [Except as specifically provided for in Section 3(2)(b) of this regulation,] The topics relating to the responsibilities of board members may include but not be limited to the following subjects:

(1) The basic role and responsibility of the district board and its members;
(2) Instructional programs;
(3) District finance;
(4) Relations with superintendent and staff;
(5) School law; and
(6) Community relations.

Section 3. (1)(a) For calendar years after 1989 [1987], the Kentucky School Boards Association (KSBA) is recognized as the provider of eight (8) hours of district board member in-service training for board members who are required to obtain twelve (12) hours annually. This arrangement equates to the KSBA being the provider of thirty-two (32) of the forty-eight (48) hours required during the four (4) year period for new board members.

(b) New, inexperienced board members shall [should] be exposed to basic information and [basic] skills that make them informed and effective board members. Topics that new, inexperienced board members shall acquire hours in shall be offered annually by KSBA from the following list of topics: [During the zero to three (3) year experience period, district board members initially elected in 1986, or initially elected thereafter, shall be required to acquire a minimum of two (2) hours training in each of the following areas through programs offered by the KSBA:]

1. School law;
2. School finance;
3. Community relations;
4. Policy development;
5. Personnel relations;
6. Instructional programs;
7. Superintendent/board relations;
8. Goal setting/decision making;
9. Employment and evaluation of the superintendent;
10. Educational services provided for the exceptional, gifted and other special population children; and

[11. The increasing problems of drug and alcohol use among our young people.]

(c) KSBA shall offer hours in at least seven (7) of the ten (10) topics listed in paragraph (b) of this subsection annually. No topic shall be made available less frequently than once in every twenty-four (24) month period.

(d) [(c)] Board members in the zero to three (3) year experience period shall [will] be allowed a maximum of four (4) hours per year, or sixteen (16) hours for the four (4) year period, as flexible hours of in-service. If board members in this category opt to get all of their hours through the KSBA, then they can have KSBA credit them for these hours. If they determine to acquire a portion or all of the sixteen (16) flexible hours through sources other than KSBA, then they must get credit through their own school board's action at a board meeting, and a copy of that record must be sent to KSBA so that proper credit can be given.

(2) Those district board members in the four (4) to seven (7) years experience category may [can] acquire their hours anywhere, through any source they desire. If they obtain their hours through any source other than the KSBA, they must have local board approval and send a copy of the record (board minutes) to KSBA.

(3) Those board members in the eight (8) or more years experience category are subject to subsection (2) of this section.

(4) As the approved provider, the KSBA [Kentucky School Boards Association] shall, in cooperation with the Superintendent of Public Instruction, annually develop an in-service training plan for the review and approval of the State Board for Elementary and Secondary [of] Education. In-service training for district board members shall be provided at a minimum of five (5) geographic locations, on a variety of dates.

(5) The local district board of education shall by board action certify completion of all qualifying flexible hours of in-service training in writing to KSBA, which shall combine such hours with hours of in-service training received through its approved activities. The certification to KSBA shall include a description of the time, date, location, and description of the in-service training. These records shall be submitted annually to the State Board for Elementary and Secondary [of] Education.

Section 4. Subject to extensions granted under Section 5 of this regulation, the names of all district school board members who fail to complete the required hours of in-service training shall be transmitted by the Department of Education to the Attorney General.

Section 5. The State Board for Elementary and Secondary [of] Education, in cases of emergency, may grant an extension of time within which a local board member may complete the required hours of in-service training. Such extensions may include true emergencies for board members serving less than a full year, based upon reasons other than merely less than a full year's service.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: July 12, 1989
FILED WITH LRC: July 14, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 23, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Elementary and Secondary Education at its July meeting. Those persons wishing to provide

written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 18, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Bill McCann
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: 177 school districts.
2. Continuing costs or savings: No change
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Same
(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: Same
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Amendment to existing program.
(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: NA
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: NA
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Administration and Finance
(Proposed Amendment)

702 KAR 5:010. Responsibilities of division.

RELATES TO: KRS 156.160, 189.540
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY AND FUNCTION: KRS 156.160 and 189.540 require the State Board <u>for Elementary and Secondary</u> [of] Education to promulgate regulations relating to the safety of public school children, the transportation of such children to and from school, and the operation of school buses. This regulation establishes guidelines and procedures whereby the Division of Pupil Transportation will be enabled and empowered to offer direct assistance to the school districts in these areas: service to the pupils, school bus safety, and economy of operation.

Section 1. The Division of Pupil Transportation shall make the calculations for pupil transportation allotment purposes under the Minimum Foundation Program that are necessary to determine the calculated pupil transportation program cost for each district that provides transportation for its pupils.

Section 2. The Division of Pupil Transportation shall be responsible for the development of a standardized school bus driver training curriculum, meeting the standards of 702 KAR 5:080, Sections 8, 9, and 10, [for approval by the State Board of Education,] and shall keep the curriculum up-to-date by revision when experience indicates updating is necessary. The division shall be responsible for training and certifying instructors of the training curriculum.

Section 3. No person shall be certified to teach the school bus driver training curriculum until he or she has satisfactorily completed a minimum of <u>twenty-five (25)</u> [twenty (20)] hours classroom and driving instruction, conducted by the Division of Pupil Transportation and relevant to the approved driver training curriculum, and has been issued an instructor's certificate by the Superintendent of Public Instruction. Instructors shall be required to renew their certificates annually by completing six (6) appropriate hours of update training conducted by the division.

Section 4. The Division of Pupil Transportation personnel shall have the authority at any time to make a safety inspection of any and all school buses and special type vehicles either owned by the board or contracted to the board that are being used to transport pupils to and from school, held in reserve as substitutes for this purpose, or are being proposed for this purpose. If any of these school buses or special type vehicles are found to be in an unsafe condition, personnel of the Division of Pupil Transportation shall have the authority to prohibit their further use for the transportation of pupils until the conditions causing them to be unsafe shall have been corrected.

Section 5. The Division of Pupil Transportation personnel shall have the authority to prohibit the use of school buses [and/]or special type vehicles used for the transportation of pupils to and from school that have been purchased by boards of education or school bus contractors that were originally manufactured to the specifications of a state other than Kentucky until such school buses shall have been approved by said Division of Pupil Transportation personnel as meeting the minimum safety standards for Kentucky school buses of the same model year.

Section 6. The Division of Pupil Transportation shall have the authority to make a district pupil transportation system survey in any school district that provides transportation for its pupils, or that is planning to provide transportation for its pupils.

Section 7. The Division of Pupil Transportation shall have the authority to require the superintendent of a school district to prepare or cause to be prepared: pupil transportation maps, bus route descriptions, and reports necessary for calculating the district's entitlement under the minimum foundation program and for the purposes of the Division of Pupil Transportation in making a pupil transportation system survey for the district.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: July 12, 1989
FILED WITH LRC: July 14, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 23, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Elementary and Secondary Education at its July meeting. Those persons wishing to provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 18, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wendell Bruce
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: Costs are included in the Regulatory Impact Analysis for 702 KAR 5:080.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Costs are included in the Regulatory Impact Analysis for 702 KAR 5:080.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Governor's Task Force on School Bus Safety Mandate; Commercial Driver's License Requirement.
(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. Necessary uniformity for insuring school bus safety and driver qualifications.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Commercial Motor Vehicle Act of 1986 which will require school bus drivers to possess a commercial drivers license and Federal Highway Safety Standard 17.
2. State compliance standards. Each state must submit a plan to the National Highway Traffic Safety Administration which demonstrates training and testing required of drivers who are issued a commercial drivers license meets the requirements of the Commercial Motor Vehicle Act of 1986. Kentucky school bus drivers do not have to possess a commercial drivers license at the present.
3. Minimum or uniform standards contained in the federal mandate. Operators of vehicles with a gross weight of 25,000 pounds and vehicles with a carrying capacity of fifteen or more passengers will be required to have a commercial drivers license.
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.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Administration and Finance
(Proposed Amendment)

702 KAR 5:030. Superintendents' responsibilities.

RELATES TO: KRS 156.160, 189.540
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY AND FUNCTION: KRS 156.160 and 189.540 require the State Board for Elementary and Secondary Education to promulgate regulations relating to the safety of public school children, the transportation of such children to and from school, and the operation of school buses. This regulation provides the district superintendent with the regulations necessary to assist him in administering the district's pupil transportation programs and to provide the maximum consistency throughout the state.

Section 1. Each school district superintendent shall be responsible for the general supervision of the district's pupil transportation program. The superintendent may designate another employee or other employees of the board to assist in carrying out this responsibility. For the purpose of these regulations, the word "superintendent" shall mean the superintendent or his designate.

Section 2. The superintendent shall require that a safety inspection be made on each school bus owned and operated by the board or contracted to the board at least once each month that the district's schools are in session. This inspection shall be made by a competent person. If, upon inspection, a school bus is found to be in unsafe operating condition, the superintendent shall withhold the bus from operation until the required repairs are made. The superintendent shall be responsible for keeping the records of the bus safety inspections on file, and shall be responsible for certifying to the Division of Pupil Transportation at least once each month that each school bus used during that month has received the proper safety inspection.

Section 3. The superintendent shall be responsible for preparing the school bus route maps, school bus inventories, and other reports required by the Division of Pupil Transportation for the purpose of making the pupil transportation cost calculation for the Minimum Foundation Program.

Section 4. The superintendent shall be

responsible for making reports on a monthly basis to the Division of Pupil Transportation on all school bus accidents that happened to the district's buses during the month.

Section 5. The superintendent shall be responsible for providing the necessary and required school bus driver training before a school bus driver shall enter into the duties of transporting pupils to and from school or events related to such schools. This training shall at least include the school bus driver course prescribed by the State Board for Elementary and Secondary Education, in accordance with 702 KAR 5:080, Sections 8, [and] 9, and 10 and shall be conducted by a certified instructor. Evidence that the driver has received this training shall be submitted to the Division of Pupil Transportation and a copy shall be kept on file in the office of the superintendent.

Section 6. The superintendent shall be responsible for providing the required in-service school bus driver training which each school bus driver must complete annually for certification renewal, in accordance with 702 KAR 5:080, Section 10. The in-service training shall include at least eight (8) hours of required [appropriate] instruction conducted by a certified instructor. Evidence that each driver has received this training shall be submitted to the Division of Pupil Transportation and a copy shall be kept on file in the office of the superintendent.

[Section 7. The superintendent may issue a temporary school bus driver's permit provided the applicant meets the qualifications set forth in 702 KAR 5:080, Sections 1 through 7, and a certified instructor judges the applicant competent to safely drive a school bus and safeguard the welfare of students. The temporary school bus driver's permit shall be valid for a period of twenty (20) consecutive school days and shall be nonrenewable.]

Section 7. [8.] The superintendent shall perform a criminal records check of all currently employed school bus drivers and school bus driver applicants for criminal history; alcohol and illegal drug use; and driving infraction conviction(s) prior to recommendation for employment. Current school bus drivers with a positive records check in such areas shall be considered for appropriate disciplinary action.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: July 12, 1989
FILED WITH LRC: July 14, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 23, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Elementary and Secondary Education at its July meeting. Those persons wishing to provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 18, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wendell Bruce
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Governor's Task Force on School Bus Safety Mandate; Commercial Driver's License Requirement.
(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. Necessary uniformity for insuring school bus safety and driver qualifications.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Commercial Motor Vehicle Act of 1986 which will require school bus drivers to possess a commercial drivers license and federal Highway Safety Standard 17.
2. State compliance standards. Each state must submit a plan to the National Highway Traffic Safety Administration which demonstrates training and testing required of drivers who are issued a commercial drivers license meets the requirements of the Commercial Motor Vehicle Act of 1986. Kentucky school bus drivers do not have to possess a commercial drivers license at the present.
3. Minimum or uniform standards contained in the federal mandate. Operators of vehicles with a gross weight of 25,000 pounds and vehicles with a carrying capacity of fifteen (15) or more passengers will be required to have a commercial drivers license.
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.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Administration and Finance
(Proposed Amendment)

702 KAR 5:080. Bus drivers' qualifications; responsibilities.

RELATES TO: KRS 156.160, 189.540
STATUTORY AUTHORITY: KRS 156.070, 156.160, 189.540
NECESSITY AND FUNCTION: KRS 156.160 requires the State Board for Elementary and Secondary Education to adopt regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children; and KRS 189.540 requires the State Board to adopt regulations to govern the design and operation of school buses. This regulation implements those duties relative to the qualifications and responsibilities of the school bus driver.

Section 1. All local boards of education shall require annual medical examination of each school bus driver and drivers of special vehicles used to transport school children to and from school and such events related to such schools. The medical examination shall include tests for hearing and vision disorders, emotional instability, and for serious medical conditions including diabetes, epilepsy, heart disease, and other chronic or communicable diseases if indicated in the opinion of the examining physician. The examination shall include tests for tuberculosis upon initial employment and positive reactors shall be required to have further evaluations. All medical examinations of the school bus drivers shall be reported on a form prescribed by the State Department of Education and submitted to the local superintendent.

Section 2. No person shall be employed as a school bus driver who has been convicted of driving any motor vehicle under the influence of alcohol or any illegal drug within the last five (5) years. No person shall drive a school bus unless he or she is physically or mentally able to operate a school bus safely and satisfactorily. If there is limitation of motion in joints, neck, back, arms, legs, or other bodily parts [etc.], due to injury or disease and that would limit the driver's ability to safely perform the task of safely driving a school bus, the driver shall be rejected. Any driver taking medication either by prescription or without prescription, shall not be permitted to drive if that medication would affect, in any way, the driver's ability to safely drive a school bus.

Section 3. (1) No person shall drive a school bus unless he or she has:
(a) Visual acuity of at least 20/40 (Snellan) in each eye either without glasses or by correction with glasses;
(b) Form field vision of not less than a total of 140 degrees; and
(c) The ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.
(2) Drivers requiring correction by glasses shall wear properly prescribed glasses at all times while driving.

Section 4. No person shall drive a school bus whose hearing is less than 7/15 in the better ear, or hearing loss is greater than forty (40) decibels if audiogram is used, for conversational tones, with or without a hearing aid. Drivers requiring a hearing aid shall wear such properly operating aids at all times while driving.

Section 5. The board, at its discretion, may require a school bus driver to pass a routine physical examination or a special type physical examination more often than annually. The school bus driver shall have a current physical fitness certificate on file in the district superintendent's office.

Section 6. A driver shall not start driving a school bus until his 18th birthday.

Section 7. (1) The school bus driver shall have a current driver's license that is valid in Kentucky.
(2) A driver applicant, prior to acceptance into the driver training program, shall be required to demonstrate driving skills judged to be acceptable by a certified driver training instructor, with acceptable performance standards as outlined in the Division of Pupil Transportation curriculum and with the score sheet to become a part of each drivers record. Skill levels shall be demonstrated in:
(a) Vehicle knowledge;
(b) Driver ability to perform steering, shifting, maneuvering, braking, use of mirrors, and negotiate each of the following:
1. Ninety (90) degree left hand turns;
2. Ninety (90) degree right hand turns;
3. Straight ahead;
4. Irregular surface maneuverability at speeds;
5. Backing ability using mirrors only; and
6. Demonstration of spatial awareness.

Section 8. (1) During [Beginning with] the 1989-90 [1985-86] school year, no person shall begin driving a school bus until he or she has completed the beginning school bus driver training course prescribed by the State Board for Elementary and Secondary Education and has been issued a Kentucky school bus driver certificate by the Superintendent of Public Instruction, based upon evidence submitted by a certified instructor that all training requirements have been satisfied[; provided that a temporary school bus driver's permit may be issued under the provisions set forth in 702 KAR 5:030, Section 7]. The prescribed core training course for beginning drivers shall consist of the following instructional units and minimum instructional times:
(a) [(1)] Laws and regulations - one (1) hour;
(b) [(2)] Driving fundamentals - one (1) hour;
(c) [(3)] Care and maintenance - one (1) hour;
(d) [(4)] Critical situations - one (1) hour;
(e) [(5)] Accidents and emergency procedures - one (1) hour;
(f) [(6)] Pupil management - one (1) hour;
(g) [(7)] First aid - one (1) hour; [and]
(h) Special education transportation - five-tenths (.5) hour;
(i) Extracurricular trips - five-tenths (.5) hour; and

(j) [(8)] Vehicle operations - three (3) hours [one (1) hour].

(2) Drivers beginning between the start of school in 1989 through December 31, 1989, shall also be required to complete, prior to December 31, 1989, the prescribed training and evaluation course of the following instructional units and minimum instruction - evaluation times relative to the curriculum under the standards set forth in this regulation:

(a) Vehicle control at speed - one (1) hour;

(b) Bus route identification, driver review and instruction - two (2) hours;

(c) Driver review I, evaluation and instruction - two (2) hours; and

(d) Driver review II, evaluation and instruction - two (2) hours.

(3) Drivers beginning after December 31, 1989, shall complete fourteen (14) hours as set forth in subsections (1)(a) through (j) and (2)(a) and (b) of this section and shall be required to complete the prescribed training and evaluation course set forth in subsection (2)(c) and (d) of this section within thirty (30) days after employment.

Section 9. (1) During the 1989-90 school year, all [Beginning with the 1986-87 school year, no] school bus drivers with less than one (1) year of experience and who drove during 1988-89 shall be required to have, by December 31, 1989, [driver shall continue to drive a school bus until he or she has completed] the initial school bus driver training course prescribed at the time the course was taken [by the State Board for Elementary and Secondary Education] and to have qualified for [holds] a Kentucky school bus driver certificate issued by the Superintendent of Public Instruction, based upon evidence submitted by a certified instructor that all training requirements were [have been] satisfied; and shall in addition have satisfactorily completed, prior to continuing driving, eight (8) hours of in-service driver safety training conducted by a certified instructor, relevant to the curriculum established under the standards set forth in Section 8 of this regulation. [The prescribed training course for initial certification of experienced drivers shall consist of the instructional units and minimum times outlined in Section 8 of this regulation, plus the following instructional units and minimum instructional times:]

(2) During the 1989-90 school year, all school bus drivers with one (1) year or more of experience who drove during 1988-89 shall be required to have completed the school bus driving training eight (8) hour in-service update relative to the curriculum set forth in Section 8(1)(a) through (j) and (2)(a) of this regulation and further including the areas and minimum hours of instruction set forth in Section 8(1)(h) and (i) of this regulation for those drivers who have not previously had such training.

[(1) Special education transportation - five-tenths (.5) hour; and]

[(2) Extra curricular trips - five-tenths (.5) hour.]

Section 10. Beginning with the 1990-91 [1987-88] school year, initial certificate issuance and annual renewal shall require satisfactory completion of the Kentucky Department of Education driver training curriculum prior to the beginning of employment as follows: [all school bus drivers shall be required to renew their certificates annually by satisfactorily completing eight (8) hours of in-service driver safety training conducted by a certified instructor and relevant to the curriculum established under the standards set forth in Sections 8 and 9 of this regulation.]

(1) Beginning drivers - fourteen (14) hours as set forth in Section 8(1)(a) through (j) and (2)(a) and (b) of this regulation, and shall additionally be required to complete the prescribed training and evaluation courses set forth in Section 8(2)(c) and (d) of this regulation within thirty (30) days following the beginning of school;

(2) Certified drivers must complete annually eight (8) hours in-service update; and

(3) Discontinuance of driver employment and subsequent reemployment shall require drivers to become requalified by a training update within a twelve (12) month period following his or her certification termination date. Drivers who are not updated and recertified within such twelve (12) month period shall be required to be retrained through the beginning training program. The requirements of this subsection shall also apply to the 1989-90 school year.

Section 11. Substitute school bus drivers shall meet the same requirements as regular school bus drivers.

Section 12. In case of an emergency that would make it necessary for the driver to leave the bus while pupils are on board, the driver shall stop the motor, shift the bus to low gear, set the parking brake, remove the ignition key, and place one (1) of the older responsible pupils in charge during the driver's absence.

Section 13. The driver shall operate the school bus at all times in a manner that provides the maximum amount of safety and comfort for the pupils under the circumstances.

Section 14. The driver shall supervise the seating of the pupils on the bus. The driver shall make certain the seating capability of the bus has been fully utilized before any pupil is permitted to stand in the bus aisle.

Section 15. The driver shall not, at any time, permit pupils to stand in the stepwell or landing area or where the pupil would likely fall out of the bus if the rear emergency door was opened, or where the driver's view directly in front of the bus or to either side of the front of the bus would be obscured.

Section 16. The driver shall report to the superintendent any overcrowded conditions on the bus.

Section 17. The driver shall transport only those pupils officially assigned to a particular bus trip unless an unassigned pupil presents the driver with a written permit to ride the bus trip that has been signed by the school principal or his designate. The driver shall not permit an assigned pupil to leave the bus at a stop other than where the pupil regularly leaves the bus unless a written permit signed by the school principal or his designate is presented

to the driver.

Section 18. The driver shall not transport adult employees of the board or any person not employed by the board unless he receives written permission of the district superintendent to do so.

Section 19. The driver shall not knowingly permit any firearms or weapons, either operative or ceremonial, to be transported on the bus. The driver shall not knowingly permit any fireworks of any type to be transported.

Section 20. The driver shall not knowingly permit any live animals, fowls, or reptiles to be transported on the bus. The driver shall not knowingly permit any preserved specimen to be transported that would likely frighten any pupil or cause a commotion on the bus.

Section 21. The driver shall not permit the transportation of any object that would likely block the bus aisle or exits in case of a collision.

Section 22. The driver shall not permit a pupil to operate the entrance door handle or any other bus control except in case of an emergency.

Section 23. The driver shall activate the flashing amber [stop warning] lights [and/or the stop signal arm] a sufficient distance from a bus stop so as to permit any prudent motorist to stop short of striking or passing the stopped bus and the flashing stop warning lights and the stop signal arm at the bus stop. [that would permit any prudent motorist to stop short of striking or passing the stopped bus.]

Section 24. For safety reasons, the driver shall not permit fueling of [gasoline to be put into] the bus [gasoline tank] while pupils are on board the bus.

Section 25. If a pupil's conduct on the bus is such that it endangers the lives and morals of the other people on the bus and makes it unsafe for the bus to continue on its route, and when requested by the driver to desist from such conduct and the pupil does not comply, it shall be the duty of the driver to order the pupil to leave the bus, and if this order is refused, to eject the pupil from the bus or send for assistance, whichever the circumstances dictate. Ejecting a pupil from the bus shall be done only in the most extreme circumstances. When ejection from the bus is required, the driver shall notify the principal of the school where the pupil attends, the district superintendent or some other school authority of the action taken as soon as it is possible to do so.

Section 26. In the interest of safety, the driver shall stop the bus at all places where the roadway crosses a railroad track or tracks at the grade level. The driver shall open the bus entrance door, listen, and look for the approach of a train from both directions. When the driver has ascertained that it is safe for the bus to cross the railroad tracks, he shall close the bus entrance door, shift the bus gears into the range that will provide adequate power and proceed immediately to cross the railroad tracks. In cases of severe weather or restricted visibility, the driver shall request assistance from the oldest pupils on the bus in determining whether or not it is safe for the bus to cross the railroad tracks. Under these circumstances, the stop signal arm and flashing warning lights shall be used only if these pupils get off the bus before it is driven across the tracks and board the bus after it has crossed the tracks.

Section 27. The driver shall have the authority to assign a pupil to a specific seat on the school bus.

Section 28. The driver shall make a pretrip inspection of the bus safety and operating equipment each time that the bus is taken out for the transportation of pupils.

Section 29. The school bus driver shall not operate the school bus at a speed in excess of the posted speed limit on the sections of highways over which the bus travels, nor at any time in excess of fifty-five (55) miles per hour. The driver shall not drive the school bus on any roadway at any time at a speed where the conditions of the roadway, weather conditions, or other extenuating circumstances would likely make it unsafe for the bus to travel at that speed.

Section 30. The driver shall wear the driver's seat belt at all times that the bus is operated.

Section 31. The stop signal arm and flashing warning lights shall be used only at stops where pupils are boarding or leaving the bus.

Section 32. The driver shall not use tobacco products while operating the school bus, nor knowingly permit pupils to use tobacco products when on the school bus.

Section 33. The driver shall signal pupils who must cross a roadway to board or leave the bus when the driver has determined that any visible approaching traffic creating a substantive risk of harm has come to a complete stop and is not attempting to start up or pass the bus.

Section 34. A driver shall not operate a school bus while under the influence of alcoholic beverages or any illegal drug or other drug as provided in Section 2 of this regulation. Drivers found under the influence of alcohol or any illegal drugs while on duty or with remaining driving responsibilities that same day shall be dismissed from employment.

Section 35. The driver of a school bus shall be on the bus at all times students are loading or unloading.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: July 12, 1989
FILED WITH LRC: July 14, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 23, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Elementary and Secondary Education at its July meeting. Those persons wishing to provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and

Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 18, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Wendell Bruce
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: $200,000.
2. Continuing costs or savings: $100,000
3. Additional factors increasing or decreasing costs (note any effects upon competition): New school bus drivers employed.
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $79,000.
2. Continuing costs or savings: $86,000.
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: Governor's Task Force on School Bus Safety Mandate; Commercial Driver's License Requirement.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(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. Commercial Motor Vehicle Act of 1986 which will require school bus drivers to possess a commercial drivers license and federal Highway Safety Standard 17.
2. State compliance standards. Each state must submit a plan to the National Highway Traffic Safety Administration which demonstrates training and testing required of drivers who are issued a commercial drivers license meets the requirements of the Commercial Motor Vehicle Act of 1986. Kentucky school bus drivers do not have to possess a commercial drivers license at the present.
3. Minimum or uniform standards contained in the federal mandate. Operators of vehicles with a gross weight of 25,000 pounds and vehicles with a carrying capacity of fifteen (15) or more passengers will be required to have a commercial drivers license.
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.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 3:292. Chapter 1, ESSIA [ECIA] migrant education requirements [plan].

RELATES TO: KRS 156.010, 156.035, 156.070
STATUTORY AUTHORITY: KRS 156.035, 156.070
NECESSITY AND FUNCTION: In accordance with Section 435 of the General Education Provisions Act and sections 1201, 1202, and 1203 of the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary Improvement Amendments of 1988 [564 of the Education Consolidation and Improvement Act of 1981], the Department of Education, when applying to the U.S. Department of Education for participation in programs for migrant [migratory] children under Chapter 1 of the Education Consolidation and Improvement Act of 1981, must submit an approvable plan and satisfactory assurances that all requirements of the law will be met. This regulation[, through adoption of the migrant plan developed by the Department of Education,] implements the State Board for Elementary and Secondary [of] Education's duties to develop education policy, to implement acts of Congress appropriating and apportioning funds to the state and to provide for the proper apportionment and disbursement of federal migratory children funds in accordance with the state's current plan.

Section 1. Local education agency program applications for federal migratory children funds shall be authorized by the local board of education prior to submission to the Kentucky Department of Education. [The Chapter 1, ECIA Migrant Education Annual Program Plan for fiscal year ending September 30, 1989, such to become effective July 1, 1988, is presented herewith for filing with the Legislative Research Commission, and incorporated by reference. Copies of this plan may be obtained from the Division of Compensatory Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601. This plan shall govern the distribution and allocation of subgrants to eligible local school districts and provide supplemental education services to eligible migratory students, grades K-12.]

Section 2. (1) The Department of Education, in submitting a three (3) year plan, for fiscal years 1990-1992, shall phase out regular school term academic programs for migratory children by the end of year three (3) and phase in substitute summer term programs. The phasing in of a student advocate at the local district level shall be implemented, with such a person to be employed half to full-time, year round, and to be responsible for recruitment activities, acting as an advocate for migrant children, and for identifying and coordinating the resolution of problems relating to both home and school.
(2) Local school districts shall provide services to migrant children, as follows, with all children to receive support services as appropriate:

Currently Migrant Children (Ages 5-17)

Year 1	Language Arts Advocate Support Funds	regular or summer school part to full-time
Year 2	Language Arts Advocate Support Funds	regular or summer school part to full-time
Year 3	Language Arts Advocate Support Funds	summer school part to full-time

Currently Migrant Children (Ages 3-4)

Year 1 Service during regular school year via preschool appropriate materials and home visitation by the advocate. Referral to and service through Headstart. Summer school programs (preparation for kindergarten).

Year 2 Same

Year 3 Same

Currently Migrant Youth (Ages 18-21)

Student advocate activities in arranging for and referral to GED programs, adult education programs, Kentucky Migrant Farm Workers' Project (DOL 402 Project), JTPA projects, and others as appropriate.

Formerly Migrant Children (Ages 3-21)

Similar services, as resources permit.

(3) All currently migrant children (ages 3-21) regardless of need are first priority. Formerly migrant children shall be served, based upon need, as funds permit.

(4) Summer school programs shall be a minimum of six (6) weeks in duration. [Local educational agency program applications must be authorized by the local board of education prior to submission to the Kentucky Department of Education.]

Section 3. (1) Prior to November 1, 1989, local district migrant coordinators (or migrant advocates) shall geographically locate the currently migrant children (ages 3-4), visit the home, and get acquainted with parents. Coordinators shall ascertain current intervention by other educational programs (such as Headstart, PACE, and nursery schools), assess the level of parent educational attainment, and determine the degree of parental cooperation or interest in services. The record of this first visit including demographics, data verification, educational level of parents, current intervention, and degree of interest or cooperation, shall provide baseline data and facilitate preparation for a second home visit before March 7, 1990.

(2) During the months of February and March, 1990, the LEA migrant student advocate shall arrange a second home visit to deliver a predeveloped packet and train the parents in suitable developmental activities with a prekindergarten child. A record or log of the visit - i.e., date, parent and child, time-in-training, attitude toward intervention, anticipated progress, concerns or apprehensions - shall be kept.

(3) On or about May 1, 1990, the advocate shall visit the home to assess the value of the packet from the parent's perspective and to enroll the child in the summer school prekindergarten program if locally available in the summer of 1990.

(4) If the summer school is not operational in the summer of 1990, the migrant advocate shall bring migrant parents and their prekindergarten children to a central location (school) to share experiences using the training packets and to collect evaluation data on the effectiveness of parent-child activity. This gathering shall provide a forum for discussing readiness for kindergarten, the value of schooling, and the importance of parent involvement in the learning process.

(5) During the second year, the prekindergarten objectives from the first year shall be continued with the revision of training packets and more emphasis on acceleration for economically deprived and educationally disadvantaged children in a six (6) week summer school prekindergarten program, including participation in a federally funded nutrition program.

(6) During the third year, the prekindergarten objectives from the first year (appropriate referral and parent/child stimulation) shall continue, with all currently migrant children having an opportunity for a summer school prekindergarten acceleration program in 1992.

Section 4. (1) During the regular school year, August 15, 1989, to June 1, 1990, the LEA migrant teachers and aides shall serve approximately 1,200 currently migrant school age students, ages five (5) through seventeen (17). They shall be served in the traditional supplemental instructional tutorial approach and the pull-out model in language arts which supplements reading, writing, listening, and speaking skills needed in regular classroom activities. As an alternative, the LEA project staff may elect to play a supportive role only during the regular school term and use an advocacy model. This model shall facilitate good attendance, positive attitude, good nutrition and grooming, health maintenance, class preparation, serious study, and improved academic performance as measured by norm-referenced, standardized achievement tests, percentage of attendance, and promotion or retention. Any opportunity to participate in a six (6) week migrant summer school instructional program shall maintain basic skills, provide a broad program of enrichment, and develop study skills leading to acceleration and motivation.

(2) During the second year, the Department of Education staff, in cooperation with the LEA projects staff, shall continue the gradual phasing out of the migrant supplemental instruction role in favor of a strong advocacy role of supportive service during the regular school term and the extended instructional program for all migrant students (currently and formerly) via the six (6) week summer school program.

(3) In the third year of the plan, the Department of Education staff shall realize the full implementation of the advocacy model with new advocates being trained on site by LEA projects staff who have demonstrated ability in

getting the best for students from school personnel, the home, and the community. Baseline assessment data shall be established after which exceptions in trend data will alert staff to areas of strength and weakness or neglect. The summer schools shall be monitored for effectiveness in reducing the educational gap, and summer school staff shall be given opportunities for staff development.

Section 5. (1) During the 1989-90 school year, the Kentucky Migrant Education program staff shall develop and implement procedures for locating approximately thirty-five (35) currently migrant youth, less than twenty-two (22) years of age, who have dropped out of school before attaining a high school diploma or its equivalent, and for cultivating an interest and determination to act on a referral to an adult education program, a GED class, a vocational school, or return to the regular secondary school. A log or case study shall document the effort and success of initiatives by migrant advocates.

(a) Before September 15, 1989, the Department of Education staff shall develop an interagency coordinating council of persons responsible for the delivery of educational and supportive services to youth in an alternative environment for the purpose of coordinating those services in the interest of migrant youth that failed to attain a high school diploma. Admissions procedures and requirements shall be shared and recorded.

(b) Before September 1, 1989, the LEA migrant coordinators or migrant student advocates shall geographically locate currently migrant dropouts or residency only youth, visit the family, get acquainted with the youth, assess the attitude and interest in further schooling, learn of any current intervention by other agencies, and explore needs. Data gathered shall be recorded as a needs assessment.

(c) The LEA migrant student advocate shall work individually to secure the participation and completion of the most appropriate alternative educational program for each such youth. The value of the advocates' work shall be measured by youth participation, regular attendance, consistent preparation and application, and successful completion.

(d) Similar activities with currently migrant youth, ages sixteen (16) to twenty-one (21), shall continue during the second and third year of the plan, and the local migrant advocate shall continue to transition such youth to alternative educational programs and even seek to intervene before dropout occurs.

(2)(a) LEA personnel shall help locate eighteen (18) to twenty-one (21) year old current migrant adults who have not attained either high school graduation or a GED. These persons shall be referred to the local adult education agency. These identified adults shall be encouraged to become involved in the local adult education or HEP program.

(b) Similarly, any eligible eighteen (18) to twenty-one (21) year old who is handicapped shall be referred to the local rehabilitation office.

(c) Sixteen (16) and seventeen (17) year old currently high school dropouts located during recruiting shall be encouraged to return to school. If they choose not to return to school, they shall be referred to adult education and rehabilitation programs, as appropriate.

Section 6. (1) The Department of Education migrant program evaluator shall guide LEA coordinators in the maintenance of an LEA migrant database that is updated annually by May 30. The database shall contain demographic information requested by the federal Secretary of Education, attendance (days present and days absent), achievement status (promoted or retained), migrant funded instructional and supportive services received, other supplemental services, special education services, and achievement performance as measured by the statewide assessment instrument, the Comprehensive Test of Basic Skills, Fourth Edition (CTBS/4), given annually in May.

(2) The LEA migrant staff, using the migrant database, shall complete a self-assessment of the LEA migrant project based on the program application and budget approved by the Department of Education.

Section 7. Success of the migrant program shall be measured in academic achievement by the CTBS/4; improved attendance; promotion or graduation; reducing the dropout rate; and the general well-being of the student as gathered from interviews with students, teachers and parents.

Section 8. Each local applicant shall be required to submit an approvable budget. Monthly finance reports denoting expenditures by code(s) (as per the Kentucky School Financial Accounting System Manual) shall be submitted. LEA expenditures for equipment costing $150 or more, and all computer equipment, shall have prior approval from the Department of Education.

Section 9. (1) Final allocation of federal migrant funds for each LEA shall be based upon the current FTE generated during the preceding calendar year, with such figure to be adjusted due to size, scope, and quality of the proposed project. Other factors determining allocation amounts shall be monitoring results, evaluation data, unused previous year funds, and whether program designs reflect state and local needs assessment results.

(2) New recruitment projects shall be funded ten (10) to fifteen (15) hours per week at five (5) dollars to seven (7) dollars per hour plus eighteen (18) cents per mile for travel. New projects shall begin as summer projects based upon recruitment results obtained over a minimum recruitment period of not less than six (6) months prior to application for a summer school. Other factors are:

(a) Results of monitoring of each LEA program if current (last year);

(b) Evaluation data of year just completed;

(c) Whether program design is reflective of state and local needs assessment data; and

(d) Unused funds from the previous year.

(3) All project applications, regardless of size, shall be given consideration for funding if there are currently migrant children residing in the district. In the event of limited numbers of currently migrant children (less than five (5)), the Department of Education shall first consider funding for those districts where more substantial numbers of currently migrant children reside.

(4) LEA's shall use teachers who are certified

in the grade levels of children with whom they work, but the Department of Education reserves the right to approve the use of teachers who are out of their certification range so long as the majority of students assigned to the teacher are within the certificated grade range. Once LEA's move to summer school academic programs only, teachers shall not be permitted to work with children out of their certificated range.

(5) Projects shall be designed in consultation with parents and teachers, and written documentation of such consultation is required.

Section 10. All instructional staff paid with migrant funds shall be required to provide instructional services only upon consultation with and direction from the regular classroom teacher. They are required to document consultation and the subject matter content determined by the regular classroom teacher. Handicapped migrant students receive special education services as would any other child. Migrant (academic) services to handicapped migrant children shall only be provided through consultation with special education teachers. Documentation is required at the LEA level and checked during monitoring.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: July 12, 1989
FILED WITH LRC: July 14, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 23, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Elementary and Secondary Education at its July meeting. Those persons wishing to provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 18, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Joanne Brooks
(1) Type and number of entities affected: All LEAs operating migrant programs and parents of such children - potential 177 LEAs.
(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: Filing a written document in the event of a complaint.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Operational costs to investigate complaints.
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: SEA files written findings to complaints.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Federal law requires this complaint procedure.
(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: None
TIERING: Was tiering applied? No. Federal law does not allow.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Research and Planning
(Proposed Amendment)

704 KAR 10:022. Elementary, middle and secondary schools standards.

RELATES TO: KRS 156.160
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY AND FUNCTION: KRS 156.160 requires the State Board for Elementary and Secondary Education to adopt rules and regulations relating to grading, classifying, and accrediting all common schools, and further allows private, parochial, and church schools to voluntarily comply with accreditation standards and to be so certified by the state board. This regulation implements this duty by prescribing general standards to be used in evaluation of public elementary, middle and secondary schools, and of those nonpublic schools voluntarily seeking an accreditation evaluation.

Section 1. Pursuant to the authority vested in the State Board for Elementary and Secondary Education by KRS 156.070 and 156.160, the Kentucky Standards for Accrediting Elementary, Middle and Secondary Schools, as amended on March 8, 1989, are presented herewith for filing with the Legislative Research Commission, and incorporated by reference.

Section 2. Pursuant to the authority vested in the State Board for Elementary and Secondary Education by KRS 156.160(2), nonpublic schools which voluntarily request accreditation shall be in compliance with all standards and indicators included in the Kentucky Standards for Accrediting Elementary, Middle and Secondary Schools limited to curriculum, textbooks, and staff certification. Schools shall address all standards and indicators except those marked "N/A" (not applicable). These Voluntary Nonpublic School Accreditation Standards, July, 1989 [May, 1986], are presented herewith for filing with the Legislative Research Commission and incorporated herein by reference.

Section 3. The procedures for the voluntary accreditation of individual nonpublic schools or related groups of such schools under common management and control shall be as follows:
(1) All nonpublic schools or groups of schools which voluntarily request accreditation shall notify the Division of Accreditation by letter of their intentions.
(2) An Instructional Services Advisor (I.S.A.) shall be assigned to a school and shall be the

liaison between the school and the Department of Education. The I.S.A. shall provide the school with the department's self-study guide and provide technical assistance as needed.

(3) An on-site team will visit each school to validate the school's self-study. This team shall be appointed by the Department of Education and shall consist of at least three (3) persons - an I.S.A., a local nonpublic school official and another Department of Education staff member.

(4) An additional team member shall be appointed for each additional five (5) faculty members beyond fifteen (15).

(5) A report shall be generated by the on-site team and a copy presented to the school or related group of schools. The school or related group of schools shall prepare a three (3) year plan of action to correct all noncompliance. The plan shall be monitored annually to assure that the plan of action is being implemented.

(6) The school or related group of schools shall then be placed on a five (5) year accreditation cycle. The first year shall be the self-study and the on-site visit followed by a three (3) year plan of action, and the last year shall be devoted to updating the self-study.

(7) State funds shall not be used for the accreditation of nonpublic schools. Such schools shall reimburse the Department of Education the total costs of accreditation certification, including necessary follow-up, either from their own funds or from any appropriate federal grants.

Section 4. Any school or institution whose primary mission is to serve a student clientele (K-12) with unique needs that are outside the generally accepted operational range of students who attend public schools shall be classified and accredited under the category of Special School Accreditation.

Section 5. A copy of all documents incorporated in this regulation may be copied, inspected, and obtained from the Office of Research and Planning, Department of Education, Third Floor, Capital Plaza Tower, Frankfort, 8 a.m. - 4:30 p.m., Monday-Friday.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: July 12, 1989
FILED WITH LRC: July 14, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 23, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Elementary and Secondary Education at its July meeting. Those persons wishing to provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 18, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: R. C. Story
(1) Type and number of entities affected: 200 nonpublic schools.
(a) Direct and indirect costs or savings to those affected: No additional.
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.
(2) Effects on the promulgating administrative body: No effect.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: N/A
(4) Assessment of alternative methods; reasons why alternatives were rejected: Must be consistently applied.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. This regulation must apply consistently.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

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

RELATES TO: KRS 161.020, 161.025, 161.030
STATUTORY AUTHORITY: KRS 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020 prohibits any person from holding the position of superintendent, principal, teacher, supervisor, director of pupil personnel, or other public school position for which certificates may be issued unless he holds a certificate of legal qualifications for the particular position; KRS 161.025 gives the Kentucky Council on Teacher Education and Certification the duty to develop and recommend policies and standards relating to teacher preparation and certification; and KRS 161.030 rests the certification of teachers and other school personnel and the approval of teacher-preparatory colleges and universities and their curricula with the State Board of Education. This regulation establishes the standards and procedures which are to be used for the approval of the various teacher preparation programs offered by the colleges and universities, and where applicable, these curriculum standards are consistent with the Program of Studies as incorporated in 704 KAR 3:304; and this regulation also establishes procedures and necessary justifications for future development of new preparation-certification programs.

Section 1. Pursuant to the statutory authority placed upon the Superintendent of Public Instruction, the State Board for Elementary and Secondary Education, and the Kentucky Council on Teacher Education and Certification under KRS

Chapter 161, there is hereby devised, created, and incorporated by reference the Kentucky Standards for the Preparation-Certification of Professional School Personnel, which shall include the standards and procedures for the approval of college and university curricula for the preparation programs.

Section 2. The Kentucky Standards for the Preparation-Certification of Professional School Personnel are hereby amended, and the amended document is hereby incorporated by reference and identified as the Kentucky Standards for the Preparation-Certification of Professional School Personnel, revised July [May], 1989. A copy of this document can be inspected, copied and obtained from the Office of Instruction, Department of Education, 18th Floor, Capital Plaza Tower, Frankfort, Kentucky, 8 a.m. - 4:30 p.m., Monday-Friday.

Section 3. Any proposal for the development by the Council on Teacher Education and certification of a program of preparation-certification for a new position shall be evaluated in writing by the office of the Superintendent of Public Instruction on the basis of the following criteria:

(1) There are compelling reasons for establishing a preparation-certification program. Alternate procedures for insuring professional competence for the position are either not feasible or are not appropriate. The likelihood of unsatisfactory practices represents too high a risk for noncertification alternatives.

(2) A distinctive and specific body of knowledge exists for the new position which is not likely to be attained without a specific preparation-certification plan. The body of knowledge is sufficiently extensive for a program of preparation - twelve (12) semester hours of credit or more - rather than something that can be earned in miscellaneous noncredit experiences.

(3) There are pupils having unique characteristics which require the teacher to have specialized knowledge and skills or there is a need for special services for which unique professional preparation is required.

(4) There is a sufficient demand for the training for this position to warrant the development of preparation-certification programs at one (1) or more Kentucky teacher education institutions and for sustaining these programs over a period of several years.

(5) The preparation-certification requirement is cost effective in terms of the anticipated benefits to the local school district.

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: July 12, 1989

FILED WITH LRC: July 14, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing has been scheduled on Wednesday, July 23, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, to review the regulation adopted by the State Board for Elementary and Secondary Education at its July meeting. Those persons wishing to attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 18, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer

(1) Type and number of entities affected: Approximately 20 institutions of higher education offering kindergarten endorsement. Approximately 170 individuals in these certification programs annually.

(a) Direct and indirect costs or savings to those affected: Costs related to institutions offering these programs making necessary changes as required by revisions to standards. Savings to individuals seeking kindergarten certification.

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: Institutions of higher education will have to submit revised programs for administrator student personnel services certification for approval by State Board of Education.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Costs involved in reviewing and approving revised programs submitted by institutions of higher education.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Revised programs will have to be reviewed by Division of Teacher Education and Certification and recommended for approval by State Board of Education if they meet standards.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative would require candidates seeking kindergarten certification to complete a lengthier course of study.

(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

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:070. Provisional high school certificate.

RELATES TO: KRS 161.020, 161.025, 161.030

STATUTORY AUTHORITY: KRS 156.070, 161.030

NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of

programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board for Elementary and Secondary [of] Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to a particular certificate on the basis of standards and procedures recommended by the council and approved by the state board. This regulation establishes an appropriate certificate for teaching in the secondary grades and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted in 704 KAR 20:005.

Section 1. (1) The provisional high school certificate shall be issued in accordance with the pertinent Kentucky statutes and State Board for Elementary and Secondary [of] Education regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted in 704 KAR 20:005, TEC 40.0, 40.1, 40.2, and 40.3.

(2) The provisional high school certificate shall be issued and renewed in accordance with the provisions of KRS 161.030 and 704 KAR 20:045. [Effective until December 31, 1984, the provisional high school certificate shall be issued initially for a duration period which expires ten (10) years from the calendar year of completion of the curriculum requirements. This certificate shall be renewed for a ten (10) year period only upon completion of the planned fifth-year program. The certificate may be extended for life upon completion of three (3) years of successful teaching experience on a regular certificate and upon completion of a planned fifth-year program.]

(3) Except as hereinafter provided, the provisional high school certificate shall be valid for teaching in grades seven (7) through twelve (12).

(4) Effective September 1, 1989, the certificate described in this regulation shall be renamed the provisional certificate for teaching in the secondary grades 9-12, and this new certificate shall be valid only for teaching in grades nine (9) through twelve (12) and for a departmentalized assignment in grades seven (7) and eight (8) in the major, minor, or area of concentration designated on the teaching certificate.

[(5) Effective January 1, 1985, the provisional high school certificate shall be issued and renewed in accordance with the provisions of KRS 161.030 and 704 KAR 20:045.]

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: July 12, 1989
FILED WITH LRC: July 14, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 23, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Elementary and Secondary Education at its July meeting. Those persons wishing to provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 18, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer
(1) Type and number of entities affected: Approximately 24 institutions of higher education offering programs leading to high school teaching certificates and approximately 1,200 candidates annually receiving high school teaching certificates and 178 employing school districts.
(a) Direct and indirect costs or savings to those affected: Savings to local school districts due to flexibility in teacher assignments provided by amendments.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No additional requirements.
(2) Effects on the promulgating administrative body: Flexibility provided by regulations will be communicated to entities effected and administered.
(a) Direct and indirect costs or savings: No additional costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional paperwork or reporting requirements.
(3) Assessment of anticipated effect on state and local revenues: Flexibility in teacher assignments provided by regulation should allow savings in local funding of schools.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Current certification of high school teachers restricts their assignment to grades 9-12. Amendments allow greater flexibility by allowing their assignments to 7th and 8th departmental classrooms.
(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

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:080. Provisional middle grades certificate.

RELATES TO: KRS 161.020, 161.025, 161.030
STATUTORY AUTHORITY: KRS 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020, 161.025,

and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board for Elementary and Secondary [of] Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the council and approved by the state board. This regulation establishes an appropriate certificate or teaching in the middle grades and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel.

Section 1. (1) The provisional certificate for teaching in the middle grades 5-8 shall be issued in accordance with the pertinent Kentucky statutes and State Board for Elementary and Secondary [of] Education regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted in 704 KAR 20:005, TEC 35.0.

[(2) Such a certificate issued prior to January 1, 1985, shall be renewed for an additional ten (10) year period only upon completion of the planned fifth-year program. The certificate may be extended for life upon completion of three (3) years of successful teaching experience on a regular certificate and upon completion of the planned fifth-year program.]

(2) [(3) Effective January 1, 1985,] The provisional certificate for teaching in the middle grades shall be issued and renewed in accordance with the provisions of KRS 161.030 and 704 KAR 20:045.

(3) [(4)] The provisional certificate for teaching in the middle grades 5-8 shall be valid for teaching in grades five (5) through eight (8) and shall be endorsed for grades nine (9) through twelve (12) for any subject assignments in which the teacher holds a regular high school teaching major or minor or area of concentration. The certificate shall also be valid for teaching pupils in grades four (4) who are grouped for instruction in combination classes for grades four (4) and five (5). The certificate shall be valid for an assignment beyond the eighth grade as identified by the Kentucky Program of Studies. Such assignment shall be in the middle grade fields specified on the teaching certificate.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: July 12, 1989
FILED WITH LRC: July 14, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 23, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Elementary and Secondary Education at its July meeting. Those persons wishing to provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 18, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer
(1) Type and number of entities affected: Approximately 22 institutions of higher education and approximately 300 candidates receiving middle grades teaching certificates annually. 178 employing local school districts.
(a) Direct and indirect costs or savings to those affected: Savings to local school districts due to flexibility in teaching assignments provided by the amendments.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No additional requirements.
(2) Effects on the promulgating administrative body: Flexibility provided by the amendments will be communicated to the entities affected.
(a) Direct and indirect costs or savings: No additional costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional requirements.
(3) Assessment of anticipated effect on state and local revenues: Flexibility in teacher assignments provided by amendments should allow savings in local funding of schools.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Current certification of middle school teachers restricts their assignment to grades 5-8, amendments would allow such teachers to be assigned to teach certain courses beyond the eighth grade.
(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

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:135. Kindergarten teachers.

RELATES TO: KRS 161.020, 161.025, 161.030
STATUTORY AUTHORITY: KRS 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the

Kentucky Council on Teacher Education and Certification and approved by the State Board for Elementary and Secondary [of] Education; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the council and approved by the state board. This regulation establishes an appropriate certificate for kindergarten teachers and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel.

Section 1. [Effective until September 1, 1989,] An endorsement for teaching kindergarten shall be issued in accordance with the pertinent Kentucky statutes and State Board for Elementary and Secondary [of] Education regulations to an applicant who holds a certificate valid for classroom teaching at the elementary school level and who has completed the approved program of preparation for the kindergarten endorsement at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel, as adopted by 704 KAR 20:005, TEC 20.0, Section 1. [Effective with the 1986-87 academic year teacher candidates shall not be admitted to this preparation program leading to an endorsement for teaching kindergarten.]

Section 2. The certificates issued for a duration period beginning prior to September 1, 1971, and valid for classroom teaching at the elementary school level, shall continue to be valid for teaching kindergarten. Certificates issued for a duration period beginning after September 1, 1971, and valid for classroom teaching at the elementary school level, shall be valid for teaching kindergarten only upon completion of the endorsement program for kindergarten teaching.

[Section 3. An endorsement for teaching kindergarten through grade four (4) shall be issued in accordance with the pertinent Kentucky statutes and State Board of Education regulations to an applicant who holds a certificate valid for classroom teaching at the elementary level and who has completed the approved program of preparation for the K-4 endorsement at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel, as adopted by 704 KAR 20:005, TEC 20.0, Section 2.]

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: July 12, 1989
FILED WITH LRC: July 14, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 23, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Elementary and Secondary Education at its July meeting. Those persons wishing to provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 18, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer
(1) Type and number of entities affected: Approximately 20 institutions of higher education which offer kindergarten endorsement programs and approximately 160 candidates annually.
(a) Direct and indirect costs or savings to those affected: Costs related to institutions having to continue offering certain coursework related to the program. Savings for candidates seeking endorsement for kindergarten who otherwise would have to complete more extensive K-4 certification endorsement.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No additional requirements.
(2) Effects on the promulgating administrative body: No additional requirements.
(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 additional requirements.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative would require candidates seeking kindergarten endorsement to complete a lengthier and more expensive course of study to qualify.
(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

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 20:290. Certification for early elementary level.

RELATES TO: KRS 161.020, 161.025, 161.030
STATUTORY AUTHORITY: KRS 156.070, 161.030
NECESSITY AND FUNCTION: KRS 161.020, 161.025, and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board for Elementary and Secondary [of] Education; furthermore, the teacher education institutions

are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures recommended by the council and approved by the state board. This regulation establishes an appropriate certificate for teaching at the early elementary level and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel.

Section 1. (1) [Effective July 1, 1986,] The provisional certificate for teaching in the early elementary grades K-4 shall be issued in accordance with the pertinent Kentucky statutes and State Board for Elementary and Secondary [of] Education regulations to an applicant who has completed the approved program of preparation which corresponds to the certificate at a teacher education institution approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted in 704 KAR 20:005, TEC 22.0.

(2) The provisional certificate for teaching in the early elementary grades K-4 shall be issued and renewed in accordance with the provisions of KRS 161.030 and 704 KAR 20:045.

(3) The provisional certificate for teaching in the early elementary grades K-4 shall be valid for teaching in kindergarten and in grades one (1) through four (4). The certificate shall also be valid for an assignment in a self-contained classroom in grades five (5) and six (6).

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: July 12, 1989
FILED WITH LRC: July 14, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 23, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Elementary and Secondary Education at its July meeting. Those persons wishing to provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 18, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Akeel Zaheer
(1) Type and number of entities affected: Approximately 25 institutions of higher education offering programs leading to early elementary certification. Approximately 1,500 individuals receiving early elementary certification annually. 178 local school districts employing these individuals in Kentucky.
(a) Direct and indirect costs or savings to those affected: Savings resulting from flexibility in teaching assignment provided by proposed amendments.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No additional requirements.
(2) Effects on the promulgating administrative body: Flexibility provided by the amendments will be communicated to entities effected and administered.
(a) Direct and indirect costs or savings: No additional costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional paperwork or reporting requirements.
(3) Assessment of anticipated effect on state and local revenues: Flexibility in teacher assignments provided by amendments should allow savings in local funding of schools.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Current certification of early elementary teachers restricts their assignment to grades K-4. Proposed amendment allows their assignment to self-contained fifth and sixth grades as well.
(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

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Vocational Education
(Proposed Amendment)

705 KAR 5:130. Attendance policies for long-term adults in state-operated vocational schools.

RELATES TO: KRS 163.030
STATUTORY AUTHORITY: KRS 156.070, 163.030
NECESSITY AND FUNCTION: KRS 163.030 provides that the State Board for Adult, Vocational [of] Education and Vocational Rehabilitation has all necessary power and authority in administering vocational education. The State Board for Adult, Vocational [of] Education and Vocational Rehabilitation finds it necessary to establish attendance policies for adults sixteen (16) years of age and older who are enrolled in a vocational education program of 500 hours or more.

Section 1. Students shall be treated uniformly in terms of their attendance in all state-operated vocational schools. Each school shall maintain a uniform attendance accounting procedure.

Section 2. Regular attendance and punctuality are expected of all students as the student's school attendance record may have a positive or negative impact on initial employment opportunities. An accurate record of total hours absent and total hours in attendance for the program shall be reflected on the student's transcript. Students shall assume responsibility for regular attendance; completion of all

assignments; completion of all examinations; and completion of required laboratory, internship, and clinical time. [The teacher or school principal shall determine when an absence from a scheduled class is excused or unexcused.]

Section 3. Work missed because of absence for any reason shall be made up satisfactorily to the teacher within a reasonable time after returning to school. Makeup work not turned in by the time designated by the instructor shall receive a grade of "0". It is the student's responsibility to contact the teacher on the day returning to school to arrange for makeup work. Makeup of examinations, clinical time, or other instructional activities may require extra hours as arranged by the teacher. [Excused absences are those due to personal illness, injury, or accident; serious illness of family members; death of spouse, brother or sister, children including stepchildren, foster children, parents or spouse's parents, or grandparents or spouse's grandparents; requirements to appear in court; military assignments; and other compelling circumstances making it unwise or inadvisable to attend class. In the event of illness, a student may be requested to present a medical statement.]

Section 4. The school recognizes that there are times when a student must be absent because of illness, death in the family, accident or other personal emergency. Students are expected to keep leave time to a minimum and may be asked for verification of illness or personal emergency if there is reasonable cause to suspect abuse of this leave policy. [Regardless of whether a student believes an absence(s) to be excused or unexcused,] The student shall notify the teacher or an appropriate administrator of the absence(s) and the reason therefor either prior to the absence(s) or as soon thereafter as practicable.

[Section 5. If an excused absence requires the student to be absent for more than ten (10) consecutive days, serious consideration will be given to interrupting the student's training and then enrolling him or her when the cause of the absence has been eliminated. Students who are enrolled in a clinical or cooperative education component and must miss more than five (5) consecutive days shall have training formally interrupted.]

Section 5. [6.] If a student has more than seventy (70) hours of total absence during the school year [one (1) unexcused absence in a calendar month], the student shall receive an official warning. The student [be placed on probation from the date of notification of probationary status for a period of ninety (90) days, and] shall be referred to a guidance counselor for guidance and counseling services. After receiving an attendance warning, a student shall notify the school principal or the principal's designee of reasons for any further absence. The principal or the principal's designee shall determine whether or not the absence is for an essential cause, including serious illness, injury, or accident; court appearance; military assignment; or other emergency situations. Only one (1) day or six (6) cumulative hours, whichever is greater, past the warning notification shall be allowed for any cause. If the student has any [one (1)] additional [unexcused] absence of one (1) hour or more [during the probationary period], the student shall, without compelling circumstances, be subject to suspension or expulsion as prescribed in 705 KAR 5:080.

Section 6. [7.] Absences shall be recorded for any time of more than a half hour missed from class or an assigned work station unless the student participates in an approved alternate school activity such as a vocational student organization conference. Arriving after the roll is checked but within the first half hour of the class period is recorded as tardy; i.e., arriving forty (40) minutes late equals one (1) hour of absence and twenty-five (25) minutes late is one (1) tardy. Leaving class within the last half hour of the program is considered the same as tardy. Three (3) tardies or three (3) times leaving early equals one (1) hour of absence. [Three (3) instances of tardiness or leaving early shall constitute either an excused or unexcused absence for reasons described in preceding sections of this regulation. Students who habitually arrive late or leave early shall be counseled; and if the problem continues, the student shall be placed on probation on the same basis as described in Section 6 of this regulation. If the terms of probation are violated, the student shall be subject to suspension or expulsion, as prescribed in 705 KAR 5:080.]

Section 7. [8.] Satisfactory progress for the purpose of financial aid is based on academic progress. An official warning for attendance problems shall not result in withholding financial aid payments. [When school administrators feel expulsion is appropriate, a hearing shall be requested of the regional director. The hearing shall be in compliance with 705 KAR 5:080, and any reinstatement after expulsion shall be in accordance with said regulation.]

Section 8. [9.] A student scheduled for a support class (such as, related instruction, computer laboratory, economics, or study skills) who misses fifteen (15) percent or more of the total hours scheduled shall be required to repeat the support class prior to graduation. [This regulation shall be effective for the 1988-89 school year and thereafter until such time as it shall be formally amended.]

Section 9. Students subject to dismissal for attendance violations may request a hearing by filing a request for such with the regional administrator within three (3) days of notification of the recommendation for dismissal. Otherwise, no hearing shall be scheduled pursuant to 705 KAR 5:080, and expulsion shall be automatic.

Section 10. Students attending a program of less than eleven (11) total months duration or students attending a program on a part-time basis shall have the maximum of seventy (70) hours prior to attendance warning reduced proportionately.

Section 11. Students completing a program with five (5) or fewer total days' absence for the program shall be given a Certificate of Merit for Attendance. Students completing a program

with less than one (1) day of absence during the program shall receive a Certificate of Excellence for Attendance.

C. RICHARD WARNER, Vice Chairman
APPROVED BY AGENCY: June 20, 1989
FILED WITH LRC: July 3, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing has been scheduled on August 25, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Adult, Vocational Education and Vocational Rehabilitation at its June meeting. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult, Vocational Education and Vocational Rehabilitation, 2013 Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 21, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Joyce Logan
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: Not applicable
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: Reduction in paperwork requirements; eliminates daily monitoring of reasons for absence.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: Not applicable
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No change.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The number of days allowed could be different; the number selected was based on accumulation of the equivalent of 10-day absence period. Another option was to accumulate leave time monthly; this was rejected because of the paperwork and the need to have some up-front time to take care of consecutive days of illness early in the school year.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Not applicable
(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 should reduce friction between school staff and students and cause the student to monitor his/her own absences more carefully. Positive motivation for good attendance comes from Certificates of Merit and Excellence at graduation.
TIERING: Was tiering applied? Yes

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Education for Exceptional Children
(Proposed Amendment)

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

RELATES TO: KRS 157.200 to 157.290, 157.360
STATUTORY AUTHORITY: KRS 156.070, 157.220, 157.221, 157.250, 157.360
NECESSITY AND FUNCTION: KRS 157.200 to 157.290 set forth the state statutory framework for special education programs for exceptional children; and KRS 157.360 provides the mechanism for state financial support of local school district programs for exceptional children. This regulation establishes requirements for special education programs and is necessary to assure uniformity in providing special education and related services to exceptional children and to conform with P.L. 94-142.

Section 1. General Provisions. Local school boards of education shall operate programs for exceptional children of school attendance age pursuant to KRS 157.200 to 157.290 inclusive, and the criteria listed in this chapter.
(1) Classroom units. Local school districts shall request classroom units for the education of exceptional children from the State Department of Education by filling out the appropriate application(s) as provided by the Office of Education for Exceptional Children, and in accordance with KRS 157.360(6). Application(s) shall be made pursuant to schedules established by the Office of Education for Exceptional Children. In order to receive allotment of foundation classroom units local school districts shall assure that the following criteria are met:
(a) Approved teacher;
(b) Approved housing;
(c) Approved program plan; and
(d) Minimum number of children for type of unit requested.
(2) Fractional classroom unit. A fractional classroom unit is a unit having fewer pupils than the prescribed pupil-teacher ratio as indicated in regulations pertaining to the specific categorical program or if the program is in operation for less than a full day or full school year. Such units shall be allotted and certified on a basis proportionate to the pupil-teacher ratio and/or the proportionate length of the school day or the school year.
(3) Qualifications for assignments of special education personnel. Teachers employed for a teaching assignment in a classroom unit for exceptional pupils shall hold appropriate state certification in the area(s) of assignment as required in Title 704 KAR Chapter 20, except as hereinafter provided specified in 707 KAR 1:140:
[(a) Teachers of classes for severely profoundly handicapped. Teachers assigned to classes established to serve pupils classified as severely/profoundly handicapped (S/PH) shall possess a certificate valid at any grade level for teaching trainable mentally handicapped or severely/profoundly handicapped pupils of any age.]
[(b) Teachers of classes for multiple handicapped. Teachers assigned to classes established to serve multiple handicapped (MH) pupils shall meet the following requirements:]

[1. The assigned teacher shall possess a certificate valid at any grade level for teaching:]

[a. Trainable mentally handicapped or severely/profoundly handicapped for assignment to classes where the majority of students are multiple handicapped pupils whose intellectual functioning is trainable mentally handicapped; or]

[b. Educable mentally handicapped, learning disabilities, physically/orthopedically handicapped or learning and behavior disorders for assignment to classes where the majority of students are multiple handicapped (MH) pupils whose intellectual functioning is educable mentally handicapped or above. Severely/profoundly handicapped pupils shall not be assigned to classes taught by teachers with the certification specified in this section.]

(a) [2.] Teachers employed as of September 1, 1985, and assigned to classes for multiple handicapped students who do not possess a certificate as specified in 707 KAR 1:140, Section 7 [paragraph (b)1a and b of this subsection] may continue to be assigned to such classes provided the teacher has had class assignments in a class for multiple handicapped pupils for each of the preceding three (3) years, and the Kentucky Department of Education approved the assignment for each of the years involved.

(b) [(c)] Teachers of cross-categorical classes. Assignment of teachers to special education classes serving more than one (1) category of exceptional pupils (cross-categorical programs) shall meet the following:

1. Local school districts may serve pupils classified as educable mentally handicapped (EMH), learning disabled (LD) and emotionally disturbed (ED) within the same classroom, provided teachers assigned to such classes are certified in at least two (2) of the categories of exceptionality or have certification in the area of learning and behavior disorders (LBD). [Teachers employed as of September 1, 1985, with assignments to such classes and who are certified in only one (1) of the areas of exceptionality served may continue to be assigned to such classes until September 1, 1988, by which time appropriate certification must be obtained. Or,] Teachers employed as of September 1, 1985, and assigned to classes which include pupils of an exceptionality not covered by their certification may continue to be assigned to such classes, provided the teacher has had class assignments which included such exceptional pupils for each of the preceding three (3) years, and the Kentucky Department of Education approved the assignment for each of the years involved.

2. Local school districts may serve pupils classified as trainable mentally handicapped, severely/profoundly handicapped and multiple handicapped whose intellectual functioning is trainable mentally handicapped within the same classroom, provided teachers assigned to such classes are certified as specified in 707 KAR 1:140 [in trainable mentally handicapped or severely/profoundly handicapped].

3. Local school districts may serve pupils classified as educable mentally handicapped (EMH) and learning disabled (LD) within the same classroom, provided teachers assigned to such classes are certified as specified in 707 KAR 1:140 [in the category of exceptionality of the majority of pupils or have certification in the area of learning and behavior disorders (LBD)].

[(d) Teachers of classes for visually impaired. For the 1988-89 school year only, teachers assigned to special education classes established to serve pupils classified as visually impaired shall possess a certificate valid for teaching either elementary or secondary visually impaired when the pupils assigned include both the elementary and secondary levels of instruction.]

[(e) Teachers of classes for hearing impaired. For the 1988-89 school year only, teachers assigned to special education classes established to serve pupils classified as hearing impaired shall possess a certificate valid for teaching either elementary or secondary hearing impaired when the pupils assigned include both the elementary and secondary levels of instruction.]

[(f) Teachers of classes for trainable mentally handicapped.]

[1. For the 1988-89 school year only, teachers assigned to classes established to serve trainable mentally handicapped and who possess a teaching certificate endorsed for teaching trainable mentally retarded or trainable mentally handicapped, grades 1-8, may be assigned to teach pupils in grades 9-12.]

[2. For the 1988-89 school year only, teachers assigned to classes established to serve trainable mentally handicapped and who possess a teaching certificate endorsed for teaching trainable mentally retarded or trainable mentally handicapped, grades 7-12, may instruct classes which include pupils from the elementary and secondary school levels provided the Office of Education for Exceptional Children has approved an age range waiver.]

[(g) Teachers of classes for educable mentally handicapped.]

[1. For the 1988-89 school year only, teachers assigned to classes established to serve educable mentally handicapped and who possess a teaching certificate endorsed for teaching educable mentally retarded or educable mentally handicapped, grades 1-8, may be assigned to teach pupils in grades 9-12.]

[2. For the 1988-89 school year only, teachers assigned to classes established to serve educable mentally handicapped and who possess a teaching certificate endorsed for teaching educable mentally retarded or educable mentally handicapped, grades 7-12, may instruct classes which include pupils from both the elementary and secondary school levels provided the Office of Education for Exceptional Children has approved an age range waiver.]

[(h) Teachers with learning and behavior disorders certification. For the 1988-89 school year only, teachers who possess a teaching certificate for learning and behavior disorders, grades 7-12, may instruct classes which include pupils from both the elementary and secondary school levels provided the Office of Education for Exceptional Children has approved an age range waiver.]

[(i) Teachers of exceptional child kindergarten classes. For the 1988-89 school year only, teachers may be assigned to classrooms established to serve kindergarten age pupils classified as handicapped with valid teaching certificates as follows:]

[1. A certificate or certificate endorsement

for teachers of exceptional children valid for grades K-8 or K-12, except those issued for speech and communication disorders; or]

[2. A certificate or certificate endorsement for teaching any category of special education and valid for grades 1-8 or grades 1-12, except those issued for speech and hearing.]

(c) [(j) For the 1988-89 school year only,] Teachers providing instruction to exceptional children at home or in hospitals shall be provided with the skills needed to meet the individual needs as set forth in the individual education program.

(d) [(k)] Local school districts which need to assign teachers to teach classes or pupils not consistent with the above criteria and which do not correspond with the certification specified in 707 KAR 1:140 for [of] the assigned teachers shall request approval for the teacher assignment from the Kentucky Department of Education, Office of Education for Exceptional Children.

1. The Kentucky Department of Education shall give consideration for such approval based on information provided by the local school district as follows:

a. Request shall be made prior to September 15 or within ten (10) school days of the need for assignment if it occurs after September 15 and shall include the teacher's name, school assignment, social security number and class plan assignment;

b. Teacher's current certification(s) and a listing of pupils by category of exceptionality to be served demonstrating that the teacher meets qualifications for assignment to teach the majority of the exceptional pupils enrolled and that only one (1) additional category of exceptional pupils shall be included in the classroom;

2. The assignment shall not exceed the length of the school year during which it was initiated.

[(l) Replacement teacher for special education classes. When a local school district loses the services of the approved special education teacher after September 15, a replacement teacher may be used for a classroom unit for exceptional children under the following conditions:]

[1. The teacher qualifies for assignment to the class as specified in paragraphs (a) through (d) of this subsection.]

[2. If a teacher with appropriate certification in special education is not available for the vacated position, the local school district may assign a teacher to the class, with the exception of speech and communication disorders, pursuant to the following:]

[a. The superintendent and the local board of education shall submit an application to the Kentucky Department of Education, Office of Education for Exceptional Children, for each replacement teacher. The application shall be made on forms provided by the Kentucky Department of Education. Information which validates all attempts to employ an appropriately certified teacher shall accompany the application and shall document the following:]

[(i) Teachers with certification in special education are not available within the local school district for the position.]

[(ii) Efforts have been made to recruit a teacher certified in special education for the vacant position. This vacancy has been publicized by appropriate means, including advertisement of the vacant position.]

[(iii) The position will be filled by the best certified person available giving preference to the factors of academic preparation, prior successful teaching experience or related educational work.]

[b. The replacement teacher must qualify as a basic classroom teacher and hold, at minimum, a provisional elementary, middle or secondary certificate valid for the grade level of the assignment.]

[c. The replacement teacher may not be employed for the same teaching assignment for the following year without obtaining appropriate certification or endorsement in special education.]

[d. If the Kentucky Department of Education, Office of Education for Exceptional Children, approves the replacement teacher, the effective employment date for the replacement teacher shall be the date the application and accompanying documentation are received and stamped in by the Office of Education for Exceptional Children.]

(4) Program plan. The appropriate program plan for exceptional pupils in the local school district shall be determined by the needs of the pupils. Consideration shall be given to the least restrictive environment concept in the placement of pupils. Programs shall be organized and operated under one or more, or a combination of the following:

(a) Classroom units plans.

1. A resource plan shall be a program which serves exceptional pupils who shall be entered on the class roll of a regular class teacher and shall do part of their classwork in the regular class. The pupils shall receive special instruction from the resource teacher as specified on their individual education programs. The number of pupils served by the resource teacher and the number of pupils in the resource room for instructional purposes at any one (1) time shall be determined by the appropriate categorical regulations. The resource plan shall utilize a classroom-based teacher or an itinerant teacher.

2. A special class plan shall be a classroom-based program which serves exceptional pupils who shall be entered on the class roll of the special class teacher. The pupils shall participate in the regular class program to the maximum extent appropriate as specified on the pupils' individual education programs. The number of pupils and the chronological age range for pupils enrolled in the special class shall be determined by the appropriate categorical regulations. A classroom-based teacher shall be utilized for this plan.

3. A hospital instructional plan shall be a program which provides educational services on a regularly scheduled basis to pupils in a hospital setting. The itinerant teacher providing educational services in the hospital shall keep a regular Kentucky attendance register. A pupil receiving services in a hospital setting shall have a minimum of two (2) one (1) hour visits per week in order to be counted as being in attendance five (5) days. Special education and related services for the identified exceptional pupil in a hospital setting shall be provided as specified on the pupil's individual education program (IEP). The

hospital instructional plan shall utilize a classroom-based teacher, an itinerant teacher, or a visiting teacher.

4. A home instruction plan shall be a program which provides educational services to pupils at the home on a regularly scheduled basis. The teacher providing educational services at the home shall keep a regular Kentucky attendance register. A pupil receiving educational services under this plan shall have a minimum of two (2) one (1) hour visits per week in order to be counted in attendance five (5) days. Special education and related services for the identified exceptional pupil served under this plan shall be provided as specified on the pupil's individual education program (IEP). The home instruction plan shall utilize an itinerant teacher or a visiting teacher.

(b) Teacher and housing. Each classroom unit plan shall be housed as specified and shall operate utilizing one (1) of the following types of teachers:

1. A classroom-based teacher shall be an approved teacher who shall provide educational services to exceptional students in a classroom provided for such services. The classroom-based teacher providing services through the resource plan or special class plan shall be housed in an elementary or secondary school dependent upon the age range of the pupils or in an approved special school or facility. Classroom location shall be made consistent with the least restrictive environment concept. Classrooms shall meet the standards for regular classrooms pursuant to 702 KAR 4:060. The classroom-based teacher providing services in a hospital setting shall be housed in facilities and/or rooms appropriate and adequate for instructing pupils in small groups or individually.

2. An itinerant teacher shall be an approved teacher who travels to exceptional pupils' school(s), class(es), homes, or hospital setting(s) on a regularly scheduled basis to work with pupils either individually or in small groups. Those pupils being served in a school facility shall be entered on the class roll of a regular class teacher and shall receive the majority of their instruction through the regular program. The itinerant teacher shall work with the pupils in an area in the regular classroom or in a room provided for such services. Housing for the itinerant teacher providing services in a school shall be in facilities and/or rooms appropriate for instructing pupils in small groups or individually and shall be housed in an elementary or secondary school dependent upon the age range of the pupils or in an approved special school or facility. The itinerant teacher shall be provided permanent work space. For the itinerant teacher who travels to the pupils' school(s), class(es), homes, or hospital setting(s) the board of education shall defray travel expenses incurred by personnel in the execution of duties related to the program pursuant to 702 KAR 3:120.

3. A visiting teacher shall be an approved teacher in a home and/or hospital program who travels to the necessary setting to provide appropriate instruction to pupils on an hourly basis. Teacher salary, travel expenses, and teaching supplies for the visiting teacher will be provided through the funding mechanism set forth in 707 KAR 1:051, Section 1(b).

(c) A variation plan shall be an alternative to the above plans. The local school district shall submit a written request to and receive approval from the Office of Education for Exceptional Children prior to implementation of a variation plan. Written requests for such plan shall be made pursuant to provisions established by the Office of Education for Exceptional Children. In granting approval the Office of Education for Exceptional Children shall assure that approved requests for such plan shall contain but not be limited to the following components:

1. Rationale for need of the variation plan;
2. Detailed description of the plan;
3. Verification of teacher's certification in the categorical area of the majority of the students to be served; and
4. Method of evaluation to be used to determine effectiveness of the plan.

(5) Length of school day. The length of school day shall be the same as for nonhandicapped children except as specified in KRS 157.270 and 158.060. Requests for and approval of changes in length of school day shall be made in writing pursuant to provisions established by the Office of Education for Exceptional Children.

(6) Length of school year.

(a) The provision of an extended school year program shall be considered for students having handicaps which are severe in nature. Eligibility criteria for placement of students in extended school year programs shall be:

1. Significant regression caused by interruption in educational programming; and
2. Limited recoupment capacity which would render unlikely the attainment of a level of self-sufficiency and independence from caretakers which would be expected for the handicapping condition.

(b) Local boards of education shall provide written notification of the availability of extended school year programs to the parents of students with handicaps.

(7) Instructional materials and equipment. Instructional materials and equipment appropriate to the educational needs of the identified exceptional child shall be provided as required under 704 KAR 2:020.

Section 2. Identification of Exceptional Children. Each local school district shall have in operation policies and procedures to insure that all exceptional children are identified, located and evaluated. As used here, this requirement refers to all exceptional children who are in need of special education and related services and are residing within the jurisdiction of the local school district, including those exceptional children who are out of school; in local school district programs; and, being served by other public and private agencies and institutions within the local school district's jurisdiction. Local school district policies and procedures shall include the development, implementation, monitoring and evaluation of a practical method of determining:

(1) Which children are currently receiving needed special education and related services; and

(2) Which children need special education and related services but are not currently receiving these services.

Section 3. Admissions and Release Committees. Local school district personnel shall establish

one (1) district-wide administrative admissions and release committee and a school-based admissions and release committee in each school with appropriate membership and functions as listed below. In addition, for those school districts with a school census figure of 15,000 or over, subdistrict admissions and release committees may be established pursuant to approval by the Office of Education for Exceptional Children.

(1) Administrative admissions and release committee. The membership of the Administrative Admissions and Release Committee (AARC) shall consist of:

(a) Director, local school district's program for exceptional children or person having such responsibility, chairperson (permanent member);

(b) Local school district superintendent or designee (permanent member);

(c) Referred pupil's principal and teacher (if the child is enrolled in public or private school);

(d) Involved instructional supervisor depending on the age and level of the child;

(e) The parent(s) of the referred child;

(f) The referred child, where appropriate;

(g) Personnel responsible for providing evaluation information, where appropriate; and

(h) Other persons as requested by any member of the AARC.

(2) The functions of the AARC shall include the following:

(a) Receive referrals of the following nature:

1. Written information on identified children not currently enrolled in the local school district, including those children enrolled in nonpublic schools, who are thought to need special education and related services.

2. Cases where the school-based admissions and release committee is not able to determine an appropriate educational placement for a referred pupil and make recommendations as to appropriate educational placement.

3. Cases from school-based admissions and release committee where appropriate services are not available within the school.

(b) Follow due process procedures to insure that exceptional children and their parent(s) are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement.

(c) Assure that appropriate evaluations on referred children are obtained or conducted.

(d) Review written results of the formal and informal evaluation to determine if the referred child meets eligibility criteria for a category of exceptionality.

(e) Determine if the identified child needs special education and related services.

(f) Develop an individual education program (IEP) for the identified child needing special education and related services to make recommendations as to appropriate services and/or programs for the identified child. The AARC shall determine if the local school district can provide appropriate services, if local programs must be changed to accommodate the identified child, if additional services or programs will be developed, or if the child must receive services outside the local school district. For those pupils who shall receive services within the local school district, the appropriate school-based admissions and release committee shall assume responsibility for the implementation, monitoring, evaluation and annual review of the IEP as well as annual review of placement. In those cases where the local school district has determined that appropriate special education and related services cannot be provided through existing programs in the local school district, services shall be provided to the identified child pursuant to the following:

1. Local school district referral of an exceptional child to a public or private agency. The Administrative Admissions and Release Committee shall:

a. Contact a public agency or approved private agency/organization, as provided in 707 KAR 1:070, which provides the type of services specified on the child's IEP regarding the possible referral of the child to the agency.

b. Insure that a representative(s) of the receiving agency shall participate in a meeting(s) with the AARC regarding the possible referral. Participation may be provided through attendance at meetings, written communications, and/or individual or conference calls. Receiving agency means an approved agency/organization which has indicated a willingness to provide the services requested by the local school district.

c. In collaboration with representative(s) of the receiving agency, review and revise, where appropriate, the child's IEP.

d. In collaboration with representative(s) of the receiving agency, determine if such agency is the appropriate agency to provide the specified services. If the agency is an appropriate one, such agency assumes responsibility for implementing the provisions of the special education and related services specified on the IEP.

e. The local school district shall be responsible for providing continued educational services to the child until such time as the child enters the programs provided by the receiving agency.

2. Placement of an exceptional child in a public or private agency:

a. Public agency (another local school district, Kentucky School for the Blind, Kentucky School for the Deaf). Upon admission of the referred child to the agency's program, the agency shall: Assume responsibility for providing special education and related services to the exceptional child as specified on the IEP; and, insure that the child and parent(s) are afforded all rights and protections as required and provided in 707 KAR 1:051, Sections 9 and 10, and 707 KAR 1:060.

b. An admissions and release committee of the receiving public agency shall: Conduct meetings for the purposes of reviewing and where appropriate revising the IEP, assure that the IEP shall be reviewed on at least an annual basis and revised where appropriate; insure that any review (including annual review) and revision of the IEP shall be done with the input and approval of the parent(s); and, insure that any review and revisions of the IEP shall include input and approval of the local school district placing the child in the program. The participation of the parent(s) and the local school district placing the child may take place through attendance at meetings, written communications and/or individual or conference calls.

c. Monitoring and evaluation of the IEP shall be done by specific members of the receiving public agency's admissions and release committee

at intervals specified on the IEP. This shall be done to document progress and mastery of objectives specified in the IEP. Written results of such monitoring and evaluation shall be forwarded to the parent(s) and the Administrative Admissions and Release Committee of the local school district placing the child in the agency's program.

d. Responsibilities of the Administrative Admissions and Release Committee of the local school district placing the child in another public agency shall be: participation in meetings called by the receiving agency for the purpose of review and revision of the IEP; and, at least annually, review the exceptional child's IEP and review the placement of each exceptional child receiving services outside the local school district in relation to his educational progress in that setting.

e. Private agency/organization (as defined in 707 KAR 1:070) the private agency shall provide those special education and related services specified on the child's IEP. At the discretion of the local school district, the private agency may initiate and conduct meetings for the purposes of reviewing and revising the child's IEP. When circumstances warrant, the private agency shall be responsible for notifying the local school district of the need to initiate and conduct a meeting for such purposes. The local school district shall insure that the parent(s) and a local school district representative(s) are involved in any decision regarding review and revisions of the child's IEP; and, agree to any placement changes before such changes are implemented.

f. Responsibilities for the Administrative Admissions and Release Committee of the local school district placing the child in a private agency shall be: participation in meetings called by the receiving agency regarding review and revision of the IEP; at least annually, review the exceptional child's IEP and review the placement of each exceptional child receiving services outside the local school district in relation to the educational progress in that setting; and, insuring that the child and parent(s) are afforded all rights and protections as required and provided in Sections 9 and 10 of this regulation and 707 KAR 1:060.

(g) For those referred pupils who are determined by the AARC not to need special education and related services, the AARC shall provide the referring person and the parents with written explanation of why the child is not to receive special education and related services, shall provide in writing recommended remedial action, and shall provide written notice pursuant to 707 KAR 1:060.

(3) School-based admissions and release committee (SBARC). The membership of the school-based admissions and release committee shall consist of:

(a) Chairperson, building principal or designee. The designee shall be recommended by the building principal and approved by the local school superintendent. This person shall not be a regular or special education teacher, (permanent member).

(b) Referring person(s) or the referred child's regular teacher(s);

(c) Teacher(s) of exceptional children;

(d) Parent(s) of the referred pupil;

(e) The referred child, where appropriate;

(f) Other persons providing input into the referred pupil's educational program as requested by any member of the SBARC; and

(g) Personnel responsible for providing evaluation information, as appropriate. For a child who has been evaluated for the first time, the chairperson shall assure that a member of the evaluation team participates in the meeting; or that a representative of the school district is present who is knowledgeable about the evaluation procedures used with the child and is familiar with the results.

(4) The functions of the SBARC shall include the following:

(a) Receive written referrals on pupils currently enrolled in the school and thought to need special education and related services.

(b) Follow due process procedures to insure that exceptional children and their parents are guaranteed procedural safeguards in decisions regarding identification, evaluation and educational placement.

(c) Assure that appropriate evaluations on referred children are obtained or conducted.

(d) Review written results of the formal and informal evaluations to determine if the referred child meets eligibility criteria for a category of exceptionality.

(e) Determine if the identified child needs special education and related services.

(f) Develop an individual education program (IEP) for the identified child needing special education and related services to make recommendations as to appropriate services and/or programs for the identified child.

(g) At least annually, review the pupil's IEP and review the placement of each exceptional child in the school in relation to his or her educational progress in that setting to determine:

1. Continuation of current educational placement;

2. Change in educational placement; or

3. That special education and related services are no longer needed.

(h) For those referred pupils who are determined by the SBARC not to need special education and related services the SBARC shall provide the referring person and the parents with written explanation why the child is not to receive special education and related services, shall provide in writing recommended remedial actions, and shall provide written notice pursuant to 707 KAR 1:060.

(i) Refer cases where appropriate services are not available within the school to the AARC.

(5) If at any time during the school year, the child's IEP or educational placement appears to be inappropriate to the parent(s), the principal, the teacher(s) or specialist(s) providing services to the child, any one of such persons may request a review of placement. The appropriate admissions and release committee shall conduct the review. The child, parent(s) and local school district shall be afforded all due process rights as described in 707 KAR 1:060. When a review is requested for the purpose of securing a more restrictive or less restrictive environment, the appropriate admissions and release committee shall determine that the child's needs can appropriately be met in the proposed setting and the child's placement and educational program shall be changed and support services provided as necessary.

(6) At any time, during the three (3) years

following an individual evaluation utilized for initial placement purposes, or for reevaluation purposes, the parent(s), principal, teacher(s), or specialist(s) providing services to the child may request a reevaluation. The appropriate admissions and release committee shall be responsible for assuring that such evaluation(s) are obtained or conducted, and shall follow the procedures outlined in Section 3(2) and (4) of this regulation, functions of the AARC and SBARC.

(7) Subdistrict admissions and release committees: For those school districts with a school census figure of 15,000 or over, subdistrict admissions and release committees (ARCs) may be established within the local school district to facilitate school to school placements. The subdistrict ARCs shall not supplant administrative and school-based admissions and release committees and their respective functions. Subdistrict ARCs shall be established to conform with district-specified school groupings. Those local school districts wishing to establish subdistrict ARCs shall submit a written request to and receive approval from the Office of Education for Exceptional Children prior to implementation of the plan and pursuant to provisions specified by the Office of Education for Exceptional Children. The membership and functions of subdistrict committees shall be similar to the membership and the functions of the administrative admissions and release committee.

Section 4. Child Evaluation. Child evaluation refers to the sum total of information needed to make educational decisions about the child, including information obtained from such sources as informal and formal testing, aptitude and achievement tests, behavior observation, teacher/parent interviews, work samples, social/developmental history, medical history, school records and anecdotal records. The appropriate admissions and release committee shall be responsible for assuring that child evaluation information is obtained from all available sources, documented and carefully considered in making placement decisions pursuant to the following:

(1) All due process procedures related to evaluation as required and provided in Section 9 of this regulation and 707 KAR 1:060 shall be followed.

(2) Appropriate evaluations shall be conducted by a multidisciplinary team. Evaluation personnel shall be determined by the appropriate admissions and release committee and shall include at least one (1) teacher or other specialist with knowledge in the suspected area of exceptionality.

(3) Areas for evaluation shall be determined by the appropriate admissions and release committee and as specified by regulations related to the suspected area of exceptionality, including where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(4) Evaluation procedures. To the maximum extent possible, child evaluation procedures shall be nondiscriminatory in that:

(a) Techniques and/or materials used are nonbiased relative to race, culture, socioeconomic status or impaired sensory, manual, or speaking skills, in order to insure that test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure.

(b) Qualified personnel provide the evaluation services. Qualified personnel refers to those certified special education personnel and others who have met approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area of child evaluation. Such personnel shall be trained in specific areas of child evaluation and shall assure that they:

1. Have the expertise to conduct the evaluation;
2. Understand the use of the different evaluation procedures; and
3. Properly administer and interpret the evaluation results.
4. Such personnel may include but are not limited to: educational diagnosticians, assessment specialists, classroom teachers, speech and language therapists, psychologists, psychometrists, counselors.

(c) Tests and materials are provided and administered in the child's native language or primary mode of communication, unless it is clearly not feasible to do so.

(d) Tests and materials have been validated for the specific purpose for which they are used.

(e) Tests and materials are administered by trained personnel in conformance with the instructions provided by the producer.

(f) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.

(5) No single evaluation procedure shall be used to determine an appropriate program for a child.

(6) Each child placed in a program for exceptional children shall be reevaluated every three years or more frequently as warranted.

(7) Any evaluation conducted within one year prior to the current referral may be accepted by the appropriate admissions and release committee as a legitimate substitute for another evaluation of the same type provided the information obtained meets the criteria specified in subsection (1) to (5) of this section.

Section 5. Individual Education Programs (IEP). The appropriate admissions and release committee shall be responsible for the development, implementation, and monitoring/evaluation of each exceptional child's individual education program.

(1) Development. The individual education program shall include but not be limited to the following components:

(a) Present level of educational/behavioral performance including a written summary of strengths and weaknesses.

(b) Annual goals based on child's current level of functioning.

(c) Short term instructional objectives for each of the annual goals. Short term instructional objectives refer to measurable intermediate steps between the present level of educational/behavioral performance and the specified annual goals. These objectives are identified for the purpose of periodically reviewing and evaluating pupil progress toward meeting the annual goal(s) specified on the IEP.

(d) Specific special education and related

services needed to meet the specified goals and objectives.

(e) Extent to which the child will participate in the regular education program.

(f) Projected dates for initiation of specified educational and related services.

(g) Anticipated duration of the specified special education and related services.

(h) Appropriate objective criteria and evaluation procedures; and

(i) Schedule for determining, at least on an annual basis, whether the goals and objectives are being achieved.

(2) Implementation and evaluation. The appropriate admissions and release committee shall be responsible for assuring that strategies and activities designed to meet short-term objectives are implemented, and that the child's progress toward and mastery of the short-term objectives is evaluated at least annually.

(a) For each short-term objective specified on the IEP the appropriate admissions and release committee shall assign a specific person(s) who shall be responsible for determining and implementing appropriate strategies and activities that will assist the child in achieving the specified objectives and goals.

(b) The implementer(s) shall maintain records of student progress in achieving short term objectives.

(c) The above records shall be utilized by the implementer and the appropriate admissions and release committee for ongoing evaluation of the IEP to determine the effectiveness and appropriateness of the IEP and to document implementation of the IEP.

Section 6. Placement. Placement shall mean the special education and related services provided an exceptional child and shall not refer solely to enrollment in a minimum foundation program classroom unit for exceptional children.

(1) All exceptional children as defined in KRS 157.200 are eligible for placement. The appropriate admissions and release committee shall identify the specific handicapping condition of the child. The specific area of exceptionality (handicapping condition) of the child shall be that category for which the child meets eligibility criteria following evaluation procedures as specified in the appropriate categorical regulations.

(2) All due process procedures related to placement as required and provided in Section 9 of this regulation and 707 KAR 1:060 shall be followed.

(3) For each identified exceptional child needing special education and related services, the appropriate admissions and release committee shall:

(a) Determine placement;

(b) Base placement on the child's IEP;

(c) Determine placement at least annually; and

(d) Make placement consistent with the least restrictive environment concept as required in Section 7 of this regulation.

(4) Temporary placement. Temporary placement may occur for thirty (30) school days, upon written request from the parent(s), for those exceptional pupils who are new enrollees to the local school district and who have been provided special education and related services by another local school or agency in the school days preceding the request. Documentation shall be on record that special education and related services were provided to the pupil by the other school district or agency. The pupil shall be placed in the same type program as previously provided and in accordance with the IEP. Within the thirty (30) school days the admissions and release committee shall convene to carry out its functions as specified in Section 3(4) of this regulation.

(5) Trial placement. Trial placement shall be a temporary placement for students not new to the school or school system and may be considered pursuant to the following conditions:

(a) The placement shall be for no longer than four (4) school months and shall not be continued beyond this time as a trial placement.

(b) Written rationale justifying the trial placement shall be provided by the admissions and release committee recommending such placement and shall be maintained with the IEP.

(c) The pupil shall have an IEP specifying trial placement and the starting and ending dates of such placement.

(d) A trial placement shall not serve as a substitution for a more appropriate placement.

(e) The appropriate admissions and release committee shall review the trial placement no later than four (4) school months after initiation of services to determine the effectiveness of such services, and to make recommendations for continuation in that program or a change in program.

(f) All due process procedures as required and provided in Sections 9 and 10 of this regulation and 707 KAR 1:060 shall be afforded the parent, child, and school, including written parental permission for trial placement.

(6) Change in placement. Change in placement refers to those actions that cause a significant alteration in programming for a child who is currently receiving special education and related services.

(a) Change in placement shall mean, but not be limited to, a change from:

1. Special education and related services to regular education, including regular education with support services;

2. One (1) categorical program to another (e.g., TMH to EMH);

3. Or to a more or less restrictive environment (e.g., special class to resource room).

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

(c) Any change in placement shall be subject to established admissions and release committee procedures and consideration of the least restrictive environment concept.

Section 7. Least Restrictive Environment. Least restrictive environment refers to that educational setting or program in which he identified child can function most effectively based upon his/her unique needs and capabilities.

(1) To the maximum extent appropriate exceptional children as defined in KRS 157.200 including those children in public or private institutions or other care facilities shall be educated with children who are not identified as exceptional.

(2) Self-contained classes, separate schooling or other removal of exceptional children from the regular educational environment shall occur only when the nature or severity of the exceptionality is such that education in the regular class with the use of supplementary aids and services cannot be achieved satisfactorily.

(3) Unless an exceptional child's individual education program requires some other arrangement, the child shall be educated in the school in which he or she would attend if not identified as exceptional.

(4) Each agency providing educational services shall insure that a continuum of placement alternatives is available to meet the needs of exceptional children for special education and related services. The alternatives shall include but not be limited to instruction in the regular classroom, special classes, special schools and home and hospital instruction. The alternatives shall also make provision for supplemental services such as resource room or itinerant instruction to be provided in conjunction with regular class placement.

(5) The identified child shall be returned to the most normal setting possible when specified goals and objectives have been achieved, consistent with the child's capabilities and educational needs and as determined by the appropriate admissions and release committee.

Section 8. Program Completion. An exceptional pupil shall be granted a high school diploma pursuant to meeting criteria and standards as provided in the "Program of Studies for Kentucky Schools." These pupils should be considered a part of the graduating class and no distinction shall be made in the ceremonies.

Section 9. Procedural Safeguards. (1) Each local school district shall establish and implement reasonable timelines in order for the identification, evaluation, and placement of referred pupils to occur without delay and pursuant to the specifications of this section and 707 KAR 1:060.

(2) Each child and his or her parent(s) and the local school district shall be guaranteed procedural safeguards in decisions regarding identification, location, evaluation and educational placement of the child in programs for exceptional children as provided in 707 KAR 1:060, the "Due Process Policy and Procedure Manual." These safeguards shall include the following:

(a) The child shall be represented by his or her parent(s) at all decision making points in the identification, evaluation and placement process. "Parent" refers to a natural mother or father, adoptive mother or father, a legally appointed guardian, a person acting as a parent of a child, (grandparent, stepparent, etc.) or a surrogate parent appointed to act in this capacity.

(b) The parent(s) shall receive written notification from the local school district that their child has been referred as a possible candidate for programs for exceptional children and that the child has the right to receive a free, appropriate public education.

(c) Parent(s) shall receive written notification in English and the primary language of the home regarding identification, evaluation and placement procedures.

(d) The local school district shall obtain written parental permission prior to initial individual evaluation and initial placement in a program for exceptional children.

(e) The local school district shall provide the parent(s) with written notification of continuation of placement.

(f) The parent(s) shall have the right to obtain an independent educational evaluation conducted by a qualified examiner. The results of this evaluation must be considered in decisions regarding the provision of a free appropriate public education to the child.

(g) In accordance with procedures outlined in 707 KAR 1:060, the "Due Process Policy and Procedure Manual," either the parent(s) or the local school district may request an impartial due process hearing to resolve disagreements regarding proposed or refused actions related to the identification, evaluation and educational placement of exceptional children. Appeals related to the due process hearing decision shall be conducted pursuant to 707 KAR 1:080.

(h) Where a child's parent(s) or guardian(s) are not known, whereabouts of the parent cannot be determined or the child is a ward of the state (parental rights have been terminated), such child shall be assigned a surrogate parent to represent him/her in all matters relating to the provision of a free, appropriate public education.

1. The local school district in cooperation with other public and private agencies shall recruit persons who can and will serve as surrogate parents. Persons selected as surrogate parents shall:

a. Have no other vested interest that would conflict with their primary allegiance to the child they would represent;

b. Be committed to personally and thoroughly acquainting themselves with the child and the child's educational needs;

c. Be familiar with the educational system within the state;

d. Be readily accessible to the children they represent;

e. Be an adult - eighteen (18) or over; and

f. Be a U.S. citizen.

2. Assignment of a surrogate to a particular child shall be made by the local school district according to the following procedures:

a. Any person including local school district personnel, may file a request for a surrogate to represent a child with the child's local school district.

b. The local school district shall acquire the proper documentation to substantiate the need for a surrogate parent. Justification and documentation for surrogate parent assignment shall be:

JUSTIFICATION FOR SURROGATE	DOCUMENTATION NEEDED
No parent (as defined by federal regulation 34 CFR 300.10) can be identified.	A copy of the request for a surrogate parent and a cooy of the returned envelope sent by certified mail to the parent(s) or guardian(s) at their last known address, documentation from the Cabinet for Human Resources that no parent exists or a
34 CFR 300.10 the term "parent" means a parent, a guardian, a person acting as a surrogate parent of a child, or a surrogate parent. This term does not include	

the state if the child is a ward of the state. Comment: The term "parent's" defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.	copy of death certificate(s).
Whereabouts of the parent cannot be determined.	A copy of the request for a surrogate parent and a copy of the returned envelope sent by certified mail to parent(s) or guardian(s), at their last known address.
Child is a ward of the state and parental rights have been terminated.	A copy of the court order terminating the rights of the parent(s) or an affidavit from the local Cabinet for Human Resources, Social Services Field Office Supervisor, stating the child's name, birthdate, county of termination and signature and title of the person giving it.

c. The local school district shall assign a surrogate within fifteen (15) school days of the receipt of request for surrogate parent.

d. The assigned surrogate shall represent the child in all matters relating to identification, evaluation and placement, and the provision of a free appropriate public education.

e. Surrogates shall not be assigned to children who have reached the age of majority.

f. An individual assigned as a surrogate shall not be an employee of a public agency involved in the education or care of the child.

(i) Testing and evaluation materials utilized for the purpose of evaluation and placement of exceptional children must be selected and administered so as not to be racially or culturally discriminatory.

(j) Decisions regarding the placement of exceptional children shall be made with regard to educating these pupils to the maximum extent appropriate with their nonhandicapped peers in the least restrictive environment.

Section 10. Confidentiality of Personally Identifiable Information. The public agency shall develop and adopt policies and procedures consistent with the provisions of the Family Educational Rights and Privacy Act and confidentiality requirements of P.L. 94-142 for all exceptional children. These shall include the following:

(1) Parent(s) shall be notified annually of all requirements concerning personally identifiable information.

(2) Educational records collected, maintained, and used by the agency are open for inspection and review by the child's parent(s) and a representative of the parent(s).

(3) The agency shall comply with a parental request to inspect and review records without unnecessary delay, before any meeting of the admissions and release committee, before an impartial due process hearing, and in no case more than forty-five (45) days after the request has been made.

(4) Upon request of the parent(s) the public agency must provide an explanation and interpretation of such records.

(5) Copies of the records must be provided if failure to do so would prevent the parent(s) from exercising their right to review and inspect the records. A nominal fee may be charged unless it would prevent such access rights. A fee may not be charged for record search or retrieval.

(6) An agency may presume that the parent(s) has the authority to inspect and review records relating to his/her child unless the agency has been advised that the parent(s) does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

(7) A record of access shall be maintained for those individuals obtaining access to such records, except the parent(s) and authorized parties of the agency, including the name of the party, the date of access, and the purpose for which the party was authorized to use the records.

(8) Information from records containing data on more than one (1) child shall be provided in such a way as to preserve the confidentiality of the other pupils.

(9) A list of the location and types of education records collected, maintained and used by the agency shall be provided by the agency to parent(s) on request.

(10) The parent(s) have the right to request an amendment of information in the education records pursuant to the following:

(a) The agency shall decide whether to amend the information within a reasonable period of time of receipt of the request and shall notify the parent(s) to this effect.

(b) If the agency refuses to amend the records, it shall inform the parent(s) of their right to a record amendment hearing.

(c) If the result of the hearing does not require such amendment, the parent(s) has the right to place a statement outlining the points of dissent in the education records. This statement must accompany the information each time it is released.

(d) If the agency amends the records as a result of the hearing, it shall so inform the parent(s) in writing.

(11) Parental consent must be obtained before disclosing personally identifiable information to individuals or agencies unless otherwise authorized to do so as delineated in the Family Educational Rights and Privacy Act and P.L. 94-142.

(12) Each agency shall protect the confidentiality of records at collection, storage, disclosure and destruction stages and shall insure that all persons collecting or using records receive training in confidentiality requirements.

(13) One (1) agency official shall assume responsibility for insuring the confidentiality of personally identifiable information.

(14) A current listing of the names and titles

of individuals in the public agency who have access to education records must be maintained for public inspection.

(15) Public agencies must inform the parent(s) when education records are no longer needed for educational services and destroy that information upon request of the parent(s). The agency must inform the parent(s) that such information could be needed later for social security benefits or other purposes. A permanent record of the pupil's name, address, phone, grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: July 12, 1989

FILED WITH LRC: July 14, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 23, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Elementary and Secondary Education at its July meeting. Those persons wishing to provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 18, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy LaCount

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The information in the new regulation was previously renewed on a year by year basis in 707 KAR 1:051. The new regulation presents the same information in a separate regulation, making it easier for local school districts to access and use.

(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. Federal and state mandates do not allow for tiering of certification requirements for service providers.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 300.12.

2. State compliance standards. Established by this regulation.

3. Minimum or uniform standards contained in the federal mandate. Federal mandate does not set minimum uniform standards for certification but merely requires that personnel providing services to handicapped students be "qualified". (34 CFR 300.12) Qualified is defined in the federal mandate as meeting state agency approved or recognized certification, licensing or other comparable requirements which apply to the area in which he or she is providing special education and related services. Thus, the federal mandate allows states to set their own minimum uniform standards for certification.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Federal Programs
(Proposed Amendment)

709 KAR 1:060. Standard for academic progress for postsecondary and adult students.

RELATES TO: KRS 163.030

STATUTORY AUTHORITY: KRS 156.032, 156.070, 163.030 [Chapter 13A]

NECESSITY AND FUNCTION: KRS 163.030 gives the State Board for Adult, Vocational [of] Education and Vocational Rehabilitation all necessary power and authority in administering the state's vocational education program. This regulation is necessary in order to set a statewide standard for academic progress for postsecondary and adult students in the state's vocational technical schools and area vocational education centers to meet in order to remain in good academic standing in such schools.

Section 1. Any postsecondary or adult student enrolled in a state operated vocational school shall maintain satisfactory progress toward completion of the prescribed competencies based upon the student's skill development. The quality of the student's performance shall include the quality of any shop or laboratory work, technical knowledge, attitude, conduct, and completion of assigned tasks and learning activities.

Section 2. Postsecondary and adult students must maintain an overall "C" average, i.e., seventy (70) percent passage, in each requirement for completion of an occupational program. A student who falls below a "C" average in any of the requirements at the end of a specified grading period shall be placed on academic probation for not less than one (1) grading period. A grading period consists of an academic quarter (fifty-five (55) days). [of six (6) weeks or more and not more than two (2) grading periods.] Remedial assistance shall be

offered the student in those instructional areas below the "C" in an effort to allow them to proceed in the program. If satisfactory academic progress is still not being made at the end of the probationary period, the student shall be academically expelled, without the right of formal hearing, by the principal.

Section 3. (1) Clear and specific notice of the academic progress policy set forth herein shall be included in each school's student handbook, which shall be disseminated to each student upon his entrance into a vocational program, and each teacher shall clearly explain to each student the grading criteria to be used at the outset of a student's participation in that teacher's course or program.

(2) Any student being placed on academic probation shall be clearly advised of such by the school, the duration of such probation, and the consequences of continued failure to make satisfactory academic progress.

Section 4. (1) A student expelled for academic reasons, shall, unless extenuating circumstances or the facts of individual cases warrant shorter expulsions, be readmitted to school on the basis of waiting list priorities at the time of expulsion or on the basis of two (2) academic quarters [a ninety (90) day expulsion (excluding the month of July)], whichever is longer.

(2) A school shall not be obligated to, but may, readmit a student after a second academic expulsion.

C. RICHARD WARNER, Vice Chairman
APPROVED BY AGENCY: June 20, 1989
FILED WITH LRC: July 3, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing has been scheduled on August 25, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Adult, Vocational Education and Vocational Rehabilitation at its June meeting. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult, Vocational Education and Vocational Rehabilitation, 2013 Capital Plaza Tower, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 21, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Joyce Logan
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: It could be a reduction if the school previously used a 6 or 9 week grading period.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: Not applicable
(4) Assessment of alternative methods; reasons why alternatives were rejected: Schools have operated with a variety of admission dates and grading periods. This regulation will bring better organization to the state-operated vocational system by establishing quarterly grading periods. Schools will also begin quarterly admissions.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: This change is expected to give more visibility to the system by looking at the state-operated schools as a system and establishing more uniformity in enrollments and grading. This will also facilitate transfer between institutions.
TIERING: Was tiering applied? Yes

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Programs
(Proposed Amendment)

709 KAR 1:080. Community education.

RELATES TO: KRS 160.155 to 160.157
STATUTORY AUTHORITY: KRS 156.070, 160.156, 160.157
NECESSITY AND FUNCTION: KRS 160.155 to 160.157 establish the framework for a local school district to set up, and receive state funding for, a community education program, with KRS 160.156 directing the State Board for Adult, Vocational [Elementary and Secondary] Education and Vocational Rehabilitation to establish a system of priorities for targeting available resources on the areas of greatest need with respect to community education and to administer a community education grant program and with KRS 160.157 establishing general criteria for local district eligibility for funding. This regulation implements such statutory provisions by defining the appropriate allocation of appropriated funds and by establishing criteria by which grant proposals are to be evaluated and criteria for model-trainer projects.

Section 1. (1) Funds appropriated by the Kentucky General Assembly for support of community education development and expansion during the 1988-90 biennium shall be distributed as follows:
(a) Grants to local school districts in the following two (2) categories in the aggregate amount of $235,000;
1. Partial funding for local district coordinator salaries - $217,000; and
2. Compensation to local districts for serving as model-trainer units - $18,000.
(b) The remaining monies shall be used for administrative expenses.
(2) A competitive review process shall be utilized to select actual grant recipients. Grants shall be awarded upon approval of the State Board for Adult, Vocational [Elementary

and Secondary] Education and Vocational Rehabilitation. Districts interested in receiving funding shall submit an application to the Kentucky Department of Education. Applications shall be evaluated and scored based on adherence to the criteria designated in this regulation.

Section 2. Grant proposals shall be evaluated and scored utilizing the following criteria:

(1) Local board of education willingness to staff a full-time community education coordinator or director (interpreted as one whose total working hours - regardless of number - are devoted to the implementation of the community education concept). It is understood that the concept of community education includes lifelong learning (early childhood, K-12, adult, and special populations), systematic citizen involvement, utilization of public facilities, and agency cooperation. No state certification is necessary for the coordinator or director positions, but education and job experience shall be considered in the scoring process, and the proposed coordinator or director shall be evaluated as to whether he or she possesses skills in communication, organization and management, human and public relations, decision-making and problem solving, budgeting, and evaluation. 0-20 points.

(2) Evidence that the local board has an existing, or planned, advisory council, representative of the community, which shall be involved in the planning, implementation and evaluation of community education efforts. 0-15 points.

(3) Evidence of cooperation among local school district and community organizations, agencies, institutions, local business, and industry. 0-15 points.

(4) A plan which includes provisions for early childhood, K-12, adult, and special populations. 0-15 points.

(5) A management plan for implementation of the overall project. 0-15 points.

(6) Evidence of a systematic plan for conducting needs assessment and evaluation. 0-10 points.

(7) Evidence that schools and other public facilities are available for citizen use. 0-10 points.

Section 3. Criteria for model-trainer projects shall be as follows:

(1) The purpose of such projects shall be to provide technical training for local district coordinators, advisory council members, school administrators, agency representatives, and other community members; to provide awareness training for local district staffs and community representatives; and to utilize the experience and expertise of local district community educators to provide training for existing and potential community education projects.

(2) In order to qualify for funding of model-trainer projects, districts shall demonstrate success in community education and that they have all components of the process in place, i.e., lifelong learning, citizen involvement, agency cooperation, K-12 support, and facility usage; and districts shall further authorize the community education coordinator or director to serve as the trainer.

(3)(a) For training purposes, the state shall be divided into Region I - school districts located west of I-65; Region II - school districts located between I-65 and I-75 and south of I-64; Region III - school districts located north of I-64; and Region IV - school districts located south of the I-64 and east of I-75.

(b) Local districts shall have the opportunity to participate in at least two (2) workshops per year, one (1) at the trainer project site and one (1) elsewhere in a region.

(c) Training shall be provided during each year of the 1988-90 biennium, but training shall not be held during the two (2) Department of Education moratorium periods for state sponsored meetings during the spring and fall.

C. RICHARD WARNER, Vice Chairman
APPROVED BY AGENCY: June 20, 1989
FILED WITH LRC: July 3, 1989 at 3 p.m.

PUBLIC HEARING: A public hearing has been scheduled on August 25, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Adult, Vocational Education and Vocational Rehabilitation at its June meeting. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult, Vocational Education and Vocational Rehabilitation, 2013 Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 21, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: H. Gippy Graham

(1) Type and number of entities affected: 178 local school districts and respective local communities.

(a) Direct and indirect costs or savings to those affected:

1. First year: 25% cash match to state grant.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Submit proposed local plan, mid-year progress report and annual report/evaluation.

(2) Effects on the promulgating administrative body: Expenditure of $297,000 first year of biennium and $299,000 second year.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Monitoring and review of projects and year end reports.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Statutes require state plan.

(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. In setting up the grant program, uniform standards are needed for determining which districts are to receive monies.

LABOR CABINET
Department of Workplace Standards
Kentucky Occupational Safety and Health
(Proposed Amendment)

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

RELATES TO: KRS Chapter 338
STATUTORY AUTHORITY: 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," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is adopted by reference.

(4) 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) 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) 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) 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) 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) Amendments to 29 CFR 1910.20, "Access to Employee Exposure and Medical Records," as published in Federal Register, Volume 53, Number 189, September 29, 1988, are adopted by reference.

(9) 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) and (i)(1), "Safety Requirements for Scaffolding," as published in the Federal Register, Volume 53, Number 70, April 12, 1988, are adopted by reference.

(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.

(12) 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) 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) 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.

(16) 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.

(c) 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.

(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.

(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.

(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.

(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.

(22) 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) 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.

(a) Corrections to amendments to 29 CFR 1910.120, "Hazardous Waste Operations and Emergency Response," as published in Federal Register, Volume 52, Number 85, May 4, 1987, are adopted by reference.

(b) The amendment to 29 CFR 1910.120, "Hazardous Waste Operations and Emergency Response," as published in the Federal Register, Volume 54, Number 42, March 6, 1989, is incorporated by reference.

(24) 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 label wording 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) 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) 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) 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 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.
(29) 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) 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) 29 CFR 1910.177(a)(2), Servicing Multipiece and Single Piece Rim Wheels, shall be amended as follows:
(a) Amendments as published in the Federal Register, Volume 52, Number 186, September 25, 1987 are adopted by reference.
(b) Amendments to 29 CFR 1910.177(b), "Servicing Multipiece and Single Piece Rim Wheels," as published in Federal Register, Volume 53, Number 174, September 8, 1988, are adopted by reference.
(32) The amendment to 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.
(33) 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) 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) 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) 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 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.

(38) 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 29 CRF 1910.181(j)(4)(i), "Derricks," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is adopted by reference.

(40) The amendments to 29 CRF 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.

(41) 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) 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)(iii)(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) 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) 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 29 CFR 1910.251(b), "Definitions," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is adopted by reference.

(47) 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) 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 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.

(50) The amendments to 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.

(51) 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) 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.

(53) The amendment to 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.

(54) 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) 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) 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) 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) 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) 29 CFR 1910.1000, "Air Contaminants," Table Z-1-A, Z-2 and Z-3 as published in Federal Register, Volume 54, Number 12, January 19, 1989 are incorporated by reference.

(60) [(59)] 29 CFR 1910.1000, Table Z-2, "Formaldehyde," as published in the Federal Register, Volume Number 52, December 4, 1987, is amended.

(61) [(60)] 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:"

(62) [(61)] 29 CFR 1910.1001, Occupational Exposure to Asbestos, Tremolite, Anthophylite,

and Actinolite, as published in Federal Register, October 17, 1986, Volume 51, No. 201, is adopted by reference.

(63) [(62)] 29 CFR 1910.1001, Occupational Exposure to Asbestos, Tremolite, Anthophylite, and Actinolite, as published in Federal Register, May 12, 1987, Volume 52, No. 91, is adopted by reference. Amendments, revisions and additions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite," as published in Federal Register, Volume 53, Number 178, September 14, 1988, are adopted by reference.

(64) [(63)] 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.

(65) [(64)] 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."

(66) [(65)] 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]	COMPLIANCE DATES 200 ug/m³	100 ug/m³	50 ug/m³
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, 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	(2)	N/A	N/A
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.

(67) [(66)] 29 CFR 1910.1028, Benzene, as published in the Federal Register, Volume 52, Number 176, September 11, 1987 is adopted by reference.

(68) [(67)] 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.

(69) [(68)] 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.

(70) [(69)] 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.

(a) 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.

(b) Revisions to 29 CFR 1910.1047, "Occupational Exposure to Ethylene Oxide," as published in Federal Register, Volume 53, Number 143, July 26, 1988, are adopted by reference.

(71) [(70)] 29 CFR 1910.1048, "Formaldehyde," as published in the Federal Register, Volume Number 52, December 4, 1987, is adopted by reference. Amendments to 29 CFR 1910.1048, "Occupational Exposure to Formaldehyde," as published in Federal Register, Volume 53, Number 170, September 1, 1988, are adopted by reference.

(72) [(71)] 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.

(73) [(72)] 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.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

CAROL M. PALMORE, Chairman

APPROVED BY AGENCY: July 11, 1989

FILED WITH LRC: July 14, 1989 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 24, 1989 at 1 p.m. at the Kentucky Labor Cabinet, U.S. 127 Building South, Bay 2 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 19, 1989, five days prior to the hearing, of their intent to attend. If no notification of

intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Guy Schoolfield, Kentucky Labor Cabinet, U.S. 127 Building South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Guy Schoolfield or Kembra Taylor

(1) Type and number of entities affected: Section 1(23)(b) affects all employers in the Commonwealth with operations and employees concerning hazardous waste operations and emergency response. Section 1(59) affects all employers and employees in the Commonwealth with operations involving regulated air contaminants.

(a) Direct and indirect costs or savings to those affected:

1. First year: The cost of compliance with Section 1(23)(b) will be approximately $3.068 million. The amendment of Section 1(59) will result in a total of $135,000 direct costs to employers (90,000 workers exposed).

2. Continuing costs or savings: Section 1(23)(b) will result in an annual cost of approximately $3.068 million (35,140 workers exposed). Section 1(59) will result in an annual cost of $135,000 (90,000 workers exposed at $150.00 per worker).

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors regarding these amendments which will increase or decrease costs.

(b) Reporting and paperwork requirements: Neither of these amendments entails any reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: These amendments will not affect the promulgating administrative body.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these amendments.

(3) Assessment of anticipated effect on state and local revenues: These amendments have no anticipated effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered, because the federal regulations contain specific methods for compliance.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting, overlapping, or duplicative administrative regulations 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: None

TIERING: Was tiering applied? No. The Occupational Safety and Health Program's regulations affect all employers with one or more employees. It targets its inspections toward those industries or firms that pose higher risks to worker safety and health, or from which the OSH Program has received worker complaints.

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. Section 1(23)(b) amendment affects all local government entities that are within the scope of the "Hazardous Waste and Emergency Response" standard. Section 1(59) amendment affects all local government entities that are required to maintain regulated air contaminants below prescribed levels.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed amendments affect local goverment employees' occupational safety and health.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal OSHA regulations relating to "hazardous waste and emergency response" and "air contaminants," respectively, regarding occupational safety and health. There will be no increase or decrease in local government revenues or expenditures. These amendments will have no effect on the number of employees of local government.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. Section 1(23)(b) amendment requires Kentucky employers to comply with federal standards governing hazardous waste and emergency response operation. Section 1(59) amendment requires Kentucky employers to comply with federal standards governing employees' exposure to regulated air contaminants.

3. Minimum or uniform standards contained in the federal mandate. Section 1(23)(b) amendment adopts all standards contained in the Federal Register, "Hazardous Waste Operations and Emergency Response," Volume 54, Number 42, March 6, 1989. Section 1(59) amendment adopts all changes contained in the Federal Register, "Air Contaminants," Volume 54, Number 12, January 19, 1989.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? These amendments are identical to the changes contained in the federal standards cited in item 3 above.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These amendments impose no stricter, additional, or different responsibilities on requirements than the federal standards.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 4:040. Special Supplemental Food Program for Women, Infants and Children (WIC).

RELATES TO: KRS 194.050, 211.180
STATUTORY AUTHORITY: KRS 194.050(1), 211.090, 211.180, 42 USC 1786
NECESSITY AND FUNCTION: P.L. 95-627, the "Child Nutrition Act of 1966," as amended and 7 CFR Part 246, authorizes grants for [Through operation of 42 USC §1786 and 7 CFR 246.10, the state is required to impose sanctions upon vendors participating in] the Special Supplemental Food Program for Women, Infants and Children (WIC) [when it is determined that a violation of program requirements has occurred]. The Cabinet for Human Resources is authorized by KRS 194.050 to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and as are necessary to cooperate with federal agencies for proper administration of the cabinet and its programs. The function [purpose] of this regulation is to repeal 902 KAR 4:060 and to set out [forth] the application and participation process for the Kentucky Special Supplemental Food Program for Women, Infants and Children (WIC) for both women, children, and vendors, to include the sanction, and hearing process [violations for which sanctions are to be imposed, the applicable sanctions, and the appeal rights assured an affected vendor]. This regulation includes the substance of the regulation to be repealed; therefore, no longer necessitating the old regulation.

Section 1. Definitions. (1) "Cabinet" means Cabinet for Human Resources.
(2) "Secretary" means Secretary for the Cabinet for Human Resources.
(3) "State agency" means the Cabinet for Human Resources or its designated representative.
(4) "Vendor" means a vendor of food items who applies for participation in the Special Supplemental Food Program for Women, Infants and Children (WIC) or who, by contract, participates in the Special Supplemental Food Program for Women, Infants and Children (WIC).
(5) "WIC program" means the Special Supplemental Food Program for Women, Infants and Children (WIC) administered pursuant to 42 USC §1786.
(6) "Person" means for purposes of a fair hearing, any applicant or participant in the WIC Program.

Section 2. The purpose of the Special Supplemental Food Program for Women, Infants and Children (WIC) is to provide supplemental foods and nutrition education at no cost to eligible persons and to serve as an adjunct to good health care.

Section 3. To be certified as eligible to participate in the WIC Program, a person must:
(1) Be categorically eligible as follows:
(a) Pregnant women;
(b) Postpartum women, up to six (6) months after termination of pregnancy, including those women who miscarry, have a stillbirth or abort;
(c) Breastfeeding women, up to the infant's first birthday;
(d) Infants, zero to one (1) year of age; or
(e) Children, one (1) to five (5) years of age.
(2) Be a resident of the state of Kentucky and the geographical area served by the agency.
(3) Meet the cabinet approved income criteria.
(4) Meet the nutritional risk criteria as outlined. The following conditions are considered the basis for certification:
(a) Detrimental or abnormal nutritional conditions detectable by biochemical or antropometric measurements, such as anemia, underweight, overweight, abnormal pattern of weight gain in a pregnant woman, low birth weight in an infant, or stunting in an infant or child;
(b) Other documented nutritionally related medical conditions, such as clinical signs of nutritional deficiencies, metabolic disorders, pre-eclampsia in a pregnant woman, or failure to thrive in an infant;
(c) Dietary deficiencies that impair or endanger health, such as inadequate dietary patterns assessed by a twenty-four (24) hour dietary recall, dietary history, or food frequency checklist;
(d) Conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, such as chronic infections in any person, alcohol or drug abuse or mental retardation in women, lead poisoning, history of high risk pregnancies or factors associated with high risk pregnancies (such as smoking; conception before sixteen (16) months postpartum; history of low birth weight, premature births, or neonatal loss; adolescent pregnancy; or current multiple pregnancy) in pregnant women, or congenital malformations in infants or children, or infants born of women with alcohol or drug abuse histories or mental retardation;
(e) An infant under six (6) months of age may be determined to be at risk if the infant's mother was a program participant during pregnancy or met risk criteria outlined during pregnancy; and
(f) A participant who has previously been certified eligible for the program may be considered to be at nutritional risk in the next certification period if the competent professional authority determines there is a possibility of regression in nutritional status without the supplemental foods. Limits on regression may be set for certain conditions, e.g., inadequate diet.

Section 4. Program benefits shall be based upon certifications established in accordance with the following time frames:
(1) Pregnant women shall be certified for the duration of their pregnancy and for up to six (6) weeks postpartum.
(2) Postpartum women shall be certified for up to six (6) months postpartum.
(3) Breastfeeding women shall be certified at intervals of approximately six (6) months and ending with the breastfed infant's first

birthday.

(4) Infants shall be certified at intervals of approximately six (6) months except infants under six (6) months of age may be certified for a period extending up to the first birthday provided the quality and accessibility of health care services are not diminished.

(5) Children shall be certified at intervals of approximately six (6) months and ending with the end of the month in which a child reaches the fifth birthday.

Vacancies in the program shall be filled as they occur unless maximum participation has been reached. At that time, vacancies shall be filled by a priority system based upon the nutritional risk of the patient.

Section 5. Pregnant and breastfeeding women, infants and migrants must be screened and notified of program eligibility or ineligibility within ten (10) days. Agencies requesting to extend the processing standards to fifteen (15) days must submit a written request justifying the need for the extension and a plan of action on how and when they will meet the above standard. All other persons applying for the program must be screened and notified of program eligibility or ineligibilty within twenty (20) days.

Section 6. A person shall be informed in writing of the right to a fair hearing and the method by which a hearing may be requested at the time of:

(1) Each certification;

(2) When found ineligible;

(3) Disqualification during a certification period for program abuse;

(4) When placed on the waiting list; and

(5) An action which resulted in a claim against an individual for repayment of improperly issued benefits.

Persons requesting a fair hearing must contact the appropriate WIC agency within sixty (60) days from the date of notice to deny or terminate benefits and a fair hearing will be arranged. A person may appeal a local hearing body's decision to the secretary within fifteen (15) days of the mailing date of the hearing decision notice.

Section 7. (1) An appropriate number and distribution of food vendors in order to assure adequate participant convenience and access and to assure that state agency and local officials can effectively manage a review of the vendors shall be authorized. Only authorized vendors may redeem food instruments in order to provide supplemental food to participants.

(2) In order to be an authorized WIC vendor, an applying vendor must:

(a) Provide all information, including sales volume, requested by the state agency.

(b) Stock, at all times, minimum inventory in accordance with the "Quantified Minimum Inventory Requirements." Pharmacies need to stock formula in accordance with the "Quantified Minimum Inventory Requirements."

(c) As appropriate, be in compliance with the Kentucky Retail Market Sanitation Regulations (902 KAR 45:045) and have a valid Kentucky Retail Market Permit under the current owner's name.

(d) Have prices commensurate with the area's authorized WIC vendors. Prices are compared according to state agency policy.

(e) Not be disqualified or withdrawn by USDA from participation in another FNS program nor denied application to participate in the food stamp program.

(f) Be requesting application for a business whose primary purpose is to be a retail grocery. (Does not apply to drug stores.) Direct distribution outlets and wholesale food establishments are not eligible. Retail firms whose primary business is something other than a retail grocery are not normally eligible for the program. This includes dairies, gas stations, specialty stores, liquor stores, home delivery groceries, bait shops, etc. In order for one these retail firms to be authorized, the applicant firm must have a recognized grocery department in a stationary location which is a separate and distinct area and stocks staple food items in addition to WIC approved foods. Staple food items are defined as meat, poultry, fish, bread and breadstuff, cereals, vegetables, fruit, fruit and vegetable juices, dairy products and the like. Food items such as coffee, tea, cocoa, carbonated and uncarbonated drinks, condiments and spices are not considered to be staple foods. All stores must have:

1. A separate area as defined above;

2. A stock of foods other than staple food items as defined above; and

3. Twenty (20) percent of their gross sales in total food sales excluding their specialty items. (Bakery goods for bakery, produce for fruit and vegetable stands.)

Dairies and home delivery groceries will not be approved if they operate solely as a mobile operation.

(g) Be open for business year round on a full-time basis at least eight (8) hours per day, six (6) days per week.

(h) Be accessible to monitoring by state and federal officials without prior notice.

Section 8. (1) A vendor shall be informed in writing of the right to a fair hearing and the method by which a hearing may be requested for the following:

(a) Denial of application to participate in the program; and

(b) Disqualification or other adverse action which affects participation during the agreement performance period.

(2) Expiration of an agreement with a vendor is not subject to appeal.

(3) Vendors requesting a fair hearing must contact the appropriate WIC agency within thirty (30) days from the date of notice to deny or terminate participation and a fair hearing will be arranged.

(4) A vendor may appeal a local hearing body's decision to the secretary within fifteen (15) days of the mailing date of the hearing decision notice.

Section 9. [2.] For the following acts or circumstances committed by the vendor, his employee or agent, the cabinet shall impose the following sanctions:

Type of Abuse	Period of Disqualification 1st Offense	2and Offense	3rd Offense
1. Providing cash/credit for WIC checks (trafficking)	1 year	2 years	3 years
2. Selling nonfood items for WIC WIC checks	6 months	1 year	18 months
3. Selling related but unauthorized foods	Written Warning	3 months	6 months
4. Charging more than the current retail market price for WIC food items	6 months	1 year	18 months
5. Charging for food not received by the WIC participant	1 year	2 years	3 years
6. Charging for food not authorized on the WIC check	6 months	1 year	18 months
7. Redeeming WIC checks outside valid period	Written Warning	3 months	6 months
8. Not recording actual purchase price on WIC checks at time of purchase	Written Warning	3 months	6 months
9. Giving due bills, IOU's or rainchecks	Written Warning	3 months	6 months
10. Suspension from Food Stamp Program	Equivalent to food stamp disqualification period (does not have to run concurrently)		
11. Nonpayment of a claim made by state agency	3 months	6 months	1 year
12. Discrimination (separate WIC lines, denying trading stamps, other customer courtesies)	Written Warning	3 months	6 months
13. Failure to allow monitoring and inspection of store premises, records and procedures or access to WIC checks	Written Warning	3 months	6 months
14. Failure to return WIC vendor authorization stamp upon request	Add 3 months to previously established disqualification period or monetary penalty in the amount of unauthorized funds received or both		
15. Requiring cash purchase to redeem WIC checks	Written Warning	3 months	6 months

Notice of sanction to be imposed by the cabinet and the date upon which such sanction is to commence may be hand-delivered to the vendor or mailed certified mail return receipt requested to the vendor's last known address.

Section 10. [3.] (1) Any vendor aggrieved by a decision of the cabinet to impose a sanction authorized by this regulation may file a written request for a hearing with the cabinet no later than twenty (20) days after receipt of notice. Upon receipt of a request for a hearing, the secretary shall appoint one (1) or more impartial hearing officer(s) to conduct the hearing. Within five (5) days of a request for a hearing, the cabinet shall advise the subject vendor of the date, time and place of the scheduled hearing and of the opportunity to review the records of the cabinet prior to the date of the hearing.

(2) On the date of the hearing the subject vendor shall have:

(a) An opportunity to present its case against the imposition of any sanction;

(b) The opportunity to be represented by counsel, if desired; and

(c) The opportunity to confront and to cross-examine witnesses.

(3) The hearing officer(s) shall decide upon the validity of the violation and sanction imposed based upon the record of the hearing and the relevant statutory and regulatory provisions governing the WIC program. The basis of the decision shall be in writing and shall be the final decision of the cabinet. It need not contain formal findings of fact and conclusions of law.

(4) A decision shall be reached and written notification of the decision forwarded to the vendor no later than sixty (60) days from the date of receipt of the written request for hearing. Any vendor aggrieved shall have the right to appeal such decision to the circuit court of the county wherein the vendor has his principal place of business.

Section 11. 902 KAR 4:060, Kentucky state plan of program operations and administration for the special supplemental food program for women, infants and children (WIC), is hereby repealed.

C. HERNANDEZ, M.D., M.P.H., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 28, 1989
FILED WITH LRC: July 5, 1989 at 3 p.m.

PUBLIC HEARING: A public hearing for this regulation has been scheduled for August 21, 1989 at 9 a.m. in the Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1989, 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: Peggy S. Kidd
(1) Type and number of entities affected: 82,000 clients per month in 120 counties.
(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs or savings since this administrative regulation reflects the application and participation process for the special supplemental food program for women, infants and children (WIC).
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs (note any effects upon competition): Services are ongoing, therefore there are no changes.
(b) Reporting and paperwork requirements: No additional paperwork requirements.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: Services already ongoing therefore no affect on state and local revenues.
(b) Reporting and paperwork requirements: No additional paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: Services are ongoing therefore NA.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Only efficient alternative available.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or governmental policy that is in conflict with, overlaps or duplicates this administrative 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: There is no additional information or comment.
TIERING: Was tiering applied? No. The proposed regulation applies to all independent county and district health departments and will not disproportionately affect any local health department. Local health policies must be uniform for all county and district health departments under KRS Chapter 212.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Child Nutrition Act of 1966, P.L. 95-627, as amended.
2. State compliance standards. State compliance standards are in accordance with minimum uniform standards contained in the federal mandate.
3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires specific nutritious foods along with nutrition education be provided without cost to nutritionally at risk pregnant, breastfeeding and postpartum women, and to infants and children up to five years of age who meet 185 percent of the federal poverty income guidelines.
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 will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
(Proposed Amendment)

903 KAR 5:270. Maximum weekly benefit rates.

RELATES TO: KRS 341.380
STATUTORY AUTHORITY: KRS 194.050, 341.380
NECESSITY AND FUNCTION: KRS 341.380 requires the Secretary for Human Resources to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1989 [1988], and prior to July 1, 1990 [1989]. This regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

Section 1. The secretary finds the following to exist:
(1) The "total monthly employment" reported by subject employers for the calendar year of 1988 [1987] was 15,421,347 [14,803,553];
(2) The "average monthly employment," obtained by dividing the total monthly employment by twelve (12), was 1,285,112 [1,233,629];
(3) The "total wages" reported by subject employers for the calendar year of 1988 [1987] was $23,605,828,766 [$22,004,260,410];
(4) The "average weekly wage" for the calendar year of 1988 [1987] for insured employment, obtained by dividing the average monthly employment into total wages for such year and dividing by fifty-two (52), was $353.24 [$343.02];
(5) Fifty-five (55) percent of the average weekly wage of $353.24 [$343.02] for the calendar year of 1988 [1987] was $194.28 [$188.66];
(6) However, the "trust fund balance" as of December 31, 1988 [1987], was $333,642,813.27 [$251,483,024.34] and KRS 341.380 states that if the trust fund balance on December 31 equals or exceeds $275,000,000 [$250,000,000], but is less than $350,000,000 [$275,000,000], the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate by more than twelve (12) [ten (10)] percent; and
(7) The prior year's maximum weekly benefit rate was $166 [$140].

Section 2. On the basis of the above findings, and in accordance with KRS 341.380(3), the maximum weekly benefit rate for those workers

whose benefit year commences on or after the first day of July, 1989 [1988], and prior to the first day of July, 1990 [1989], is determined to be $186 [$166].

MARGARET WHITTET, Acting Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 8, 1989
FILED WITH LRC: June 19, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for August 21, 1989 at 9 a.m. in the Health Services Building, Health Services Auditorium, First Floor, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1989, 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: Margaret Whittet
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: All eligible UI recipients for the year 7/1/89 through 6/30/90.
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: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternate methods available in accordance with statutory requirements.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: This regulation satisfies the statutory requirement of KRS 341.380(3), which mandates that the secretary determines the maximum weekly rate prior to July 1 of each year.
TIERING: Was tiering applied? No. All claimants treated equally.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:006. Technical requirements; AFDC.

RELATES TO: KRS 205.010, 205.200(2), (3)
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children (AFDC) in accordance with Title IV-A of the Social Security Act. KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by regulations in conformity with the Social Security Act and federal regulations. This regulation sets forth the technical requirements of residence, deprivation, living with a relative, age, one (1) category of assistance, work registration, work program participation, cooperation in child support enforcement activities and potential entitlement for other programs for eligibility for AFDC.

Section 1. Residence and Citizenship. Residence is determined in accordance with 45 CFR 233.40 which, in summary, provides that a resident is anyone who is living in the state, entered the state with a job commitment or seeking employment, and is not receiving AFDC benefits from another state. Citizenship is determined in accordance with 45 CFR 233.50 which states that AFDC can be provided only to citizens or aliens lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

Section 2. Deprivation. (1) To be eligible for AFDC, a child must be in need and must be deprived of parental support or care due to the death, continued absence from the home or physical or mental incapacity of a natural or adoptive parent. A married child living with his spouse in the home of his parents is not deprived of parental support or care. A married child living in the home of his parents but divorced or legally separated from his spouse is deprived of parental support if he is dependent on the parent and a parent is dead, incapacitated or continually absent from the home.
(2) Continued absence from the home. To be eligible for AFDC, a needy child must be physically separated from the parent and the nature of the absence of the parent is such as either to interrupt or terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child, and the known or indefinite duration of absence precludes counting on the parent's performance of his function in planning for the present support or care of the child. Absence may be voluntary or involuntary. Voluntary absence includes divorce, legal separation, marriage annulment, desertion of thirty (30) days or more, forced separation of seven (7) days or more, or birth out-of-wedlock. Involuntary absence includes commitment to a penal institution for thirty (30) days or more, long term hospitalization, deportation or single parent adoption. A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.
(3) Incapacity. All determinations regarding whether a child has been deprived of parental support or care by reason of the physical or mental incapacity of a natural or adoptive parent shall be in conformance with federal regulations found at 45 CFR §233.90(c)(1)(iv)

and the criteria set forth in this subsection. Each determination shall be based on a full consideration and assessment of all medical, social, and economic factors involving a particular claimant. Should a verified medical condition exist, then all relevant social and economic factors will be considered to determine whether the parent's condition is the cause of and results in a parent's inability to support or care for the child(ren).

(a) Incapacity exists in each case when the following criteria are met:

1. It is medically determined that one (1) parent has a physical or mental defect, illness or impairment which was present at the time of application and which has continued or is expected to last for a period of at least thirty (30) calendar days, including a period, if any, in which the claimant is undergoing planned diagnostic studies or evaluation of rehabilitation potential; and

2. It is determined by nonmedical evaluation that such defect, illness or impairment is of such debilitating nature as to reduce substantially or eliminate the parent's ability to support or care for an otherwise eligible child.

(b) Factors to be considered in making the medical determination shall include:

1. The claimant's medical history and subjective complaints regarding an alleged physical or mental defect, illness or impairment; and

2. Competent medical testimony relevant to:

a. Whether a physical or mental defect, illness or impairment exists;

b. Whether the defect, illness or impairment is enough to reduce the parent's ability to support or care for a child; and

c. Whether the defect, illness or impairment is likely to last thirty (30) days. The thirty (30) days is not intended to be a "waiting period." Rather, expected duration is substantial and pertinent to causal relationship.

(c) Factors to be considered in making the nonmedical evaluation shall include:

1. The claimant's age, employment history, vocational training, educational background, and subjective complaints regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

2. The extent and accessibility of employment opportunities available in the claimant's area of residence.

(d) In determining the extent and accessibility of available employment opportunities, the limited employment opportunities of handicapped individuals shall be taken into account; and

1. Available printed materials that provide information regarding available employment opportunities shall be researched;

2. The local Department for Employment Service (DES) office shall be contacted regarding accessible employment opportunities within the claimant's area of residence; and

3. The claimant shall be referred, if necessary, for further appraisal of his abilities.

(e) A written report shall be made of the determination under this subsection.

(f) Each claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing in accordance with federal regulations found at 45 CFR §205.10.

Section 3. Living with a Specified Relative. To be eligible for AFDC a needy child must be living in the home of a relative as specified in the Social Security Act and interpreted as follows:

(1) A blood relative, including father, mother, grandfather, grandmother, brother, sister, uncle, aunt, nephew, niece, first cousin.

(2) Also relatives of the half-blood and preceding generations as denoted by prefixes of grand, great or great-great; a stepfather, stepmother, stepbrother, stepsister.

(3) Any person listed above if parent has had paternity established through the administrative determination process. An administrative determination of paternity is limited to situations in which the following types of evidence are present:

(a) A birth certificate listing the alleged parent; or

(b) Legal documents such as hospital records, juvenile court records, wills, and other court records which clearly indicate the relationship of the alleged parent or relative; or

(c) Receipt of statutory benefits as a result of the alleged parent's circumstances; or

(d) A sworn statement or affidavit of either parent acknowledging paternity plus one (1) of the following:

1. School records;
2. Bible records;
3. Immigration records;
4. Naturalization records;
5. Church documents, such as baptismal certificates;
6. Passport;
7. Military records;
8. U.S. Census records; or
9. Sworn statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(e) Effective April 1, 1987, in cases in which the parent or, in the absence of the parent, the caretaker relative alleges the evidence present in paragraphs (a) or (b) of this subsection is erroneous and provides substantiation of the erroneous information, the parent/caretaker relative shall provide a sworn statement or affidavit acknowledging the erroneous information and containing the correct information on the actual alleged parent. Presence of the sworn statement or affidavit will serve as rebuttal to the evidence present in paragraphs (a) or (b) of this subsection and a determination of paternity will not be acknowledged.

(4) Adoptive parents as well as the natural and other legally adopted children and other relatives of such parents.

(5) Husband or wife of any persons listed above even if the marriage may have terminated, providing termination occurred after the birth of the child.

(6) A child is considered as living in the home even when temporarily absent for medical care, attendance at boarding school, college or vocational school, emergency foster care or short visits with friends or relatives, if the parent continues to exercise control over the child.

Section 4. Age and School Attendance. A child

may be eligible for AFDC from birth to age eighteen (18), or to age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program prior to or during the month of their 19th birthday. Full- and part-time is defined in 904 KAR 2:016, standards for need and amount; AFDC. A child is considered in regular attendance in months in which he is not attending because of official school or training program vacation, illness, convalescence or family emergency unless he has indicated an intention not to reenter school.

Section 5. One Category of Assistance. A child or adult relative shall not be eligible for AFDC if receiving supplemental security income.

Section 6. Strikers. (1) A family shall be ineligible for benefits for any month in which the natural or adoptive parent, with whom the child is living is, on the last day of such month, participating in a strike; and

(2) No individual shall be considered eligible for benefits for any month if, on the last day of such month, such individual is participating in a strike.

(3) Strike shall be defined to include a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

Section 7. Work Registration. (1) Unless exempt under the criteria specified in Title IV of the Social Security Act and 45 CFR Section 224.20(b), an individual who has applied for or is receiving AFDC shall be ineligible for benefits if he refuses to register for work.

Section 8. Jobs Through Employment and Training (JET). (1) Effective June 1, 1989, unless exempt from work registration, an individual who has applied for or is receiving AFDC shall be ineligible for benefits if he refuses to participate in the JET Program without good cause.

(2) Individuals exempt from JET are as follows:

(a) Individuals who are ill, disabled, or elderly;

(b) Individuals needed in the home to care for a sick or disabled person;

(c) Individuals working thirty (30) hours or more per week;

(d) A child [An individual] under age sixteen (16) or attending school full time;

(e) A woman in at least the seventh [fourth] month of pregnancy;

(f) Individuals living in a "remote" (non-JET) county;

(g) A parent or caretaker relative of a child under age six (6) [three (3)] who personally provides full-time care of the child with only very brief and infrequent absences from the home. Brief and infrequent absences without considering time traveled to and from work/school are defined as:

1. Employment by the caretaker relative of less than thirty (30) hours per week;

2. Less than full-time school attendance (or for college attendance, enrollment) by the caretaker relative;

3. Less than full-time school attendance (or for college attendance, enrollment) and less than fifteen (15) hours per week employment by the caretaker relative;

4. Attendance by the child under age six (6) [three (3)] in nursery school;

5. Additional brief and infrequent absences include:

a. Visits by the child under age six (6) [three (3)] with relatives, friends, the absent parent, neighbors, etc.;

b. Visits by the caretaker relative with relatives, friends, neighbors, etc.;

c. Routine shopping and errands;

d. Doctor's visits; and

e. Short-term hospitalization (less than thirty (30) days.

6. If a parent or other caretaker relative is absent from the child for reasons other than these listed, the absence is not considered brief and infrequent.

Section 9. Cooperation in Child Support Enforcement Activities. (1) Inclusion of a specified relative in the AFDC budget is dependent upon his cooperation in child support activities pursuant to 45 CFR 232.12 and refusal, except for "good cause," results in ineligibility of the relative with AFDC payments on behalf of the child(ren) made to a protective payee.

(2) If, after exclusion from the grant for failure to cooperate, the individual states that he is willing to cooperate and wishes to be reinstated, a supplemental application must be completed. If eligibility criteria are met, the individual will be added to the grant effective with the month of application and the protective payee will be removed.

(3) Pursuant to 45 CFR Part 232.40, the Cabinet for Human Resources shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate.

(4) The applicant or recipient will be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:

(a) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the child; or

(b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself to such an extent that it would reduce his capacity to care for the child(ren) adequately; or

(c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicant's/recipient's cooperation; or

(d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction; and the department believes it would be detrimental to the child to require the applicant's/recipient's cooperation; or

(e) The applicant/recipient is being assisted by a public or licensed private social agency to resolve whether to keep the child or release him for adoption and discussion has not gone on for more than three (3) months and the cabinet believes it would be detrimental to the child to require the applicant's/recipient's cooperation.

(5) Specific requirements in determining the existence of good cause and the time limits for providing substantiation of claims are made pursuant to the regulation at 45 CFR 232.42 and 45 CFR 232.43.

Section 10. Potential Entitlement for other Programs. All applicants/recipients must apply for any benefit(s) if potential entitlement exists. Failure to apply results in ineligibility for AFDC.

Section 11. Furnishing of Social Security Account Numbers. All applicants/recipients must furnish social security account numbers pursuant to 45 CFR 232.10.

Section 12. Assignment of Rights to Support. Pursuant to KRS 205.720, by accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any child support owed for the child not to exceed the amount of AFDC payments made to the recipient.

Section 13. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any medical support owed for the child not to exceed the amount of medical assistance payments made on behalf of the recipient.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 28, 1989
FILED WITH LRC: July 5, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1989 at 9 a.m. at the Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1989, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall, Director
(1) Type and number of entities affected: None. The affected recipients will continue to be served as volunteer participants.
(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: Direct costs.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(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 conditions 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).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 201.1
2. State compliance standards. Family Support Act of 1988.
3. Minimum or uniform standards contained in the federal mandate. None
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:035. Right to apply and reapply.

RELATES TO: KRS 205.200(1), 205.245, 205.520(3)
STATUTORY AUTHORITY: KRS 13A.120, 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility of administering public assistance programs under Titles IV-A, XVI and XIX of the Social Security Act, namely Aid to Families with Dependent Children[, hereinafter referred to as] (AFDC), Mandatory and Optional Supplementation of the aged, blind and disabled[, hereinafter referred to as] (MS) and (OS), and Medical Assistance[, hereinafter referred to as] (MA). This regulation sets forth the procedure by which an application for assistance under these titles is made.

Section 1. Right to Apply or Reapply. Each individual wishing to do so shall have the opportunity to apply or reapply for any assistance program administered by the Cabinet

for Human Resources through the Department for Social Insurance. An individual eligible for AFDC, MS, OS, or eligible for supplemental security income through the Social Security Administration is eligible for MA without a separate application. Denial of assistance by the Social Security Administration for supplemental security income for technical reasons is also considered a denial of MA.

Section 2. Application Process. An application will be considered to have been made when the individual or his[/her] representative has signed, under penalty of perjury, the application form prescribed by the Department for Social Insurance or the Social Security Administration, for supplemental security income, and such application has been received at the appropriate office.

Section 3. Who may Sign an Application. (1) An application for AFDC shall be signed by the relative with whom a needy child lives or the legally appointed committee of the relative.

(2) An application for MA shall be signed by the individual requesting assistance, the relative with whom the child lives, or an interested party acting in behalf of the applicant.

(3) Prior to July 1, 1982, an application for AFDC-FC (foster care) or MA for children in foster care or private child caring institutions shall be signed by the representative of the agency to which the child is committed or the institution in which the child is placed.

(4) An application for state supplementation shall be signed by the aged, blind or disabled individual, an interested party, his/her legally appointed committee or the representative payee receiving the supplemental security income benefit.

Section 4. Where Applications are Filed. (1) Applications are to be filed in the office of the Department for Social Insurance in the county in which the applicant resides except that a concurrent application for supplemental security income and MA is filed in the service area office of the Social Security Administration.

(2) When a Kentucky resident is temporarily out-of-state, a letter from the applicant, an interested party or an out-of-state agency will be accepted as the initiation of the application process when an emergency arises from accident or sudden illness, care and services are needed immediately, and health would be endangered if he[/she] undertook to return to the state. In this situation, the official application form will be forwarded to the initiating party.

Section 5. Action on Applications. A decision shall be made on each application and a check mailed [with reasonable promptness, that is] within five (5) days for emergency assistance, forty-five (45) days for AFDC or MA for families and[/or] children, or sixty (60) days for MA or OS determinations in which permanent and total disability must be established. Exception to the above time standard may be made when the applicant is cooperating but is unable to obtain necessary verification for an eligibility decision to be made or in instances in which delay is beyond the control of the department, that is, failure or delay on the part of the applicant or examining physician or because of some administrative or other emergency that could not be controlled by the department. When the above time standards are not met, the case record shall document the cause for the delay. Failure to process an application within the above time frame shall not be used as the basis for denial.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 12, 1989
FILED WITH LRC: July 14, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1989 at 9 a.m. at the Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1989, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall, Director
(1) Type and number of entities affected: None
(a) Direct and indirect costs or savings to those affected: None
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: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(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: This regulation is being revised for quadrennial review.

TIERING: Was tiering applied? No. This regulation is revised to comply with technical requirements mandated by Senate Bill 2 and House

Bill 901. Eligibility for assistance programs must be applied on a consistent and equitable basis throughout the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. KRS 13A.120 and 194.050.
2. State compliance standards. None
3. Minimum or uniform standards contained in the federal mandate. None
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:040. Procedures for determining initial and continuing eligibility.

RELATES TO: KRS 205.200(2)
STATUTORY AUTHORITY: KRS 13A.120, 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility under the provisions of KRS Chapter 205 to administer public assistance programs under Titles IV-A and XIX of the Social Security Act, namely Aid to Families with Dependent Children[, hereinafter referred to as] (AFDC), and Medical Assistance [, hereinafter referred to as] (MA). In addition, the cabinet is required by Title XVI as amended and by KRS 205.245 to provide supplementation to certain aged, blind and disabled individuals. This regulation sets forth the procedures utilized to determine initial and continuing eligibility for assistance under the above programs.

Section 1. Eligibility Determination Process. (1) Eligibility shall be determined prospectively. In order to receive or continue to receive assistance, a household must meet all of the eligibility criteria for the month payment is intended to cover.

(2) Each decision regarding eligibility or ineligibility for assistance shall be supported by facts recorded in the applicant's or recipient's case record. The applicant or recipient shall be the primary source of information and shall be required to furnish verification of income, resources, and technical eligibility if he[/she] can reasonably be expected to do so, and to give written consent to those contacts necessary to verify or clarify any factor pertinent to the decision of eligibility. Failure of the applicant or recipient to appear for a scheduled interview or present required information at the time requested, when informed in writing of the appointment or necessary information to be provided, shall be considered a failure by the applicant or recipient to present adequate proof of eligibility.

Section 2. Continuing Eligibility. The recipient shall be responsible for reporting within ten (10) days any change in circumstances which may affect eligibility or the amount of payment. In addition, eligibility shall be reconsidered or redetermined:

(1) When a report is received or information is obtained about changes in circumstances;

(2) Beginning July 1, 1982, monthly, for AFDC cases not exempted by the appropriate federal agency; and

(3) At least every six (6) months for AFDC and every twelve (12) months for MA.

Section 3. Determination of Incapacity or Permanent and Total Disability. (1) A determination that a parent with whom the needy child lives is incapacitated or that the individual requesting medical assistance due to disability is both permanently and totally disabled shall be made by a Medical Review Team following review of both medical and social reports except as listed in subsection (2) of this section.

(2) A parent shall be considered incapacitated without a determination from the medical review team if the parent declares physical inability to work, the worker observes some physical or mental limitation, and the parent:

(a) Is receiving SSI; or

(b) Is age sixty-five (65) or over; or

(c) Has been determined to meet the definition of blindness as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI by [either] the Social Security Administration [or the state supervising ophthalmologist of the Department for Social Insurance]; or

(d) Has been determined to meet the definition of permanent and total disability as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI by either the Social Security Administration or the Medical Review Team of the Department for Social Insurance; or

(e) Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board or court of proper jurisdiction with no reexamination requested and there is no visible improvement in condition; or

(f) Is receiving RSDI, federal black lung benefits or railroad retirement benefits based on disability as evidenced by an award letter or benefit check; or

(g) Is currently hospitalized and a statement from the attending physician indicated that incapacity will continue for at least thirty (30) days. If application was made prior to admission, the physician is also requested to indicate if incapacity existed as of application date.

(3) The determination that a parent is not incapacitated will not be made by the local office field staff.

(4) An individual shall be considered permanently and totally disabled if the individual:

(a) Receives RSDI, railroad retirement, or federal black lung benefits based on disability;

(b) Previously received SSI based on disability and discontinuance was due to income or resources, not to improvement in physical condition.

Section 4. Reviews of Supplementation Cases. Aged, blind or disabled supplementation cases shall be periodically reviewed to determine that the special need for which supplementation is

granted continues to exist.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 12, 1989
FILED WITH LRC: July 14, 1989 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1989 at 9 a.m. at the Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1989, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall
(1) Type and number of entities affected: None
(a) Direct and indirect costs or savings to those affected: None
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: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(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: This regulation is being revised for quadrennial review.
TIERING: Was tiering applied? No. This regulation is revised to comply with technical requirements mandated by Senate Bill 2 and House Bill 901. Eligibility for assistance programs must be applied on a consistent and equitable basis throughout the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. KRS 13A.120 and 194.050.
2. State compliance standards. None
3. Minimum or uniform standards contained in the federal mandate. None
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:046. Adverse action; conditions.

RELATES TO: KRS 205.200(2), 205.245
STATUTORY AUTHORITY: KRS 13A.120, 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer public assistance programs under Title IV-A and XIX of the Social Security Act, namely Aid to Families with Dependent Children[, hereinafter referred to as] (AFDC) and Medical Assistance [, hereinafter referred to as] (MA). In addition, the cabinet has responsibility to provide supplementation to certain aged, blind and disabled individuals as required by Title XVI, as amended, and by KRS 205.245. 45 CFR section 205.10(a)(4) and 45 CFR section 206.10(a)(4) require that applicants or recipients be provided adequate notice of adverse action in written form citing applicable state regulations. This regulation sets forth the conditions under which an application is denied or assistance is decreased or discontinued.

Section 1. Reasons for Adverse Action. An application is denied or assistance discontinued or decreased when:
(1) Income or resources exceed the standards for the specific assistance program, or when income of a recipient increases or deductions decrease resulting in reduced or discontinued benefits;
(2) The applicant or recipient does not meet technical eligibility criteria or has failed to comply with a technical requirement as set forth in 904 KAR Chapters 1 and 2;
(3) The applicant or recipient has failed to provide sufficient information or clarify conflicting information necessary for determination of eligibility despite receipt of written notice detailing the additional information needed for a determination;
(4) The applicant or [/]recipient has failed to keep the appointment for an interview;
(5) The cabinet is recovering AFDC overpayments through recoupment; or
(6) Other reasons:
(a) Request of client, or voluntary written withdrawal of application;
(b) Cabinet staff unable to locate applicant or recipient;
(c) Applicant or recipient no longer domiciled in Kentucky;
(d) Change in program policy has adversely affected the recipient.

Section 2. Denial of Applications. If [Whenever] an application is denied, the applicant is given written notification of the denial including the reason for the denial and the right to a fair hearing.

Section 3. Decreases and Discontinuances. If [Whenever] a change in circumstances indicates that a money payment should be reduced, suspended or discontinued, or that medical entitlement should be discontinued or curtailed to any or all members, the recipient is given ten (10) days advance notice of the proposed action in writing, explaining the reason for the proposed action, and extending the opportunity to confer with the worker or to request a fair hearing. Hearing requests received during the advance notice period may result in delay of the decrease or discontinuance pending the hearing officer's decision.

Section 4. Exceptions to the Advance Notice Requirement. An advance notice of proposed action is not required, but written notice is given, if [whenever] the decrease or discontinuance results from:

(1) Information is reported by the recipient and the recipient has signed a waiver of the notice requirement indicating understanding of the consequences;

(2) The cabinet has received a clear written statement, signed by the recipient, that he[/she] no longer wishes assistance;

(3) The cabinet has received factual information that the recipient or an AFDC payee, when there is no relative who can serve as a new payee, has died;

(4) Whereabouts of the recipient are unknown and mail addressed to him[/her] has been returned indicating no known forwarding address; however, a returned check will be made available to him[/her] if his[/her] whereabouts become known during the payment period covered by the returned check;

(5) It has been established that assistance has been accepted in another state;

(6) The AFDC child has been removed from the home by judicial order or voluntarily placed in foster care by his[/her] legal guardian;

(7) The aged, blind or disabled supplementation recipient has entered a chronic care facility resulting in vendor payment status;

(8) The recipient has entered a penal institution or if under sixty-five (65) a tuberculosis hospital, or if between twenty-one (21) and sixty-five (65), a mental hospital;

(9) The granting of a special allowance, or time limited assistance, which is terminated and when the recipient has been informed in writing at the time the allowance or assistance was granted of the automatic termination at the end of a specified period or under specific conditions; in these situations the notice may be provided at the time of approval, or subsequently;

(10) The AFDC recipient has failed to provide a completed mandatory monthly report form timely; or

(11) The decrease, suspension or termination of benefits is due to changes reported on the mandatory monthly report form.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 12, 1989

FILED WITH LRC: July 14, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1989 at 9 a.m. in the Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1989, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall

(1) Type and number of entities affected: None

(a) Direct and indirect costs or savings to those affected: None

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: None

(a) Direct and indirect costs or savings: None

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(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: This regulation is being revised for quadrennial review.

TIERING: Was tiering applied? No. This regulation is revised to comply with technical requirements mandated by Senate Bill 2 and House Bill 901. Eligibility for assistance programs must be applied on a consistent and equitable basis throughout the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. KRS 13A.120 and 194.050.
2. State compliance standards. None
3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:060. Delegation of power for oaths and affirmations.

RELATES TO: KRS 205.170
STATUTORY AUTHORITY: KRS 13A.120, 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a money payment program under Title IV-A of the Social Security Act and to provide supplemental payments to aged, blind or disabled persons. In the administration of the Title IV-A and state supplementation programs, staff of the cabinet is required by various federal law and regulations and state law to obtain information from applicants and recipients of the programs under oath or affirmation. KRS 205.170 empowers the Secretary for Human Resources or his duly authorized representative to administer oaths and affirmations in the administration of the programs. This regulation sets forth the designation by the secretary of certain employees of the cabinet to administer oaths and affirmations to applicants and recipients of money grants in limited situations.

Section 1. Specific Worker Designation. Field services supervisors, field services managers and regional program managers of the Department for Social Insurance in the performance of their duties in the various counties of the Commonwealth are designated as duly authorized representatives of the Secretary of the Cabinet for Human Resources to administer oaths and affirmations to recipients for the purpose of obtaining their sworn statement regarding a claim that a check issued pursuant to the money payments programs of the cabinet has been lost, misplaced or stolen.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 12, 1989
FILED WITH LRC: July 14, 1989 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1989 at 9 a.m. in the Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1989, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall
(1) Type and number of entities affected: None
(a) Direct and indirect costs or savings to those affected: None
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: None
(a) Direct and indirect costs or savings: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(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: This regulation is being revised for quadrennial review.
TIERING: Was tiering applied? No. This regulation is revised to comply with technical requirements mandated by Senate Bill 2 and House Bill 901. Eligibility for assistance programs must be applied on a consistent and equitable basis throughout the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. KRS 13A.120 and 194.050.
2. State compliance standards. None
3. Minimum or uniform standards contained in the federal mandate. None
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 3:080. Contingency plan.

RELATES TO: KRS 194.050
STATUTORY AUTHORITY: KRS 13A.120, 194.050
NECESSITY AND FUNCTION: The Cabinet for Human

Resources has responsibility to administer a Food Stamp Program as prescribed by the Food Stamp Act of 1977, as amended, and 7 CFR [Part] 270 through 280. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation sets forth the process used by the cabinet in the administration of the contingency plan in the event a reduction, suspension, or cancellation of food stamp benefits is ordered by the Department of Agriculture, Food and Nutrition Service.

Section 1. Allotment Reduction. If a reduction, suspension, or cancellation of benefits is ordered by the Food and Nutrition Service (FNS), the following procedures will be applicable:

(1) If the action is a benefit reduction, the Thrifty Food Plan amounts for all household sizes shall be reduced by a percentage specified by FNS. FNS will specify whether minimum benefits are to be provided.

(2) If the action in effect is a suspension or cancellation, eligible households shall have their allotment levels calculated as usual. However, no allotments shall be issued for the month(s) the suspension or cancellation is in effect.

Section 2. Application and Certification Process. Applications shall continue to be accepted and processed in accordance with 7 CFR [Part] 273, except as provided below.

(1) Benefits shall be reduced, suspended or cancelled as FNS orders for the affected month(s).

(2) During a cancellation, households eligible for expedited service shall be processed in accordance with time frames set forth in 7 CFR 273.2(i).

Section 3. Restoration of Benefits. (1) Allotments or portions of allotments representing restored or retroactive benefits for a prior unaffected month shall not be reduced, suspended or cancelled, even though they are issued during an affected month.

(2) Households whose allotments are reduced or cancelled shall not be entitled to the restoration of lost benefits at a future date. However, restoration of benefits to affected households shall be provided if FNS determines that a surplus of funds exists as a result of the reduction or cancellation.

Section 4. Fair Hearings. In accordance with 7 CFR 271.7(f), any household which has its allotment reduced, suspended, or cancelled as a result of an order issued by FNS may request a fair hearing if it disagrees with the action subject to the following conditions:

(1) Fair hearings shall [will] be held only when the request for a fair hearing is based on a household's belief that its benefit level was computed incorrectly under this regulation or that this regulation was misapplied or misinterpreted.

(2) Households who are merely disputing the fact that a reduction, suspension or cancellation was ordered shall be denied a fair hearing.

(3) Households shall not have the right to a continuation of benefits pending a fair hearing; however, retroactive benefits may be granted if it is determined that the household's benefits were reduced by more than the percentage ordered by FNS.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: July 12, 1989
FILED WITH LRC: July 14, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1989 at 9 a.m. in the Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1989, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall

(1) Type and number of entities affected: 161,043 households.

(a) Direct and indirect costs or savings to those affected: None

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: This plan shall not be implemented unless ordered by the Department of Agriculture, Food and Nutrition Service.

(a) Direct and indirect costs or savings: None

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(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 regulation is being revised to conform to technical requirements mandated by House Bill 901.

TIERING: Was tiering applied? No. Eligibility for the food stamp program must be applied on a

consistent and equitable basis throughout the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Food Stamp federal regulations at 7 CFR 271.7.
2. State compliance standards. This regulation outlines the procedures for authorizing food stamp benefits in the event that a reduction, suspension or cancellation of food stamp benefits is ordered by the U.S. Department of Agriculture, Food and Nutrition Service.
3. Minimum or uniform standards contained in the federal mandate. The federal regulations require state agencies to operate a contingency plan in the event of an FSN imposed restriction on federal issuances.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. The state agency operates allotment reduction procedures in accordance with federal regulations.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None - stricter standard will not be imposed.

CABINET FOR HUMAN RESOURCES
Department for Social Services
(Proposed Amendment)

905 KAR 6:010. Standards.

RELATES TO: KRS 273.405 to 273.453 [273.410 to 273.468]
STATUTORY AUTHORITY: KRS 194.050, 273.448 [Chapter 273]
NECESSITY AND FUNCTION: This regulation, which relates to the operation and oversight of community action agencies, is being promulgated pursuant to the mandate of KRS 273.448 that the state administering agency shall "establish standards in accordance with applicable state and federal laws and regulations by which administrative, fiscal and programmatic effectiveness of the act in the Commonwealth shall be measured."

Section 1. Scope. (1) This regulation relates [is related] to the administration of community action agencies in regard to Community Services Block Grant programs funded for and on the behalf of Kentucky residents meeting poverty income guidelines issued by the U.S. Department of Health and Human Services.

Section 2. Definitions. [(1) "Board of directors" means the governing board of a community action agency.]
(1) [(2)] "Cabinet means the Cabinet for Human Resources. ["Community action agency (CAA)" means a political subdivision or a private nonprofit corporation organized for the purpose of alleviating poverty within a community or specific geographic area.]
(2) [(3)] "Community Services Block Grant (CSBG)" means Community Services Block Grant funds made available by P.L. 97-35 or its successors. ["Cabinet" means the Cabinet for Human Resources.]
(3) [(4)] "Community Action Board" means the board of directors of a community action agency which is a political subdivision. ["Department" means the Department for Social Services.]
(4) "Governing Board" means the board of directors of a private nonprofit community action agency.
(5) "Department" means the Department for Social Services. ["Community Services Block Grant (CSBG)" means Community Services Block Grant funds made available by P.L. 97-35 and its successors.]
(6) "Designating official" means the chief elected official(s) of the eligible political subdivision or subdivisions where such political subdivision(s) is a community action agency.

Section 3. Board of Directors. (1) Each community action agency shall establish and maintain a board of directors in accordance with KRS 273.437 and 273.439.
[(2) The board of directors shall develop written personnel rules and regulations including, but not limited to:]
[(a) Job classifications;]
[(b) Specifications;]
[(c) A compensation plan;]
[(d) Attendance and leave policies;]
[(e) Fringe benefits;]
[(f) Affirmative action;]
[(g) Personnel grievance procedures; and]
[(h) Hiring and firing practices.]
[A copy of the personnel rules and regulations shall be available to all staff.]
(2) [(3)] Governing boards and community action boards [The board of directors] shall adopt written bylaws. The bylaws shall include, but not be limited to:
(a) The purpose of the agency;
(b) Duties and responsibilities of the board;
(c) [(b)] Number of members;
(d) [(c)] Qualifications for board memberships;
(e) [(d)] The types of membership;
(f) [(e)] The method of selecting members;
(g) [(f)] Terms of members;
(h) [(g)] Officers and duties;
(i) [(h)] Method of election of officers and chairpersons;
(j) [(i)] Standing committees, if any;
(k) [(j)] Provision for approval of [all] programs and budgets;
(l) [(k)] The frequency of board meetings and attendance requirements; and
(m) [(l)] Provision for official record of meetings and action taken.
[The board of directors shall elect its officers and executive committee, if any.]
(3) [(4)] The boards and the designating officials [of directors] may delegate the responsibility to carry out the program and fiscal requirements to the executive director; but shall not delegate final approval, responsibility, accountability, or direction of policy.

Section 4. Board [of Directors] Meetings. (1) All board meetings shall be open to the public except where such a requirement constitutes a breech of an individual's right to confidentiality. A simple majority shall constitute a quorum for all board meetings. Roberts Rules of Order shall be applicable to board meetings.
(2) The meetings of governing boards and community action boards [the board of directors]

shall be recorded and a written record made. The minutes shall include, but not be limited to:

(a) Date, time and place of meeting;

(b) Names of members attending;

(c) Topics discussed, problems, recommendations made or presented, and plans for change and improvements;

(d) Decisions reached and actions taken; [, target dates for implementation or recommendations; and]

(e) The executive director's report and such other reports as are presented; and

(f) Recommendations made by the community action board to designating officials of the eligible political subdivision(s).

The minutes shall be approved by the board of directors and signed by the appropriate officer. A copy of the minutes shall be distributed in timely fashion to each board member, the executive director, and the Department for Social Services.

Section 5. Administration. (1) Each community action agency in accordance with KRS 273.441 and 273.443, and with the knowledge and concurrence of appropriate officials and boards as required in KRS 273.437 and 273.439, shall: [The board of directors shall]

(a) Submit such reports, records, or other information the department deems necessary to fulfill requirements to determine fiscal, administrative, and programmatic effectiveness in their utilization of CSBG funds.

(b) Develop written personnel rules and regulations including, but not limited to:

1. A job classification plan including the provision of a systematic arrangement of job positions in the agency indicating title and related duties and responsibilities for each position. For those positions which are sufficiently similar as to the duties performed and to the scope of responsibility, equal pay ranges shall be allocated to the same job classification. These shall be reviewed at least every four (4) years;

2. Job specifications including for each job classification, the required education, experience, training, skills and other qualifications required. These shall be reviewed at least every four (4) years;

3. A compensation plan including the provision of a pay plan for all agency employees outlining pay grades or salary rates, salary adjustments, salary advancements, and overtime adjustments as appropriate for the job classifications. All rates of pay shall be consistent with the functions outlined in the job classification plan. These shall be reviewed at least every four years;

4. Attendance and leave policies including the accumulation and credit of annual leave, sick leave, compensatory or overtime leave, military leave, leave related to the birth or adoption of a child, court leave, voting leave, absence without leave, and for other conditions of specific leave. These shall be reviewed at least every four (4) years;

5. A fringe benefit plan including the coverage and conditions of those items provided by the agency without affecting basic salary or wage rates such as hospitalization insurance, dental insurance, holidays, disability leave, personal leave, retirement or pension, and deferred compensation. These shall be reviewed at least every four (4) years.

6. Affirmative action including a policy statement that it is the agency's intention to give equal opportunity in hiring, advancement opportunities and in work assignments regardless of race, color, handicap, religion, sex, age, or national origin;

7. Personnel grievance procedures including a plan for resolving employee grievances and complaints. This procedure shall describe the method that the agency follows when an employee is dissatisfied with some aspect of his working conditions. The procedure should outline how the employee files the complaint, who reviews the complaint, who hears the complaint, who may attend the hearing, length of time for the hearing decision, and the next level of appeal if the employee is still dissatisfied with the hearing results; and

8. Hiring and firing practices, including a plan for hirng of employees, promotions, demotions, job postings and advertisements, resignations, lay-off procedures, disciplinary actions, and dismissal procedures.

9. A copy of the personnel rules and regulations shall be available to all staff.

(c) [(2) The board of directors shall] Assure that there is no discrimination against [staff,] applicants or recipients of services because of race, color, age, sex, religion, creed, ancestry, or national origin.

(d) [(3) The board of directors shall] Be responsible for compliance with all conditions of all contracts and grants, and with appropriate state and federal [applicable] laws, [and] regulations, and cost principles.

(e) [(4) The board of directors shall] Indemnify the cabinet [department] against any and all claims, including attorney fees and other costs of litigation which may result from damage caused by agency's [CAA's] employees or the negligent acts or omissions of the agency's [CAA's] agents, employees or subcontractors.

(f) [(5) The board of directors shall] Assure that all notices, information pamphlets, research reports and similar public notices prepared and released by the community action agency [CAA] pursuant to its contract for CSBG funds shall include the statement: "This project is funded, in part, under a contract with the Cabinet for Human Resources with funds from the Community Services Block Grant Act of the U.S. Department of Health and Human Services."

(g) [(6) The board of directors shall] Assure that no employee or representative of a community action agency [CAA] with procurement authority shall participate either directly or indirectly in any activities that are in conflict with the [these] provisions of [stated in] KRS 45A.455.

(2) Each community action agency with the knowledge and concurrence of appropriate officials and boards, shall develop written fiscal and program operation policies and manuals which are periodically reviewed and updated.

[Section 6. Program. The board of directors shall develop written fiscal policies and a program manual which addresses each service program. The manual is to be periodically revised and kept up to date.]

[(1) The board of directors shall comply with, but not be limited to, the following requirements:]

(a) Fiscal records shall be maintained in

accordance with generally acceptable accounting procedures and practices and in conformity with the CSBG Audit Guide published by the department;

(b) A current written financial report shall be presented to the board of directors at least quarterly [the first meeting following the close of each quarter] or more frequently if requested by the board or the cabinet;

[(c) Financial records shall be audited by Cabinet for Human Resources auditors following the close of each fiscal year and a copy of the audit report provided the board; and]

[(d) All CAAs shall comply with applicable portions of the Federal Administration of Grants, Title 45 CFR Part 74, OMB A-122 and amendments thereto.]

(c) [(2)] The program manual which may be characterized as an operations manual, shall include, but not be limited to:

1. [(a)] Criteria for determining eligibility of individuals for all programs;

2. [(b)] Intake process including information needed to approve an applicant;

3. [(c)] Procedures for accepting referrals from other agencies;

4. [(d)] Records to be kept on applicants and clients and statistical data on intake;

5. [(e)] Reports to be made to the cabinet and frequency;

6. [(f)] Procedures to be followed when an applicant is found ineligible; [and]

7. [(g)] Complaint procedures and hearings; and

8. [(3) The board of directors shall ensure and approve overall program plans and priorities for the agency including provisions for evaluating program accomplishments, realistic and attainable short-term and long-term goals stated in measurable terms,] A description of each program's organizational structure, major lines of authority and areas of responsibility within the programs.

9. Procedures for documenting the extent of participation of the poor in agency CSBG programs.

[(4) The board of directors shall ensure documentation in writing of the extent of the participation of the poor in the programs.]

(3) [(5)] The community action agency [board of directors] shall assure that clients dissatisfied with services rendered under CSBG contracts shall be provided an opportunity to file a formal complaint and to be heard at the local level. If the grievance is not resolved as a result of the complaint procedure, the client shall be provided an opportunity to appeal a decision resulting from the local hearing process to the Department for Social Services. The complaint and hearing procedures shall be posted in each agency office.

[(6) The board of directors shall ensure the development of a written agreement with the local departmental Social Services Manager that shall include, but not be limited to, such items as: exclusive roles, services to be provided, a joint referral mechanism, and the assurance that through cooperative efforts both parties have been able to identify and address the vital services needed by the CAA geographic area. This agreement is to be submitted to the department for review and approval.]

[Section 7. Personnel. (1) The executive director shall be appointed by the board of directors in accordance with the personnel policies and procedures. The executive director shall serve at the pleasure of the board and shall perform such functions as delegated to him/her in writing by the board.]

[(2) The board of directors shall ensure the development of a written staffing pattern including job classifications and compensation with a well defined organizational chart clearly delineating lines of authority, agency and program heads and relationships of all employees. The staffing pattern shall be sufficient to carry out the programs of the agency.]

(4) [(3)] The community action agency [board of directors] shall ensure the design, implementation and documentation an in-service training program for staff. Additional training shall also be documented for staff.

Section 6. Income Eligibility, Validation, and Determination. (1) To be eligible to participate in services and programs funded with CSBG funds, individuals' and families' incomes shall be limited to those that fall at or below 100 percent of the current poverty level as determined by the Director of the United States Office of Management and Budget and published in the federal register. When an individual or family receives only information and referral services, it can be done without regard to income. If screening for programs were the eligibility factor is higher, the factor for that other program applies.

(2) To receive a service or to participate in a CSBG funded program, an individual or a family shall meet the income criteria established in subsection (1) of this section. An individual's or family's declaration of income will generally be acceptable as proof of eligibility. The individual or family head shall sign a document attesting to the amount of declared income and their eligibility to receive services. An agency or its worker may require that a client produce proof of eligibility; if proof of eligibility is obtained, a dated copy of the client's documentation shall be placed in the client's file.

(3) Initial eligibility shall be determined within thirty (30) days of application, with redetermination any time thereafter when there is a change in circumstances but not less than annually.

Section 7. [8.] Maintenance of Case Records. (1) A written log shall be maintained by the community action agency on all referrals made by outside agencies or individuals including date of referral, referring agents, reason for referral and disposition.

(2) A CSBG case record shall be maintained on each applicant accepted for ongoing service. The record shall include:

(a) Intake information. The form shall include, but not be limited to:

1. Name, address, and telephone number of the applicant;
2. Birthdate;
3. Sex;
4. Race or ethnic origin;
5. Income;
6. Level of education completed;
7. [6.] Presenting problems;
8. [7.] Date;
9. [8.] Staff member gathering information;
10. [9.] Referral agent, if any;
11. [10.] Approval or disapproval and date; and

12. [11.] The signature of the person making the determination or the referral.

(b) A service plan;

(c) Chronological recording of all supervisory and staff contacts with clients reflecting work accomplished during service contact;

(d) Copies of correspondence and other pertinent information;

(e) Recertification, of eligibility, if appropriate [needed];

(f) Fees, charged or collected, if any; and

(g) Information regarding termination of services.

(3) Each community action agency [The board of directors] shall ensure that client case records are maintained in conformity with existing laws pertaining to confidentiality. The records shall be maintained in locations which are secure and convenient to service delivery staff.

(4) The community action agency [board of directors] shall ensure development and implementation of a written client case records retention and disposal schedule.

(5) If the agency receives one-fourth (1/4) or more of its funds from state or local authority, the agency [board of directors] shall comply with the open records law, KRS 61.870-61.884 [991].

Section 8. [9.] Monitoring and Evaluation Reports. Each community action agency, with the knowledge and concurrence of appropriate officials and boards are required in KRS 273.437 and 273.439 to meet the following:

(1) [The board of directors shall] Establish effective controls that are designed to achieve and maintain maximum standards of service delivery and utilization and conservation of physical and financial assets.

(2) [The board of directors shall] Ensure the development of a data collection and recordkeeping system that allows for administrative, program and fiscal monitoring and evaluation.

(3) [The board of directors shall] Ensure the design and implementation of program reviews and studies to determine under or over utilization of each program, progress toward goals and objectives.

(4) [The board of directors shall] Permit monitoring, review, and evaluation of the total agency operation by the Department for Social Services or its designee in accordance with the terms of the contract and appropriate federal and state laws.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 12, 1989
FILED WITH LRC: June 22, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on August 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1989: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Thyra Whitford

(1) Type and number of entities affected: 23 federally funded community action agencies will be affected by the proposed regulations. The regulations will affect all of the community action agencies throughout the state as all receive federal Community Services Block Grant funds from the Department of Social Services.

(a) Direct and indirect costs or savings to those affected: There will not be any direct and indirect costs or savings to the community action agencies as the proposed regulations only add detail and clarify issues that were required or recommended by the federal monitors during their last program site review. Failure to make the requested changes may result in the reduction or loss of federal funding for these programs.

1. First year: There will not be any direct and indirect costs or savings during the first year for the community action agencies because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

2. Continuing costs or savings: There will not be any continuing costs or savings for the community action agencies because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the community action agencies because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

(b) Reporting and paperwork requirements: There will not be any change in the community action agencies reporting and paperwork requirements because the agencies are currently regulated by the same kind of regulations. For example, the agencies are monitored each fiscal year by the Department for Social Services using the current regulations during their review process. If any deficiencies are discovered during the review, the agency has to prepare and submit a plan of corrective action to the department. The proposed regulations will not change the monitoring review process nor the plan of corrective action process. There will not be any increase because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

(2) Effects on the promulgating administrative body: There will not be any cost or saving to the Department for Social Services as the proposed regulations only add detail and clarify issues in the current regulations. The proposed regulations will improve the language of the regulation but does not effect the way in which the department administers the community action agencies.

(a) Direct and indirect costs or savings: There will not be any direct and indirect costs or savings to the Department for Social Services as the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

1. First year: There will not be any direct and indirect costs or savings during the first year for Department for Social Services because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

2. Continuing costs or savings: There will not be any continuing costs or savings for the Department for Social Services because the proposed regulations add detail and clarify issued in order to improve the already existing regulations.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or effect competition for the Department for Social Services because the proposed regulations add detail and clarify issued in order to improve the already existing regulations.

(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements because the community action agencies are currently regulated by the same kind of regulations. For example, the agencies are monitored each fiscal year by the Department for Social Services using the current regulations during their review process. If any deficiencies are discovered during the review, the agency has to prepare and submit a plan of corrective action to the department. The proposed regulations will not change the monitoring review process nor the plan of corrective action process. There will not be any increase because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect of state and local revenues as the proposed regulations will not affect the community action agencies' funds.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(6) Any additional information or comments: There is no additional comment or information.

TIERING: Was tiering applied? No. Tiering was not applied as the existing community action agencies are the only entities in the state that are eligible to receive Community Services Block Grant funds funded by the U.S. Department of Health and Human Services made available by P.L. 97-35 and its successors.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

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

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with requirements of Title XIX of the Social Security Act. KRS 205.520(3) empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the resource and income standards by which eligibility of the medically needy is determined.

Section 1. Resource Limitations and Exclusions of the Medically Needy. The following provisions are applicable with regard to computation of allowable resources:

(1) The upper limit for resources for family size of one (1) and for family size of two (2) is set at $2,000 and $4,000 respectively, effective January 1, 1989, with fifty (50) dollars for each additional member.

(2) A homestead, occupied or abandoned, household equipment, and farm equipment without limitation on value are excluded from consideration.

(3) Equity of $6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, is excluded from consideration. In addition, for AFDC related MA only cases the value of otherwise countable real property (whether income producing or nonincome producing) may be excluded from consideration for six (6) months if a good faith effort is being made to dispose of the property properly; an additional three (3) months may be allowed for the disposal at the request of the recipient if efforts to dispose of the property within the six (6) month period have been unsuccessful.

(4) Equity of $4,500 in automobiles is excluded from consideration; however, if an automobile is used for employment, to obtain medical treatment of a specific or regulation medical problem, of if specially equipped (e.g., as for use by the handicapped) the total value of such automobile is excluded.

(5) Burial reserves of up to $1,500 per individual, which may be in the form of burial agreement(s) (prepaid burials or similar arrangements), trust fund(s), life insurance policies, or other identifiable funds are excluded from consideration. The cash surrender value of life insurance is considered when determining the total value of burial reserves. When burial funds are commingled with other funds, the applicant has up to thirty (30) days to separately identify the burial reserve amount. Interest or other appreciation of value of an excluded burial reserve is excluded so long as such amount is left to accumulate as a part of the burial reserve.

(6) Burial spaces, plots, vaults, crypts, mausoleums, urns, caskets, and other repositories which are customarily and traditionally used for the remains of deceased

persons are excluded from consideration as a countable resource without regard to value.

(7) Resources determined in accordance with subsections (3), (4), and (5) of this section to be in excess of excluded amounts must be considered countable resources when determining whether the individual or family group exceeds the upper limits specified in subsection (1) of this section. If resources exceed the upper limits, the individual or family group is ineligible.

(8) The following exclusions are also applicable as stated:

(a) Proceeds from the sale of a home are excluded from consideration for three (3) months from date of receipt if used to purchase another home.

(b) Resources of a blind or disabled person necessary to fulfill an approved plan for achieving self-support are excluded from consideration.

(c) Payments or benefits from federal statutes, other than Title XVI (Supplemental Security Income), are excluded from consideration (as either a resource or income) if precluded from consideration in Title XVI determinations of eligibility by the specific terms of the statute.

(d) Disaster relief assistance is excluded from consideration.

(e) Cash or in-kind replacement for repair or replacement of an excluded resource is excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

(f) Effective with regard to determinations of eligibility made on or after April 16, 1988, and applicable with regard to the usual three (3) month period for retroactive eligibility, the life interest that Medicaid applicants or recipients may have in real estate or other property shall be excluded from consideration as an available resource.

(g) Effective with regard to determinations of eligibility for periods beginning on or after December 1, 1988 real property is excluded from consideration for adult medical assistance and state supplementation recipients if:

1. Such property is jointly owned and its sale would cause undue hardship due to loss of housing for the other owner or owners; or
2. Its sale is barred by a legal impediment; or
3. The owner's reasonable efforts to sell have been unsuccessful.

(h) Cash payments intended specifically to enable applicants or recipients to pay for medical or social services are not considered as available income or as a resource in the month of receipt or for one (1) calendar month following the month of receipt. If the cash is still being held at the beginning of the second month following its receipt, it will be considered a resource.

(i) Effective with regard to determinations of eligibility made on or after June 1, 1989, any amount received which is a result of an underpayment (i.e., which is a retroactive payment) of benefits from Title II (Federal Old Age, Survivors, and Disability Insurance Benefits) or Title XVI (Supplemental Security Income) is excluded as a resource for the first six (6) months following the month in which the amount is received or for the first nine (9) months following receipt if receipt is during the period of October 1, 1987 through September 30, 1989.

Section 2. Income and Resource Exemptions. Income and resources which are exempted from consideration for purposes of computing eligibility for the comparable money payment program (Aid to Families With Dependent Children and Supplemental Security Income) shall be exempted from consideration by the cabinet, except that the AFDC earned income disregard (first thirty (30) dollars and one-third (1/3) of the remainder) may not be allowed in determining eligibility for medical assistance only.

Section 3. Income Limitations of the Medically Needy. Eligibility from the standpoint of income is determined by comparing adjusted income as defined in Section 4 of this regulation, of the applicant, applicant and spouse, or applicant, spouse and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	$2,600 [2,500]	$217 [208]
2	3,200 [3,000]	267 [250]
3	3,700 [3,500]	308 [292]
4	4,600 [4,400]	383 [367]
5	5,400 [5,100]	450 [425]
6	6,100 [5,800]	508 [483]
7	6,800	567

For each additional member, $720 [600] annually or sixty (60) [fifty (50)] dollars monthly is added to the scale. The change shown in this section of the regulation shall be effective with regard to determinations of eligibility made on or after July 1, 1989 [1988].

Section 4. Additional Income Considerations. (1) In comparing income with the scale as contained in Section 3 of this regulation, gross income is adjusted as follows in all cases with exceptions as contained in Section 5 of this regulation:

(a) In cases of adults and children, the standard work related expenses of adult members and out-of-school youth are deducted from gross earnings. For those with either full-time or part-time employment the standard work expense deduction is seventy-five (75) dollars per month. All earnings of an in-school child are disregarded. Full-time and part-time employment, and school attendance, shall be as defined in 904 KAR 2:016, Standards for need and amount; AFDC.

(b) In cases of adults and children, dependent care as a work expense is allowed not to exceed $160 per child or incapacitated adult per month for full-time employment (as defined in subsection (1) of this section) or $110 per child or incapacitated adult per month for part-time employment (as defined in subsection (1) of this section). A dependent care work expense deduction is allowed only when the dependent is included in the assistance unit.

(2) The following special factors are applicable for pregnant women, infants and children eligible pursuant to Section 9401 of the Omnibus Budget Reconciliation Act of 1986 (OBRA 86):

(a) Such pregnant women and children may have family income up to, but not to exceed, 100 percent of the official poverty income

guidelines as promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of July 1 of the particular state fiscal year;

(b) Pregnant women, infants and children who would be eligible under the provisions of OBRA 86 except for income in excess of the allowable standard may not become eligible by spending down to the official poverty guidelines;

(c) Effective with regard to determinations of eligibility made on or after June 1, 1989, available resources shall be disregarded;

(d) The Aid to Families with Dependent Children (AFDC) budgeting methodology (except for application of the AFDC earned income disregard of the first thirty (30) dollars and one-third (1/3) of the remainder) shall be used; and

(e) Changes of income that occur after the determination of eligibility of a pregnant woman shall not affect such pregnant woman's eligibility through the remainder of the pregnancy including the usual post partum period which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy.

(3) Effective with regard to determinations of eligibility for Medical Assistance furnished on or after October 1, 1988, pregnant women and children eligible pursuant to Section 4101 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) shall be subject to the same special factors applicable to pregnant women, infants, and children as specified in Section 4(2)(b), (c), (d) and (e) of this regulation, and this additional special factor: such pregnant women and children under age one (1) may have family income up to, but not to exceed, 125 percent of the official poverty income guidelines as promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of July 1 of the particular state fiscal year.

(4) The following special income and resource limits and provisions are applicable for determinations of eligibility of qualified Medicare beneficiaries for the special Title XVIII benefits described in 907 KAR 1:006, effective for determinations of eligibility made on or after January 1, 1989.

(a) The following income upper limits, shown as a percentage of the official poverty income level, shall be effective on the specified dates: January 1, 1989, eighty-five (85) percent; January 1, 1990, ninety (90) percent; January 1, 1991, ninety-five (95) percent; and January 1, 1992, 100 percent.

(b) The official poverty income guidelines will be those promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of July 1 of the particular state fiscal year.

(c) The income disregards to be used will be those applicable in the federal Supplemental Security Income (SSI) program.

(d) Resources shall be limited to no more than twice the allowable amount for the federal Supplemental Security Income (SSI) program.

Section 5. Individuals in Chronic Care Institutions. For aged, blind or disabled individuals in chronic care facilities, the following requirements with respect to income limitations and treatment of income shall be applicable.

(1) In determining eligibility, the appropriate medically needy standard is used as are appropriate disregards and exclusions from income. In determining patient liability for the cost of institutional care, gross income is used as shown in subsections (2) and (3) of this section.

(2) Income protected for basic maintenance, effective July 1, 1986, is forty (40) dollars monthly in lieu of the figure shown in Section 3 of this regulation. All income in excess of forty (40) dollars is applied to the cost of care except as follows:

(a) Available income in excess of forty (40) dollars is first conserved as needed to provide for needs of the spouse and minor children up to the appropriate family size amount from the scale as shown in Section 3 of this regulation.

(b) Remaining available income is then applied to the incurred costs of medical and remedial care that are not subject to payment by a third party (except that, effective for determinations of eligibility for periods beginning on or after December 1, 1988, the incurred costs may be reimbursed under another public program of the state or political subdivision of the state), including Medicare and health insurance premiums and medical care recognized under state law but not covered under the state's Medicaid plan.

(3) The basic maintenance standard allowed the individual during the month of entrance into or exit from the long term care facility shall reasonably take into account home maintenance costs.

(4) When an individual loses eligibility for a supplementary payment due to entrance into a participating long term care facility, and the supplementary payment is not discontinued on a timely basis, the amount of any overpayment is considered as available income to offset the cost of care (to the Medical Assistance Program) if actually available for payment to the provider.

(5) Effective with regard to determinations of eligibility made on March 16, 1989 and thereafter, Supplemental Security Income (SSI) or state supplementation payments received by specified institutionalized Medicaid eligible individuals in accordance with Section 1611(e)(1)(G) of the Social Security Act shall be excluded from consideration as either income or a resource, and such payments may not be used in the posteligibility process to increase the patient liability.

Section 6. Spend-down Provisions. No technically eligible individual or family is required to utilize protected income for medical expenses before qualifying for medical assistance. Individuals with income in excess of the basic maintenance scale as contained in Section 3 of this regulation may qualify for medical assistance in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period; effective October 1, 1988, medical expenses incurred in periods

prior to the quarter for which spend-down eligibility is being determined may be used to offset excess income so long as such medical expenses remain unpaid at the beginning of the quarter and have not previously been used as spend-down expenses. Effective for determinations of eligibility for periods beginning on or after February 1, 1989, the incurred costs may be reimbursed under another public program of the state or political subdivision of the state and still be considered incurred costs of the applicant or recipient.

Section 7. Consideration of State Supplementary Payments. For an individual receiving state supplementary payments, that portion of the individual's income which is in excess of the basic maintenance standard is applied to the special need which results in the supplementary payment.

Section 8. Special Needs Contributions for Institutionalized Individuals. Voluntary payments made by a relative or other party on behalf of a long term care facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the Medical Assistance Program. Examples of such special services or items include television and telephone service, private room or bath, private duty nursing services, etc.

Section 9. Pass-through Cases. Increases in social security payments due to cost of living increases but for which the individual would be eligible for supplemental security income benefits or state supplementary payments, and which are received after April 1, 1977, shall be disregarded in determining eligibility for medical assistance benefits; such individuals shall remain eligible for the full scope of program benefits with no spend-down requirements. Beginning on November 1, 1986, the additional amount specified in Section 12202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) shall be disregarded, i.e., that amount of social security benefits to which certain widows or widowers were entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) such individuals would be eligible for federal supplemental security income benefits; eligibility as a result of such disregard shall not exist prior to July 1, 1986. To be eligible, applicants must apply by July 1, 1988.

Section 10. Relative Responsibility. For purposes of the Medical Assistance Program, spouses are considered responsible for spouses and parents are considered responsible for dependent minor children. Effective for determinations of eligibility made on or after December 1, 1987, children under age twenty-one (21) living with parents (but not including children age eighteen (18) and above who are blind or disabled) are considered dependent minor children for purposes of deeming of income and resources under the Medicaid Program even if such children are emancipated under state law. This responsibility, with regard to income and resources, is determined as follows:

(1) "Living with" is defined as sharing a common living arrangement or household, but not including living in the same room in a long term care facility. "Living apart" is defined as not sharing a common household, whether due to estrangement, disability, or illness. Effective July 1, 1987, a husband and wife sharing a room or comparable accommodation in a long term care facility may be considered to be "living with" each other after they have continuously shared such a room or accommodation for six (6) months, if treating such husband and wife as living apart would prevent either of them from receiving medical assistance.

(2) In cases of aged, blind, or disabled applicants or recipients living with their eligible spouse, total resources and adjusted income of the couple is considered in relation to the resource and income limitations for a family size of two (2), or if other dependents live with the couple, the appropriate family size including the dependents.

(3) In cases of aged, blind or disabled applicants or recipients living with an ineligible spouse, income from the ineligible spouse shall be deemed as available to the eligible spouse as outlined below.

(a) Determine the potential spend-down amount of the eligible individual by comparing the countable income to the Medically Needy Income Level (MNIL) for one (1) as shown in Section 3 of this regulation.

(b) Allocate to other dependents in the household from the ineligible spouse income in an amount equal to one-half (1/2) of the MNIL for a family size of one (1) for each dependent.

(c) If the ineligible spouse's income is more than one-half (1/2) of the MNIL for a family size of one (1), combine the income of the ineligible spouse with that of the eligible individual and compare that figure with the MNIL for a couple to determine the spend-down amount.

(d) Compare the amount resulting from paragraph (a) of this subsection with the result of paragraph (c) of this subsection and determine eligibility using the spend-down amount, if any, which is greater.

(e) Resources shall be considered in the same manner as for an eligible spouse.

(4) In cases of aged, blind, or disabled couples, living apart for any reason other than institutionalization, both of whom are concurrently applying for or receiving MA only, income and resources are considered in relation to resource and income limitations for a family size of two (2), or if other dependents live with either spouse, the family size including such dependents, but only for the first six (6) months after the month of separation, that such couple lives apart; however, if mutual consideration of income and resources causes the individuals to lose eligibility as a couple, eligibility for the individuals is determined in accordance with subsection (4) of this section. If the separation is due to the institutionalization of a spouse, mutual consideration of income ceases in the month after the month of separation but resources are considered mutually available to each other the month of separation, and for the six (6) months following that month unless such would act to preclude eligibility of the individual in long-term care.

(5) In cases of an aged, blind, or disabled individual living apart from a spouse (for a reason other than institutionalization) who is not a recipient of MA only, eligibility is

determined on a couple basis for the month of separation and as a single individual after the month of separation.

(6) For an individual whose case is being worked as if he were a single individual due to living apart from his spouse, as shown in Section 10(3) and (4) of this regulation, who has jointly held resources with his spouse, one-half (1/2) of the jointly held resource would be considered a resource; except that the entire amount of a jointly held checking or savings account is considered a resource if the resource may be accessed independently of the spouse.

(7) Total resources and adjusted income of parent(s) and children for whom application is made is considered in relation to limitations for family size. Excluded, however, is the income and resources of an SSI parent and the SSI essential person spouse whose medical assistance eligibility is based on inclusion in the SSI case. Resources and income of an SSI essential person, spouse or nonspouse, whose medical assistance eligibility is not based on inclusion in the SSI case must be considered.

(8) In cases of a blind or disabled child under eighteen (18) living with his parent(s) (including stepparent, if applicable), total resources and adjusted income of the parent(s) is related to limitations for family size, including the applicant or recipient child and other dependent children of parent using the adult scale. The income and resources of the parent(s) shall also be considered available to such child who is aged eighteen (18) through twenty-one (21), if in school, when to do so will work to the child's benefit and the individual was aged eighteen (18) through twenty-one (21) in September, 1980, and was MA eligible at that time.

(9) Income and resources of parent(s) are not considered available to a child living apart from the parent(s), but any continuing contribution actually made is considered as income. Living apart may mean living in a medical institution, special school or in foster care and such status continues even if the child makes visits to the parent(s) home. For comparison with the resource and income limitations, the child's individual resources and income are considered in relation to family size of one (1). Effective with regard to determinations of eligibility for periods beginning on or after December 1, 1988, the following criteria should be used to determine whether a child who has been living with his parents and is institutionalized in a psychiatric facility is to be considered as living apart from his parents: a child is to be considered as living with his parents unless he has been in the facility for thirty (30) or more days or a physician specifies that it is anticipated he will remain in the facility for thirty (30) or more days (regardless of whether the child actually does so); a child who is institutionalized in a psychiatric facility but is legally committed to or in the custody of the Cabinet for Human Resources is not to be considered as living with his parents.

(10) When a recipient (but not including a child) in a family case has income and resources considered in relation to family size and enters a long term care facility, his income and resources are considered in the same manner as previously for up to one (1) year with, effective with regard to determinations of eligibility made on or after February 1, 1988, the individual allowed forty (40) dollars as his basic maintenance standard. When a child in a family case is in the long term care facility, eligibility of the child is determined in the same manner for up to a year but his liability for the cost of care is determined by allowing to the child from his own income forty (40) dollars and considering the remainder available for the cost of care. (Note: in this situation any welfare payment made to the child is disregarded when determining liability for cost of care.) The eligibility of the individual, with regard to income and resources, shall be determined on the basis of living apart from the other family members whenever it becomes apparent that the separation will last for more than one (1) year.

Section 11. Treatment of Income of the Stepparent or Parent/Legal Guardian of a Minor Parent/Legal Guardian (referred to as a "Grandparent") and Effect on Eligibility of the Assistance Group Effective with Regard to Determinations of Eligibility Made On or After June 1, 1989. An incapacitated (as determined by the department) stepparent's income, or a grandparent's income, is considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. When the stepparent or grandparent living in the home is not being included in the family case, the stepparent's gross income is considered available to the spouse or the grandparent's gross income is considered available to the minor parent in accordance with the policies set forth in this section.

(1) Disregards/exclusions from income. The following disregards/exclusions from income shall be applied:

(a) The first seventy-five (75) dollars of the gross earned income of the stepparent or grandparent who is employed full time or part time (with full-time and part-time employment as defined in Section 4(1) of this regulation).

(b) An amount equal to the medically needy income limitations scale as shown in Section 3 of this regulation for the appropriate family size, for the support of the stepparent or grandparent and any other individuals (not including the spouse or minor parent) living in the home but whose needs are not taken into consideration in the medical assistance eligibility determination and are claimed by the stepparent or grandparent as dependents for purposes of determining his federal personal income tax liability.

(c) Any amount actually paid by the stepparent or grandparent to individuals not living in the home who are claimed by him as dependents for purposes of determining his personal income tax liability.

(d) Payments by the stepparent or grandparent for alimony or child support with respect to individuals not living in the household.

(e) Income of a stepparent or grandparent receiving supplemental security income.

(f) Verified medical expenses for the stepparent or grandparent and his dependents in the home.

(2) Determining eligibility of the grandchild(ren) and stepchild(ren). When a stepparent or grandparent has available income remaining after disregards/exclusions are

applied, the income may be deemed to the spouse (of the stepparent) or minor parent (child of the grandparent) but not to the stepchild(ren) or grandchild(ren). Eligibility of the stepchild(ren) or grandchild(ren) is determined in the following manner in order to take this requirement into consideration: consider only the income of the grandchild(ren) and minor parent, or stepchild(ren) and parent (spouse of the stepparent) as appropriate. The budget size would include the child(ren) and parent. If there is no excess, the child(ren) is eligible; if there is an excess, the excess amount may be spent down in the usual manner.

(3)(a) To determine separate eligibility of the minor parent (of the grandchild) or spouse (of a stepparent) when the eligibility of the grandparent or stepparent is not to be determined, consider the income of the child(ren) and his parent, and the actual amount available for deeming from the grandparent or stepparent. The budget size would include the child(ren) and parent (but not the grandparent or stepparent). If there is no excess, the minor parent or spouse (of a stepparent) is eligible; if there is an excess, the excess amount may be spent down in the usual manner.

(b) When the grandparent (of a minor parent) or the stepparent (spouse of the parent with children) are to be included in the case, eligibility of the minor parent or spouse cannot be determined separately but must be determined in combination with that of the grandparent or stepparent. The combined eligibility of the minor parent and grandparent or spouse and incapacitated stepparent is determined in the usual way including the available income of the grandparent or stepparent, the minor parent or spouse of the stepparent, and the grandchild(ren) or stepchild(ren) as appropriate. When the grandparent or incapacitated stepparent is included in the case, the amount excluded for the needs of the grandparent or stepparent in the determination of available income in subsection (1) of this section must be considered as available income for purposes of this determination of eligibility. If there is no excess, the minor parent and grandparent or spouse and incapacitated stepparent are eligible; if there is an excess, the excess amount may be spent down in the usual manner.

(4) When determining eligibility of individuals or family groups with excess income, uncovered incurred medical expenses of all members of the budget unit (and dependents of members of the budget unit whose needs are considered when determining the eligibility of that member) may be used to meet the spend-down amount(s).

Section 12. Companion Cases. When spouses or parent(s) and children living in the same household apply separately for assistance, relative responsibility must be taken into consideration.

(1) In the case of an application for assistance for a dependent child(ren), the income, resources and needs of the parent(s) must be included in the determination of need of the child(ren) even when the parent(s) applies for assistance for himself on the basis of age, blindness, or disability (except as shown in subsection (3) of this section).

(2) In the case of a spouse, income and resources of both spouses are combined and compared against the medically needy income and resources limits for a family size of two (2) even though a separate determination of eligibility shall be made for each individual.

(3) In the case of families with children with a parent eligible for supplemental security income (SSI), neither the income, resources, nor needs of the SSI eligible individual are to be included in the determination of eligibility of the children.

(4) A parent in a family case may request that one (1) or more children be technically excluded from the determination of eligibility due to income while a regular application for Medicaid eligibility is processed for other children in the family group. In this circumstance, the income and resources of the technically excluded child(ren) and the technically excluded child(ren)'s needs are excluded in the budgeting process when determining eligibility of the family group. A separate spend-down case(s) may then be established for the technically excluded child(ren); the income, resources and needs of the responsible relative or parent are included in the budget in accordance with usual criteria, and income/resources and needs of siblings in the other case may also be included in budgeting for the spend-down case if that works to the advantage of the technically excluded child(ren) for whom eligibility is being determined in the spend-down case. Excess income in the spend-down case may be spent-down using uncovered incurred medical care costs of any member of the family included in the budgeting process for the spend-down case.

Section 13. Treatment of Lump-sum Income. The following policy is effective January 1, 1986: for adult related cases, lump-sum income is prorated over the three (3) month period following the agency's notice of receipt by the client, with any amount spent by the client prior to notification of the agency deducted from the total considered available; any portion of the income remaining available after the three (3) month period is considered in relation to resource limitations; the exception to the treatment of lump sum income is specified in Section 1(8)(i) of this regulation; for AFDC related cases, lump sum income is divided by the medically needy income level and prorated over the resultant number of months. Effective February 1, 1989, lump sum income for individuals eligible under the federal poverty level standards specified in Section 4(2) and (3) of this regulation would be divided by the appropriate standard for the eligible group and prorated over the resultant number of months.

Section 14. Transferred Resources. The policy relating to transferred resources shown in this section is effective for determinations of eligibility for periods of time beginning on or after July 1, 1988 and transfers of property occurring on or after that date.

(1) When an institutionalized individual (defined as an individual in a skilled nursing facility, general intermediate care facility, psychiatric facility, mental hospital, or a participant in a hospice program who is in a skilled nursing or intermediate care facility, or a participant in the home and community based services waiver program or the alternate intermediate services program for the mentally

retarded so long as eligibility is being determined using the special income level) applies for medical assistance a period of ineligibility must be computed if at any time during the thirty (30) month period immediately preceding the application the individual disposed of property for less than fair market value. The period of ineligibility (beginning with the month in which the resources were transferred) shall be equal to the lesser of thirty (30) months or the number of months derived by dividing the total uncompensated value of the resources so transferred by the average cost, to a private patient at the time of the application, of nursing facility services in the state (either intermediate care or skilled nursing care as appropriate for the level of care).

(2) An individual shall not be ineligible for medical assistance by virtue of subsection (1) of this section to the extent that the conditions specified in Section 1917(c)(2)(B), (C) and (D) of the Social Security Act are met, nor shall an individual be ineligible for medical assistance due to transfer of resources for less than fair market value except in accordance with this section. Transfers of resources for less than fair market value occurring prior to July 1, 1988 shall not be considered in determinations of eligibility for periods beginning on or after July 1, 1988.

(3) The disposal of a resource, including liquid assets, at less than fair market value shall be presumed to be for the purpose of establishing eligibility unless the individual shows the transfer was in accordance with Section 1917(c)(2)(B) or (C)(i) of the Social Security Act or presents convincing evidence that the disposal was exclusively for some other purpose. If the purpose of the transfer is in accordance with Section 1917(c)(2)(B) or (C)(i) or is for some reason other than to qualify for medical assistance or if the transferred resource was considered an excluded resource at the time it was transferred, the value of the transferred resource is disregarded. If the resource was transferred for an amount equal to at least the assessed value for tax purposes, the resource will be considered as being disposed of for fair market value. Notwithstanding the preceding, if the assessed agricultural value is used for tax purposes the transfer is required to be for an amount equal to the fair market value.

(4) After determining that the purpose of the transfer was to become or remain eligible, the cabinet shall first add the uncompensated equity value of the transferred resource to other currently held resources to determine if retention of the property would have resulted in ineligibility. For this purpose, the resource considered available shall be the type of resource it was prior to transfer, e.g., if nonhomestead property was transferred, the uncompensated equity value of the transferred property would be counted against the permissible amount for nonhomestead property. If retention of the resource would not have resulted in ineligibility, the value of the transferred resource would thereafter be disregarded.

(5) If retention would result in ineligibility, the cabinet will compute a period of ineligibility as provided for in subsection (1) of this section.

(6) The uncompensated value may be excluded from consideration when good cause exists. A waiver of consideration of the uncompensated amount will be granted subject to the following criteria:

(a) "Good cause" means that an expense (or loss) was incurred by the individual or family group due to a natural disaster, fire, flood, storm or earthquake; or illness resulting from accident or disease; or hospitalization or death a member of the immediate family; or civil disorder or other disruption resulting in vandalism, home explosions, or theft of essential household items.

(b) The exclusion may not exceed the amount of the incurred expense or loss; the amount of the uncompensated value to be excluded cannot include any amount which is payable by Medicaid, Medicare, or other insurance.

Section 15. Special Provisions for AIS/MR Recipients. Medical assistance eligibility for participants in the program of alternative intermediate services for the mentally retarded (AIS/MR) shall be determined taking into consideration the special provisions contained in this section.

(1) Usual institutional deeming rules shall be applicable with regard to the categorically needy including all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level.

(2) AIS/MR services program participants who participate in the AIS/MR program for thirty (30) consecutive days (including any actual days of institutionalization within that period) and who have income not in excess of 300 percent of the SSI standard for an individual shall be determined to be eligible as categorically needy under a special income level (i.e., the special income level is 300 percent of the SSI standard). Income protected for basic maintenance of the AIS/MR participant in the posteligibility determination of patient liability for individuals eligible on the basis of the special income level of 300 percent of the federal SSI standard shall be the standard for the federal supplemental security income program in addition to the SSI general exclusion.

(3) When eligibility is determined using community deeming rules, the attributed cost of care against which monthly available income of the AIS/MR participant shall be applied shall be the projected annual average cost of care for all participants divided by twelve (12) and rounded to the nearest dollar. The amount protected for basic maintenance is the usual medically needy standard for the appropriate family size as shown in Section 3 of this regulation plus the SSI general exclusion.

(4) Eligibility shall continue on the same basis as for an institutionalized individual when the cost of care is greater than the recipient's adjusted monthly income or the recipient is eligible based on the special income level of 300 percent of the SSI level as specified in 907 KAR 1:011, Technical eligibility requirements.

Section 16. Special Provisions for Hospice Recipients. Medical assistance eligibility for participants under the Medicaid hospice benefit

shall be determined (when necessary to establish eligibility for medical assistance benefits for cases with income in excess of the usual basic maintenance standard) taking into consideration the special provisions contained in this section.

(1) Income protected for basic maintenance of the hospice participant in the posteligibility determination of patient liability for noninstitutionalized individuals eligible on the basis of the special income level of 300 percent of the federal SSI standard shall be the standard for the federal supplemental security income (SSI) program in addition to the SSI general exclusion. For the noninstitutionalized medically needy participants (all of whom must spend-down on a quarterly basis), the amount protected for basic maintenance is the usual medically needy standard as shown in Section 3 of this regulation plus the SSI general exclusion. For the institutionalized medically needy the amount protected for basic maintenance in the eligibility determination is the medically needy standard for the appropriate family size plus the SSI general exclusion. If a hospice participant is institutionalized in a long-term care facility, the basic maintenance amount is forty (40) dollars per month.

(2) When eligibility is determined for an institutionalized monthly spend-down case, the attributed cost of care against which monthly available income of the hospice participant shall be applied shall be the hospice routine home care per diem (for the hospice providing care) as established by the Medicare program plus the room and board rate for the appropriate level of care (i.e., skilled nursing or intermediate care).

(3) Eligibility shall continue on the same monthly basis as for an institutionalized individual when the recipient is eligible based on the special income level of 300 percent of the SSI level as specified in 907 KAR 1:011, Technical eligibility requirements.

(4) A hospice participant may be eligible for benefits based on this section only if he has elected coverage under the Medicaid hospice benefit rather than the regular Medicaid program.

(5) Usual institutional deeming rules shall be applicable with regard to the categorically needy including all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level.

Section 17. Special Provisions for Recipients Participating in the Home and Community Based Services Waiver Program. Medical assistance eligibility for participants under the home and community based (HCB) services waiver program shall be determined (when necessary to establish eligibility for medical assistance benefits for cases with income in excess of the usual basic maintenance standard) taking into consideration the special provisions contained in this section.

(1) Income protected for basic maintenance of HCB services program participants who are eligible under the special income level shown in this section shall be the standard used for an individual in the federal supplemental security income (SSI) program in addition to the SSI general exclusion.

(2) HCB services program participants who participate in the HCB program for thirty (30) consecutive days (including any actual days of institutionalization within that period) and who have income not in excess of 300 percent of the SSI standard for an individual shall be determined to be eligible as categorically needy under a special income level (i.e., the special income level is 300 percent of the SSI standard).

(3) If an HCB services program participant has income in excess of 300 percent of the SSI standard, eligibility of the participant is determined in the usual manner for an individual who is institutionalized, with the cost of HCB services projected if eligibility is determined on a monthly basis, except that the amount protected for basic maintenance is the usual medically needy standard for the appropriate family size as shown in Section 3 of this regulation plus the SSI general exclusion.

(4) Usual institutional deeming rules shall be applicable with regard to all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level.

Section 18. Treatment of Potential Payments from Medicaid Qualifying Trusts. When an individual (or his spouse for the individual's benefit) creates (other than by will) a trust (or similar legal device) with amounts payable to the same individual, such trust shall be considered a "Medicaid qualifying trust" if the trustee(s) of the trust are permitted to exercise discretion as to the amount of the payments from the trust to be paid to the individual. In this circumstance the amount considered available to the trust beneficiary shall be the maximum amount the trustee(s) may (using the trustee's discretion) pay in accordance with the terms of the trust, regardless of the amount actually paid. The cabinet may, however, consider as available only that amount actually paid if to do otherwise would create an undue hardship upon the individual; the criteria for determining "undue hardship" shall be established by the cabinet.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 26, 1989
FILED WITH LRC: July 5, 1989 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1989 at 9 a.m. in the Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1989, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources,

275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Approximately 910 Medicaid recipients.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $540,00 (cost) annually.
2. Continuing costs or savings: $540,000 (cost) annually.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(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. Tiering is not appropriate since this regulation does not relate to Medicaid providers.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:012. Inpatient hospital services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to inpatient hospital services for which payment shall be made by the Medical Assistance program in behalf of both the categorically needy and the medically needy.

Section 1. Length of Stay. Inpatient hospital services except for services in an institution for treatment of tuberculosis or mental diseases shall be limited to a maximum of fourteen (14) days per admission, with the further exception that effective with regard to medically necessary services provided on or after July 1, 1989 to infants under age one (1) there shall be no limit on the duration of stay or number of admissions. A recipient may transfer from one (1) hospital to another hospital when the [such] transfer is necessary for the patient to receive medical care which is not available in the first hospital. These [Such] transfers and admissions shall begin anew the fourteen (14) day per admission limitation; in such situations, the maximum covered inpatient hospital stay that may result is a total of twenty-eight (28) days for the two (2) admissions. Each admission shall [must] have prior approval of appropriateness by the designated [Kentucky] peer review organization in order for the admission to be covered under the program; this requirement does not apply for emergency admissions. Weekend stays associated with a Friday or Saturday admission will not be reimbursed unless an emergency exists.

Section 2. Covered Admissions. Admissions for which payment is made shall be limited to those primarily indicated in the management of acute or chronic illness, injury or impairment, or for maternity care that could not be rendered on an outpatient basis. Admissions relating to only observation or diagnostic purposes shall not be covered. Cosmetic surgery shall not be covered except as required for prompt repair of accidental injury or for the improvement of the functioning of a malformed or diseased body member.

Section 3. Inpatient Hospital Services not Covered by the Medical Assistance Program. (1) Those services which are not medically necessary to the patient's well-being, such as television, telephone and guest meals.
(2) Private duty nursing.
(3) Those supplies, drugs, appliances, and equipment which are furnished to the patient for use outside the hospital unless it would be considered unreasonable or impossible from a medical standpoint to limit the patient's use of the item to the periods during which he is an inpatient.
(4) Those laboratory tests not specifically ordered by a physician and not done on a preadmission basis unless an emergency exists.
(5) Private accommodations unless medically necessary and so ordered by the attending physician.
(6) The following listed surgical procedures, except when a life-threatening situation exists, there is another primary purpose for the admission, or the admitting physician certifies a medical necessity requiring admission to a hospital:
(a) Biopsy: breast, cervical node, cervix, lesions (skin, subcutaneous, submucous), lymph node (except high axillary excision, etc), and muscle.
(b) Cauterization or cryotherapy: lesions (skin, subcutaneous, submucous), moles, polyps, warts/condylomas, anterior nose bleeds, and cervix.
(c) Circumcision.
(d) Dilation: dilation and curettage (diagnostic and/or therapeutic nonobstetrical); dilation/probing of lacrimal duct.
(e) Drainage by incision or aspiration: cutaneous, subcutaneous, and joint.
(f) Exam under anesthesia (pelvic).
(g) Excision: bartholin cyst, condylomas, foreign body, lesions lipoma, nevi (moles), sebaceous cyst, polyps, and subcutaneous fistulas.

(h) Extraction: foreign body, and teeth (per existing policy).
(i) Graft, skin (pinch, splint or full thickness up to defect size three-fourths (3/4) inch diameter).
(j) Hymenotomy.
(k) Manipulation and[/or] reduction with or without x-ray; cast change: dislocations depending upon the joint and indication for procedure, and fractures.
(l) Meatotomy/urethral dilation, removal calculus and drainage of bladder without incision.
(m) Myringotomy with or without tubes, otoplasty.
(n) Oscopy with or without biopsy (with or without salpingogram): arthroscopy, bronchoscopy, colonoscopy, culdoscopy, cystoscopy, esophagoscopy, endoscopy, gastroscopy, hysteroscopy, laryngoscopy, laparoscopy, peritoneoscopy, otoscopy, and sigmoidoscopy or procto sidmoidoscopy.
(o) Removal; IUD, and fingernail or toenails.
(p) Tenotomy hand or foot.
(q) Vasectomy.
(r) Z-plasty for relaxation of scar/contracture.

[Section 4. The provisions of of this regulation, as amended, shall be effective October 1, 1985.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 16, 1989
FILED WITH LRC: July 5, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1989, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All disproportionate share hospitals.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: *The cost impact of this change is reflected in the companion regulation 907 KAR 1:013.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

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

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for hospital inpatient services.

Section 1. Acute Care Hospital, Rehabilitation Hospital and Mental Hospital (Including Psychiatric Facility) Inpatient Services. The state agency will pay for inpatient hospital services provided to eligible recipients of Medical Assistance through the use of rates that are reasonable and adequate to meet the costs that are required to be incurred by efficiently and economically operated hospitals to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

Section 2. Establishment of Payment Rates. The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" revised July 1, 1989 [December 15, 1988], which is incorporated by reference in this regulation. For any reimbursement issue or area not specified in the manual, the cabinet will apply the Medicare standards and principles described in 20 CFR Sections 405.402 through 405.488 (excluding the Medicare inpatient routine nursing salary

differential). The Kentucky Medical Assistance Program Inpatient Hospital Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.

Section 3. Compliance with Federal Medicaid Requirements. The cabinet will comply with the requirements shown in 42 CFR 447.250 through 447.280.

Section 4. General Description of the Payment System. (1) Use of prospective rates. Each hospital will be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days. The prospective rate will be all inclusive in that both routine and ancillary cost will be reimbursed through the rate. For universal rate years prior to January 1, 1985 the prospective rate will not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used. For universal rate years beginning on or after January 1, 1985, the prospective rate will not be subject to retroactive adjustment except to the extent that facilities with a rate based on unaudited data will have their rate appropriately revised for the rate year when the audited cost report is received from the fiscal intermediary. However, total prospective payments shall not exceed the total customary charges in the prospective year. Overpayments will be recouped by payment from the provider to the cabinet of the amount of the overpayment, or alternatively, by the withholding of the overpayment amount by the cabinet from future payments otherwise due the provider.

(2) Use of a uniform rate year. A uniform rate year will be set for all facilities, with the rate year established as January 1 through December 31 of each year. The first uniform rate year for mental hospitals shall be July 1, 1985 through June 30, 1986; however, effective January 1, 1986 the mental hospital rate year shall be reestablished and shall be January 1 through December 31 of each year thereafter. Changes of rates throughout the rate year as a result of policy changes shall not change the rate year, although the facility rates may change. Hospitals are not required to change their fiscal years.

(3) Trending of cost reports. Allowable Medicaid cost as shown in cost reports on file in the cabinet, both audited and unaudited, will be trended to the beginning of the rate year so as to update Medicaid costs. When trending, capital costs and return on equity capital are excluded. The trending factor to be used will be the Data Resources, Inc. rate of inflation for the period being trended.

(4) Indexing for inflation. After allowable costs have been trended to the beginning of the rate year, an indexing factor is applied so as to project inflationary cost in the uniform rate year. The forecasting index currently in use is prepared by Data Resources, Inc. This policy shall be effective August 3, 1985.

(5) Peer grouping. Acute care hospitals (but not including those considered to be primarily rehabilitative in nature) will be peer grouped according to bed size. The peer groupings for the payment system will be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds and up (except that the designated state teaching hospitals affiliated with or a part of the University of Kentucky and the University of Louisville shall not be included in the array for facilities with 401 beds and up unless such facility's primary characteristics are considered essentially the same as the peer group's, and the facility, although not a university teaching hospital as such, is treated in such a manner as to recognize the presence of the major pediatric teaching component existing outside the state university hospitals). No facility in the 201-400 peer group shall have its operational per diem reduced below that amount in effect in the 1982 rate year as a result of the establishment of a peer grouping of 401 beds and up. Mental hospitals will not be peer grouped but will have a separate array of mental hospitals only. Rehabilitation hospitals and acute care hospitals considered to be primarily rehabilitative in nature will not be peer grouped or arrayed.

(6) Use of a minimum occupancy factor. A minimum occupancy factor will be applied to capital costs attributable to the Medicaid program. A sixty (60) percent occupancy factor will apply to hospitals with 100 or fewer beds. A seventy-five (75) percent occupancy factor will apply to facilities with 101 or more beds. Capital costs are interest and depreciation related to plant and equipment.

(7) Use of a reduced depreciation allowance. The allowable amount for depreciation on building and fixtures (not including major movable equipment) shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports. The use of a reduced depreciation allowance is not applicable with regard to mental hospitals.

(8) Use of upper limits. For acute care hospitals, an upper limit will be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in each peer group, using the most recent medicaid cost report available as of December 1 of each year. For mental hospitals, an upper limit will be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in the array. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data; however the arrays or upper limits may be changed as a result of changes of agency policy. The upper limit is established at 120 percent for those acute care hospitals serving a disproportionate number of poor patients as defined in subsection (9) of this section, except as specified in this subsection and the upper limit is established at 115 percent for those mental hospitals serving a disproportionate number of poor patients as defined in subsection (9) of this section. For the designated state teaching hospitals affiliated with or a part of the University of Kentucky and the University of Louisville, and major pediatric teaching hospitals affiliated thereto, their upper limit shall recognize their status as teaching hospitals traditionally serving a disproportionate number of poor patients, and shall be set at 126 percent of the median of the array for all other hospitals of comparable size (401 beds and up). Such major

pediatric teaching hospitals shall also be paid, in addition to the facilities' base rate, an amount which is equal to two (2) percent of the base for each one (1) percent of Medicaid occupancy, but, effective January 1, 1989, such amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the facility.

(9) Disproportionate share hospitals.

(a) Disproportionate share hospitals are those hospitals meeting the criteria specified in Section 4112(b) and (d) of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) and those hospitals which may not meet such criteria but meet the criteria specified in Section 4112(d) of OBRA 87 and meet this additional criteria:

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher and mental hospitals with Medicaid utilization of thirty-five (35) percent or higher;

2. Hospitals which are designated state teaching hospitals;

3. Hospitals which are designated major pediatric teaching hospitals; and

4. Effective with regard to services provided on or after September 1, 1988, hospitals having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days.

(b) The upper limit for payments for hospitals in Kentucky is set at the lower of allowable Medicaid cost or the median of the facility array of allowable cost with payment adjustments allowed for hospitals deemed disproportionate share hospitals in accordance with subsections (8) and (9) of this section. For compliance with Section 4112(c) of OBRA 1987, the minimum payment adjustment and actual payment adjustment will be computed in the following manner:

1. All hospitals determined to be disproportionate share hospitals shall be entitled to a minimum payment adjustment equal to one (1) dollar as an addition to the hospital payment rate computed using usual upper limits; and for hospitals with Medicaid utilization in excess of one (1) standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state, a further payment adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid utilization in the hospital which is in excess of utilization at the one (1) standard deviation level.

2. Hospitals meeting the additional criteria as shown in paragraph (a) of this subsection shall have their hospital payment rate computed using usual upper limits. The payment adjustment currently applicable for such hospitals shall then be computed and compared with the minimum payment adjustment specified in paragraph (b)(1) of this subsection and the actual payment adjustment added to the payment rate shall be the greater of the two (2) adjustment amounts unless the payment rate specified in subparagraph 3 of this paragraph is applicable.

3. Effective with regard to medically necessary hospital inpatient services provided on or after July 1, 1989 to infants under the age of one (1) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay beyond the date of discharge for the mother of the child), the payment rate shall be set at 125 percent of the uncapped allowable per diem cost, without regard to length of stay or number of admissions of the infants.

(10) Operating costs shall not include professional (physician) costs for purposes of establishing the median based upper limits. Professional costs shall be trended separately.

(11) Hospitals whose general characteristics are not those of an acute care or mental hospital (i.e., because they are rehabilitation hospitals or acute care hospitals considered to be primarily rehabilitative in nature) are not subject to the operating cost upper limits.

(12) Rate appeals. As specified in the Inpatient Hospital Reimbursement Manual, hospitals may request an adjustment to the prospective rate with the submittal of supporting documentation. The established appeal procedure allows a representative of the hospital group to participate as a member of the rate review panel.

Section 5. Payments to Participating Out-of-state Hospitals. (1) Participating out-of-state hospitals shall be reimbursed for covered inpatient services rendered eligible Kentucky Medicaid recipients at the rate of seventy-five (75) percent of usual and customary charges except as specified in subsection (2) of this section. [Professional costs (i.e., physician fees) shall be paid on the basis of the usual and customary charges of the provider.]

(2) Effective with regard to medically necessary hospital inpatient services provided on or after July 1, 1989 to infants under the age of one (1), participating out-of-state disproportionate share hospitals (determined in the same manner as for in-state hospitals except that out-of-state hospitals are not included in facility arrays) shall be paid at the rate of eighty-five (85) percent of usual and customary actual billed charges in recognition of exceptionally high costs and lengths of stay related to infants under the age of one (1), without regard to length of stay or number of admissions of the infants.

(3) Professional costs (i.e., physician fees) for all covered days of stay shall be paid on the basis of the usual and customary charges of the provider.

[Section 6. The amendments to this regulation shall be effective with regard to payments for services rendered on or after July 1, 1988, except as specified in Section 4 of this regulation.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 26, 1989
FILED WITH LRC: July 5, 1989 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1989, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a

written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: Approximately 21 disproportionate share hospitals.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $7.5 million (cost).
2. Continuing costs or savings: $7.5 million (cost).
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(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 Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:022. Skilled nursing facility services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to skilled nursing facility services for which payment shall be made by the medical assistance program in behalf of both the categorically needy and medically needy.

Section 1. Participation Requirements. Each facility desiring to participate as a skilled nursing facility shall [must] meet the following requirements:
(1) An application for participation shall be made to the cabinet using the procedures specified by the Commissioner, Department for Medicaid Services, Cabinet for Human Resources. A vendor number shall be assigned to the facility by the cabinet when participation status is achieved.
(2) Each skilled nursing facility shall be required to have participatory status in the program of health care known as Title XVIII, Medicare, before the conditions of participation for Title XIX shall be deemed met.
(3) Each skilled nursing facility shall be required to comply with the preadmission screening and annual resident review requirements specified in Section 1919 of the Social Security Act, effective with regard to admissions and resident stays occurring on or after January 1, 1989. Facilities failing to comply with this requirement shall be subject to disenrollment, with exclusion from participation to be accomplished in accordance with 907 KAR 1:220, Terms and conditions of provider participation; provider appeals, and federal regulations at 42 CFR 431.153 and 431.154.

Section 2. Provision of Service. (1) Payment for services shall be limited to those services provided to eligible individuals meeting the criteria of patient status in that they require skilled nursing care on a continuous basis following an acute illness or as a result of a chronic disease and/or disability and are receiving skilled nursing [such] care in a participating facility.
(2) A participating skilled nursing facility may be certified, in accordance with standards and conditions specified in 907 KAR 1:374, Incorporation by reference of the skilled nursing facility services manual, to operate a unit providing preauthorized specialized rehabilitation services for persons with brain injuries.

Section 3. Determining Patient Status. Professional staff of the cabinet, or a peer review organization operating under its lawful authority pursuant to the terms of its agreement with the cabinet, shall review and evaluate the health status and care needs of the recipient in need of institutional care giving consideration to the medical diagnosis, care needs, services and health personnel required to meet these needs and the feasibility of meeting the needs through alternative institutional or noninstitutional services. A patient shall not qualify for Medicaid patient status unless the person is qualified for admission, and continued stay as appropriate, under the preadmission screening and annual resident review criteria specified in Section 1919 of the Social Security Act with regard to admissions and resident stays occurring on or after January 1, 1989. Patients qualify for skilled nursing care when their needs mandate skilled nursing or skilled rehabilitation services on a daily basis and when, as a practical matter, the care can only be provided on an inpatient basis. Where the inherent complexity of a service prescribed for

a patient exists to the extent [is such] that it can be safely or effectively performed only by or under the supervision of technical or professional personnel, the patient would qualify for skilled nursing care. A patient with an unstable medical condition manifesting a combination of care needs in the following areas may qualify for skilled nursing care:

(1) Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or intravenous feeding;

(2) Nasogastric or gastrostomy tube feedings;

(3) Nasopharyngeal and tracheotomy aspiration;

(4) Recent or complicated ostomy requiring extensive care and self-help training;

(5) Indwelling catheter for therapeutic management of a urinary tract condition;

(6) Bladder irrigations in relation to previously indicated stipulation;

(7) Special vital signs evaluation necessary in the management of related conditions;

(8) Sterile dressings;

(9) Changes in bed position to maintain proper body alignment;

(10) Treatment of extensive decubitus ulcers or other widespread skin disorders;

(11) Receiving medication recently initiated, which requires skilled observation to determine desired or adverse effects or frequent adjustment of dosage;

(12) Initial phases of a regimen involving administration of medical gases;

(13) Receiving services which would qualify as skilled rehabilitation services when provided by or under the supervision of a qualified therapist(s), for example [such as]: ongoing assessment of rehabilitation needs and potential; therapeutic exercises which must be performed by or under the supervision of a qualified physical therapist; gait evaluation and training; range of motion exercises which are part of the active treatment of a specific disease state which has resulted in a loss of, or restriction of, mobility; maintenance therapy when the specialized knowledge and judgment of a qualified therapist is required to design and establish a maintenance program based on an initial evaluation and periodic reassessment of the patient's needs, and consistent with the patient's capacity and tolerance; ultrasound, short wave, and microwave therapy treatments; hot pack, hydrocollator infrared treatments, paraffin baths, and whirlpool (in cases where the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, fractures or other complications, and the skills, knowledge, and judgment of a qualified physical therapist are required); and services by or under the supervision of a speech pathologist or audiologist when necessary for the restoration of function in speech or hearing.

Section 4. Reevaluation of Need for Service. Skilled nursing service shall be provided for as long as the health status and care needs are within the scope of program benefits as described in Sections 2 and 3 of this regulation. Patient status shall be reevaluated at least once every six (6) months. If a reevaluation of care needs reveals that the patient no longer requires skilled care, payment shall continue for ten (10) days to permit orderly transfer to a lesser level of care. Patients who met patient status criteria as of August 31, 1985 on the basis that they would have been reclassified to intermediate care patient status except for the unavailability of an intermediate care [such a] bed, and had continued to receive care in the facility while on the waiting list of suitable facilities, will be considered to meet patient status criteria through January 31, 1986 so long as the preexisting conditions for the [such] patient status criteria continue to be met.

Section 5. Evaluation of Patient Status for Persons with Mental Disorders or Mental Retardation. A person with a mental disorder or mental retardation meeting the health status and care needs specified in Sections 2 and 3 of this regulation shall generally be considered to meet patient status. However, these individuals are specifically excluded from coverage in the following situations:

(1) When the cabinet determines that in the individual case the combination of care needs is beyond the capability of the facility, and that placement in the skilled nursing facility is inappropriate due to potential danger to the health and welfare of the patient, other patients in the facility or staff of the facility; and

(2) When the skilled nursing care needs result directly and specifically from a mental disorder; i.e., are essentially symptoms of the mental disorder; and

(3) When the patient does not meet the preadmission screening and annual resident review criteria specified in Section 1919 of the Social Security Act for entering or remaining in a skilled nursing facility.

Section 6. Preauthorization of Provision of Specialized Rehabilitation Services for Persons with Brain Injuries. Patients who are brain injured and meet usual skilled nursing facility patient status criteria may be provided care in a certified unit providing specialized rehabilitation services for persons with brain injuries (i.e., brain injury unit) when the care is preauthorized by staff of the Department for Medicaid Services using criteria specified in this section. For coverage to occur, authorization of coverage must be granted prior to admission of the individual with the head injury into the certified head injury unit, or if previously admitted to the unit with other third party coverage, authorization must be granted prior to exhaustion of those benefits.

(1) Injuries within the scope of benefits are:

(a) Central nervous system injury from physical trauma;

(b) Central nervous system damage from anoxia or hypoxic episodes; and

(c) Central nervous system damage from allergic conditions, toxic substances and other acute medical/clinical incidents.

(2) Indications for admission and continued stay are as follows:

(a) The individual sustained a traumatic brain injury with structural, nondegenerative brain damage and is medically stable;

(b) The individual is not in a persistent vegetative state;

(c) The individual demonstrates physical, behavioral, and cognitive rehabilitation potential;

(d) The individual requires coma management; and

(e) The individual has sustained diffuse brain damage caused by anoxia, toxic poisoning, encepalitis, or cardiovascular accident with rehabilitation potential.

(3) The determination as to whether preauthorization is appropriate will be made taking into consideration the following:

(a) The presenting problem;

(b) The goals and expected benefits of the admission;

(c) The initial estimated time frames for goal accomplishment; and

(d) The services needed.

(4) The following are indicators that show it is inappropriate to preauthorize coverage for services provided in a certified brain injury unit:

(a) Strokes. (note: skilled nursing facilities provide rehabilitation services that are expected to meet the needs of most stroke patients);

(b) Spinal cord injuries in which there are no known or obvious injuries to the intercranial central nervous system;

(c) Progressive dementias and other mentally impairing conditions;

(d) Depression and psychiatric disorders in which there is no known or obvious central nervous system damage;

(e) Mental retardation, developmental disabilities, and birth defect related disorders of long standing; and

(f) Neurological degenerative, metabolic and other medical conditions of a chronic, degenerative nature.

Section 7. [6.] Reserved Bed Days. The cabinet will cover reserved bed days (effective December 1, 1984) in accordance with the following specified upper limits and criteria.

(1) Reserved bed days will be covered for a maximum of fourteen (14) days per absence for a hospital stay with an overall maximum of forty-five (45) days per provider during the calendar year.

(2) Reserved bed days will be covered for a maximum of fifteen (15) days per provider during the calendar year for leaves of absence other than for hospitalization.

(3) Coverage during a recipient's absence for hospitalization or leave of absence is contingent on the following conditions being met:

(a) The person is in Title XIX payment status in the level of care he/she is authorized to receive and has been a resident of the facility at least overnight. Persons for whom Title XIX is making Title XVIII coinsurance payments are not considered to be in Title XIX payment status for purposes of this policy;

(b) The person can be reasonably expected to return to the same level of care;

(c) Due to demand at the facility for beds at that level, there is a likelihood that the bed would be occupied by some other patient were it not reserved;

(d) The hospitalization is for treatment of an acute condition, and not for testing, brace-fitting, etc.; and

(e) In the case of leaves of absence other than for hospitalization, the patient's physician orders and plan of care provide for such leaves. Leaves of absence include visits with relatives and friends, and leaves to participate in state-approved therapeutic or rehabilitative programs.

Section 8. The amendments to this regulation shall be effective with regard to covered services provided on or after July 1, 1989.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY:June 27, 1989
FILED WITH LRC: July 5, 1989 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1989, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: Any skilled nursing facility wishing to provide specialized rehabilitation services to brain injured individuals; and brain injured individuals (estimated 10 to 20 per year).

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(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 Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:026. Dental services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the provisions relating to dental services for which payment shall be made by the Medical Assistance Program in behalf of both the categorically needy and the medically needy.

Section 1. Out-of-hospital Services. Payment for services is limited to those procedures listed in the cabinet's dental benefit schedule which are included in the following categories:
(1) Diagnostic;
(2) Preventive;
(3) Oral surgery;
(4) Endodontics;
(5) Orthodontics;
(6) Prosthetics;
(7) Operative;
(8) Crown; and
(9) Other services.

Section 2. Limitations for those under Age Twenty-one (21). The following limitations shall be applicable with regard to services provided to eligible recipients of medical assistance who are under age twenty-one (21):
(1) Dental prophylaxis, to include application of stannous fluoride, is limited to one (1) treatment per year.
(2) Bitewing x-rays are limited to four (4) x-rays per patient per year per dentist.
(3) Full mouth radiograph is limited to one (1) per patient per every two (2) years per dentist.
(4) The following orthodontic procedures are limited per twelve (12) month period to any combination totaling two (2) per patient: fixed space maintainer, band type; removable space maintainer, acrylic; removable appliance for tooth guidance; and fixed or cemented appliance for tooth guidance. Effective with regard to services provided on or after July 1, 1989, the following orthodontic procedures are available upon appropriate preauthorization by the cabinet (except orthodontic consultation, which need not be preauthorized) when services are medically necessary to correct handicapping malocclusions, with limitations as specified for the individual procedure:
(a) Orthodontic consultation is limited to one (1) per recipient per twelve (12) month period;
(b) Preauthorized orthodontia services for moderately severe handicapping malocclusions;
(c) Preauthorized orthodontia services for severe handicapping malocclusions;
(d) Retention visit or stabilization visit is allowable as a separate procedure only when a patient is referred to another practitioner in another service area and is limited to one (1) per month per recipient with a maximum of twenty-four (24) retention visits and with a maximum of ten (10) stabilization visits per lifetime.
(5) The following prosthetic procedures are limited as specified for the individual procedure:
(a) Transitional appliance, includes one (1) tooth on appliance, upper appliance, is limited to one (1) per twelve (12) month period, per patient;
(b) Transitional appliance, includes one (1) tooth on appliance, lower appliance, is limited to one (1) per twelve (12) month period, per patient;
(c) Repair of fracture of transitional appliance and space maintainer is limited to three (3) per twelve (12) month period, per patient;
(d) Repair of fracture and replacement of one (1) broken tooth on a transitional appliance and space maintainer is limited to three (3) per twelve (12) month period, per patient;
(e) Repairing broken complete denture with no teeth damaged is limited to three (3) per twelve (12) month period, per patient; and
(f) Repairing broken complete denture and replacing one (1) broken tooth is limited to three (3) per twelve (12) month period, per patient.
(g) Relining upper denture (flask cured only) is limited to one (1) per twelve (12) month period per patient.
(h) Relining lower denture (flask cured only) is limited to one (1) twelve (12) month period per patient.

Section 3. Inpatient Hospital Services. (1) Payment shall be made for all hospital inpatient services rendered by oral surgeons subject to the general physician limitations shown in 907 KAR 1:009, Physicians' services.
(2) Payment shall be provided for services rendered by general dentists for hospital inpatient care for patients termed to be "medically a high risk," defined as:
(a) Heart disease;
(b) Respiratory disease;
(c) Chronic bleeder;
(d) Uncontrollable patient, i.e., retardate, emotionally disturbed;
(e) Other, e.g., car accident, high temperature, massive infection.

Section 4. Coverage of Dental Benefits for Adults. The following named dental benefits only shall be covered for adults (eligible individuals aged twenty-one (21) or over), effective January 1, 1982 except as otherwise specified in this regulation.
(1) Oral surgery, as follows:
(a) Extraction, single tooth, with local anesthetic and including routine postoperative care, effective with regard to services provided on or after November 1, 1987;
(b) Extraction, each additional tooth, with local anesthetic and including routine postoperative care, effective with regard to services provided on or after November 1, 1987; and
(c) Root removal (but not payable on the same day the same tooth was extracted).
(2) Operative, as follows:
(a) Amalgam filling for one (1) surface cavity;
(b) Amalgam filling for two (2) surface cavity;
(c) Amalgam filling for cavity involving three

(3) or more surfaces;
(d) Silicate cement filling;
(e) Acrylic, plastic, or composite filling; and
(f) Buildup to repair a fractured incisal or anterior tooth.
(3) Diagnostic services, as follows:
(a) Bitewing x-rays, limited to four (4) x-rays per patient per year per dentist;
(b) Intraoral periapical radiograph, single view; and
(c) Full mouth radiograph, single panoramic film limited to one (1) per patient per every two (2) years per dentist.
(4) Preventive services as follows: adult dental prophylaxis, effective with regard to services provided on or after August 1, 1986.
(5) Other services, as follows: emergency treatment for pain, infection and hemorrhage.

Section 5. Other Provisions, Limitations and Clarifications. (1) Intraoral periapical radiograph, single view, is limited to fourteen (14) per patient, per year, per dentist.
(2) The procedure code for stainless steel crown will also include polycarbonate (acrylic) and full composite crown for anterior teeth. However, should a provider choose to provide crowns for anterior teeth, the usual and customary charge for a stainless steel crown must be billed.
(3) Bonded veneers are not covered as a separate entity, nor should they be provided and billed under any existing procedure code.
(4) The Sargenti method of root canal treatment is not covered under the present root canal procedure codes.
(5) The Medical Assistance Program recognizes five (5) surfaces of a tooth (buccal or labial, mesial, distal, lingual, occlusal or incisal). Only one (1) filling may be billed per surface with a maximum of five (5) per tooth.
(6) Nitrous oxide is not covered under the procedure for general anesthesia or any other procedure.
(7) Effective with regard to services provided on or after May 1, 1989, the following procedures shall be covered for all age groups:
(a) Alveoplasty (alveoloplasty) in conjunction with extractions per quadrant;
(b) Apicoectomy (per tooth) - first root;
(c) Apicoectomy (per tooth) each additional root;
(d) Gingivectomy or gingivoplasty - per quadrant;
(e) Gingivectomy or gingivoplasty - per tooth;
(f) Biopsy - excision of benign tumor - lesion diameter up to 1.25 cm.;
(g) Frenulectomy (frenotomy or frenectomy - separate procedure);
(h) Suture of recent small wounds up to five (5) cm.;
(i) Incision and drainage - intraoral soft tissue;
(j) Incision and drainage - extraoral soft tissue;
(k) Removal of foreign body, skin, or subcutaneous areolar tissue;
(l) Hospital call;
(m) Emergency call (intermediate level of service); and
(n) Comprehensive oral examination (limited to one (1) per provider per recipient per year).

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: June 27, 1989
FILED WITH LRC: July 5, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1989, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All dentists participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $3.5 million annually (cost).
2. Continuing costs or savings: $3.5 million annually (cost).
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(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: These changes are being done to comply with federal requirements.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:027. Payments for dental services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for dental services.

Section 1. Definitions. For purposes of determination of payment:
(1) "Usual and customary charge" refers to the uniform amount which the individual dentist charges in the majority of cases for a specific dental procedure or service.
(2) "Prevailing charge" refers to those charges which fall within the range of charges as computed by the use of a predetermined and established statistical percentile. Prevailing charges for each dental procedure are derived from the overall pattern existing within the state.

Section 2. [1.] Out-of-hospital Care. (1) The cabinet shall reimburse participating dentists for covered services rendered to eligible medical assistance recipients at rates based on the dentist's usual customary, reasonable, and prevailing charges.
[(2) Definitions. For purpose of determination of payment.]
[(a) "Usual and customary charge" refers to the uniform amount which the individual dentist charges in the majority of cases for a specific dental procedure or service.]
[(b) "Prevailing charge" refers to those charges which fall within the range of charges as computed by the use of a predetermined and established statistical percentile. Prevailing charges for each dental procedure are derived from the overall pattern existing within the state.]
(2) [(3)] Method and source of information on charges.
(a) Effective with fee revisions December 1, 1974 and after, individual fee profiles for participating dentists shall [will] be generated from historical data accumulated from charges submitted and processed by the Medical Assistance Program during all of the calendar year preceding the start of the fiscal year in which the determination is made.
(b) Effective with revisions December 1, 1974 and after, Title XIX prevailing fee maximums shall [will] be generated from the same historical data as referenced in paragraph (a) of this subsection.
(c) Effective with revisions December 1, 1974 and after, when applicable, Title XVIII, Part B current aggregate prevailing charge data shall [will] be utilized by the Medical Assistance Program.
(d) Percentile. The Title XIX prevailing charges were established by utilizing the statistical computation of the 50th and 75th percentile.
(4) Maximum reimbursement for covered procedures. Reimbursement for covered procedures shall be limited to the lowest of the following:
(a) The actual charge for services rendered as submitted on the billing statement.
(b) The dentist's median charge for a given service derived from claims processed during all of the calendar year preceding the start of the fiscal year in which the determination is made.
(c) The Title XIX prevailing fee maximum for a given service, derived from claims processed as described in paragraph (b) of this subsection.

Section 3. [2.] Hospital Inpatient Care. (1) Hospitalized inpatient care, which is paid in the same manner as shown in Section 2 [1] of this regulation [with the exception that the same inpatient hospital rate reduction applied to physicians will also be applied to general dentists], refers to those services provided inpatients. It does not include dental services provided in the outpatient, extended care or home health units of hospitals. Any dentist submitting a claim for hospital inpatient care benefits must agree to accept payment in full for services rendered that patient during that admission.
(2) A general dentist may submit a claim for hospital inpatient services for the patient termed "medically a high risk." Medically high risk is defined as a patient in one (1) of the following classifications:
(a) Heart disease;
(b) Respiratory disease;
(c) Chronic bleeder;
(d) Uncontrollable patient (retardate, emotionally disturbed); or
(e) Other (car accident, high temperature, massive infection, etc.).

Section 4. Reimbursement Exceptions. (1) Effective with regard to services provided on or after May 1, 1989, the procedures specified in this section shall not be paid in accordance with Sections 2 and 3 of this regulation but shall be paid at the lower of the provider's usual and customary actual billed charge or the fixed fee (i.e., fee upper limits) specified in this section. The procedures and fixed fees are as follows:
(a) Alveoplasty (alveoloplasty) in conjunction with extractions per quadrant, $54;
(b) Apicoectomy (per tooth) - first root, $60;
(c) Apicoectomy (per tooth) each additional root, $74;
(d) Gingivectomy or gingivoplasty - per quadrant, $168;
(e) Gingivectomy or gingivoplasty - per tooth, $66;
(f) Biopsy - excision of benign tumor - lesion diameter up to 1.25 cm., $37;
(g) Frenulectomy (frenotomy or frenectomy - separate procedure), $47;
(h) Suture of recent small wounds up to five (5) cm., $57;
(i) Incision and drainage - intraoral soft tissue, $39;
(j) Incision and drainage - extraoral soft tissue, $31;
(k) Removal of foreign body, skin, or subcutaneous areolar tissue, $109;
(l) Hospital call, $30;
(m) Emergency call (intermediate level of

service), $25; and
(n) Comprehensive oral examination (limited to one (1) per provider per recipient per year), $15.
(2) Effective with regard to services provided on or after July 1, 1989, the procedures specified in this section shall not be paid in accordance with Sections 2 and 3 of this regulation but shall be paid at the lower of the provider's usual and customary actual billed charge or the fixed fee (i.e., fee upper limit) specified in this section with preauthorization required for all procedures except for orthodontic consultation. The procedures and fixed fees are as follows:
(a) Orthodontic consultation, $100, except that the fixed fee is fifty (50) dollars if the provider is referring the recipient to a specialist or the preauthorization for orthodontia services is not approved or a request for preauthorization of orthodontia services is not made;
(b) Preauthorized orthodontic services for moderately severe handicapping malocclusions, $1,600 for orthodontists and $1,440 for general dentists;
(c) Preauthorized orthodontic services for severe handicapping malocclusions, $2,400 for orthodontists and $2,160 for general dentists;
(d) Retention visits, $30; and
(e) Stabilization visit, $15.

Section 5. [3.] Oral surgeons shall be treated in the same manner as physicians for reimbursement purposes, and shall be subject to the terms and conditions of payment shown in 907 KAR 1:010, Payments for physicians' services.

[Section 4. The amendments to this regulation shall be effective with regard to services provided on or after November 1, 1987.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 27, 1989
FILED WITH LRC: July 5, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1989, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All dentists participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
*The cost of these amendments are shown in the companion regulation, 907 KAR 1:026.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

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

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for home health agency services.

Section 1. Payments to Home Health Agencies. (1) The cabinet shall reimburse participating home health agencies on the basis of interim rates set by the cabinet using available Medicare data and methodology as applied to Medicaid covered services, taking into consideration the upper limit shown in Section 2 of this regulation and the various policies and guidelines specified in the Kentucky Medical Assistance Program Home Health Reimbursement Manual, dated July 1, 1989 [1988], which is hereby incorporated by reference. A home health

agency (but not including a publicly operated agency) whose nonaggregated base year costs (as shown in the cost report used to set the agency's interim rate) are below the prospective upper limit for the agency shall receive a cost containment incentive payment in accordance with the incentive payment schedule shown in the reimbursement manual; the incentive payment will not be subject to retrospective settlement. The Kentucky Medical Assistance Program Home Health Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621.

(2) Payments made at the interim rate (except for incentive payments) will be settled back to actual allowable cost at the end of the facilities' fiscal year, with actual allowable costs not to exceed the amounts that would be allowable taking into consideration the upper limit specified in Section 2 of this regulation. The Medicaid final rates (except for incentive payments) may not exceed federally established upper limits for Medicare.

Section 2. Application of Upper Limits. Publicly operated home health agencies (except [and] new facilities as shown in Section 5 of this regulation) [with less than two (2) full facility fiscal years of operations] will be reimbursed at full allowable cost but are subject to the Medicare upper limits. Payments for other agencies (except [payments for durable medical equipment, as shown in Section 3 of this regulation, and] payments for disposable medical supplies, as shown in Section 4 of this regulation), and incentive payments as shown in Section 1 of this regulation may not exceed a prospective upper limit which will be set at 105 percent of the weighted median of the array of allowable per visit costs of those agencies that will be subject to the upper limits with facilities placed in an urban or rural array based on the facility location for the following cost centers or disciplines: skilled nursing, speech pathology, physical therapy, occupational therapy, medical social services, and home health aid services. A determination as to whether a county is urban or rural will be made taking into account usual standard metropolitan statistical areas. The arrays shall be based on annual cost report data with costs trended through June 30 and indexed for the rate year; the rate year shall begin on July 1 and end on June 30; and the upper limit shall be subject to an annual adjustment to be effective on July 1 of each rate year. Aggregation of costs (i.e., shifting of allowable costs from one cost center to another if the limit is exceeded in one cost center but not in another) will be permitted. For rate years beginning July 1, 1986 and thereafter, the array shall be based on the latest available cost report as of May 31 preceding the rate year.

Section 3. Payments for Durable Medical Equipment. Effective July 1, 1989, home health agencies shall not be reimbursed for durable medical equipment. [The interim payment amount for durable medical equipment shall be determined taking into account Medicaid upper limits on cost for such durable medical equipment, and may include an amount for administrative cost not to exceed twenty (20) percent of the interim payment amount set for the item(s) of durable medical equipment. All participating home health agencies may receive full allowable costs for durable medical equipment, with allowable costs determined taking into account appropriate upper limits.]

Section 4. Disposal medical supplies shall be reimbursed on an interim basis at a percent of allowable billed charges with a settlement to actual costs at the end of the agency's fiscal year.

Section 5. New home health agencies shall be paid seventy (70) percent of the Title XIX maximum rate [an interim budgeted rate basis, with interim payments] not to exceed Medicare upper limits, until a fiscal year end cost report is available. During this initial period, the rate can be adjusted if the provider documents the justification for a rate change by the submittal of a projected cost report. [, with payments settled back to full allowable costs.]

Section 6. Owners' compensation shall be limited as shown in the Home Health Reimbursement Manual.

Section 7. Payments to Out-of-state Home Health Agencies Effective with Regard to Services Provided on or after July 1, 1989. (1) The cabinet shall reimburse participating out-of-state home health agencies at the lower of the Title XVIII maximum payment rate, the Title XIX maximum payment rate, or the agency's actual usual and customary billed charge.

(2) Disposable medical supplies shall be reimbursed at a rate of eighty (80) percent of the actual usual and customary billed charge.

Section 8. [7.] Appeals. Participating home health agencies are provided the following mechanism for a review of program decisions relating to the application of the policies and procedures governing home health agency payments.

(1) A home health agency operator may request reconsideration of a program decision by writing to the Director, Division of Reimbursement and Contracts. This request must be received within forty-five (45) days following transmittal of the audited cost report to the agency or the notification of the agency's prospective rate. The request for workpapers pertaining to audit adjustments to the home health agency's cost report will not extend the forty-five (45) day time limit. The request for appeal shall [must] indicate which adjustments the home health agency wishes to appeal. A blanket request to appeal the cost report will not be accepted. Upon receipt of the request for review, the division will determine the need for a program/vendor conference and will contact the home health agency to arrange a conference if needed. The conference, if needed, shall [must] be held within sixty (60) days of the program's receipt of the home health agency's request for review unless delayed due to extenuating circumstances. Regardless of the program decision, the provider will be afforded the opportunity for a conference if he so wishes for a full explanation of the factors involved and the program decision. Following review of the matter, the director will notify the home health agency of the action to be taken by the division

within twenty (20) days of receipt of the request for review or the date of the program/vendor conference, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.

(2) If the Director of Reimbursement and Contracts' decision is unsatisfactory, the home health agency may then appeal the question to a reimbursement review panel established by the Commissioner of the Department for Medicaid Services which will include one (1) member of the Division of Reimbursement and Contracts, a representative of the Kentucky Association of Home Health Agencies, and a member of the Department for Medicaid Services (but not within the Division of Reimbursement and Contracts) as designated by the commissioner, with the [such] designated member to serve as chairperson. The request for review by the reimbursement review panel must be postmarked within twenty (20) days following the notification of the initial decision by the Director, Division of Reimbursement and Contracts. A date for the reimbursement review panel to convene will be established within twenty (20) days after receipt of a written request for the [such] appeal. The question will be heard by the panel. The panel shall issue a binding decision on the issue within thirty (30) days of the hearing of the issue, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue. In carrying out the intent and purposes of the program the panel may take into consideration extenuating circumstances which must be considered in order to provide for equitable treatment and reimbursement of the provider.

Section 9. [8.] Audits may be performed by either the Medicare or Medicaid program; if audited by both, the Medicaid audit will take precedence over the Medicare audit.

Section 10. [9.] The amendments to this regulation shall be effective with regard to services provided on or after July 1, 1989 [1988].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 27, 1989
FILED WITH LRC: July 5, 1989 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1989, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All home health agencies participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(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:
*Cost savings from discontinuance of coverage of durable medical equipment (DME) in home health agencies will be offset against the DME program and other home health expenses.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

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

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for skilled nursing care facility services and intermediate care facility services.

Section 1. Definitions. For purpose of Sections 2 through 6 of this regulation, the following definitions shall prevail unless the

specific context dictates otherwise:

(1) "Allowable cost" means that portion of the facility's cost which may be allowed by the cabinet in establishing the reimbursement rate. Generally, cost is considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care and the cost incurred by the facility is within cost limits established by the cabinet, i.e., the allowable cost is "reasonable."

(2) "Ancillary services" means those direct services for which a separate charge is customarily made, and which except for ventilator therapy services are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services are limited to the following:

(a) Legend and nonlegend drugs, including indwelling urethral catheters and syringes, and irrigation supplies and solutions utilized with those catheters regardless of how those supplies and solutions are utilized. Coverage and allowable cost payment limitations are specified in the cabinet's regulation on payment for drugs. Hyperalimentation, when used as the total source of nutrition for a resident, is included as a drug cost.

(b) Physical, occupational and speech therapy.

(c) Laboratory procedures.

(d) X-ray.

(e) Oxygen and other related oxygen supplies.

(f) Respiratory therapy (excluding the routine administration of oxygen) effective September 1, 1988.

(g) Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded only).

(h) Ventilator therapy services, subject to the coverage limitations shown in the reimbursement manual.

(i) Disposable and reusable incontinent briefs, reusable briefs with disposable liners, and disposable or reusable underpads when ordered by a physician.

(3) "Hospital based skilled nursing facilities" means those skilled nursing facilities so classified by Title XVIII-A.

(4) The "basic per diem cost" is the computed rate arrived at when otherwise allowable costs are trended and adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(5) "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs. The inflation factor shall be included for rates computed on August 3, 1985, and thereafter.

(6) "Incentive factor" means the comparison of the basic per diem cost with the incentive return schedule to arrive at the actual dollar amount of cost containment incentive return to be added to the basic per diem cost.

(7) "Investment factor" means the comparison of the basic per diem cost with the investment return schedule to arrive at the actual dollar amount of investment return to be added to the basic per diem cost.

(8) "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(9) "Maximum payment" means the maximum amount the cabinet will reimburse, on a facility by facility basis, for routine services.

(10) "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(11) "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified such prospective rate shall not be retroactively adjusted, either in favor of the facility or the cabinet.

(12) "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services include but are not limited to the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services.

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes are allowable as routine services if generally furnished to all patients.

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, band-aids and tongue depressors.

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a skilled nursing or intermediate care facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment.

(e) Laundry services including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs.

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

(13) For disposable briefs, reusable briefs, reusable briefs with disposable liners, and disposable or reusable underpads provided upon a physician's orders, the per unit product cost in excess of twenty (20) cents, but not in excess of forty (40) cents, shall be considered ancillary cost, with other cost for such products (including all laundry cost) to be considered routine cost. The first six (6) dollars and fifty (50) cents of cost per catheter for indwelling urethral catheters (excluding specialty purpose catheters) shall be considered as allowable ancillary cost with any balance of cost to be considered as allowable routine cost. Indwelling urethral special purpose catheters will be reimbursable as an ancillary at full allowable cost when ordered by a physician.

(14) Effective October 1, 1988, "skilled nursing facility with a mental retardation specialty (SNF/MRS)" means a skilled nursing

facility in which at least seventy-five (75) percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation.

Section 2. Reimbursement for Skilled Nursing and Intermediate Care Facilities. All skilled nursing facilities (SNFs) or intermediate care facilities (ICFs) participating in the Title XIX program shall be reimbursed in accordance with this regulation. Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280. A skilled nursing facility desiring to participate in Title XIX shall be required to participate in Title XVIII-A.

Section 3. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which are reasonable and adequate to meet the costs which are required to be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards.

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the cabinet (Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual, revised December 20, 1988 which is hereby incorporated by reference) and supplemented by the use of the Title XVIII-A reimbursement principles. The Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.

Section 4. Implementation of the Payment System. The cabinet's reimbursement system is supported by the Title XVIII-A Principles of Reimbursement, with the system utilizing such principles as guidelines in unaddressed policy areas. The cabinet's reimbursement system includes the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the cabinet on a facility by facility basis, and shall not be subject to retroactive adjustment except as specified in this section, including the provisions contained in subsections (14) and (15) of this section. Prospective rates shall be set annually, and may be revised on an interim basis in accordance with procedures set by the cabinet. An adjustment to the prospective rate (subject to the maximum payment for that type of facility) will be considered only if a facility's increased costs are attributable to one (1) of the following reasons: governmentally imposed minimum wage increases; the direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in regulation or written policy which affects all facilities within the class; or other governmental actions that result in an unforeseen cost increase. The amount of any prospective rate adjustment shall not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs will be classified into two (2) general areas, salaries and other. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility. The state will set a uniform rate year for SNFs and ICFs (July 1 - June 30) by taking the latest [audited] cost data available as of May 16 of each year and trending the facility costs to July 1 of the rate year. (Unaudited, partial year, or budgeted cost data may be used if a full year's audited data is unavailable. Unaudited reports are subject to adjustment to the audited amount[, and will be used when an audited cost report ending within twenty-four (24) months of the 30th of April preceding the rate year is not available]. Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied. Facilities beginning program participation on or after July 1, 1984 whose rates are subject to settlement back to cost will not be included in the arrays until such time as the facilities are no longer subject to cost settlement.) After allowable costs are indexed for inflation for the rate year, freestanding (nonhospital based) facilities will be arrayed and the maximum set at 102 percent of the median for the class (SNF or ICF). Publicly operated skilled nursing and intermediate care facilities classified as institutions for mental diseases will not be subject to the administratively set upper limit and component limitations, although such facilities will be included in the arrays for purposes of establishing the applicable upper limits. In recognition of the higher costs of hospital based SNFs, their upper limit shall be set at [135 percent of the upper limit of all other SNFs for covered services provided on or after July 1, 1988, and at] 125 percent of the upper limit of all other SNFs for covered services provided <u>as of</u> [on or after] January 1, 1989 <u>(plus the adjustments for nurse aide training and universal precautions)</u>, and <u>shall remain at that amount through June 30, 1991; effective July 1, 1991, the hospital based SNF upper limit shall be the same as the upper limit for all other nursing facilities</u> [at 115 percent of the upper limit of all other SNFs for covered services provided on or after October 1, 1989, and at 105 percent of the upper limit of all other SNFs for covered services provided on or after July 1, 1990]. For a skilled nursing facility with mental retardation specialty, effective with regard to services provided on or after October 1, 1988, the upper limit shall be set at 120 percent of the maximum payment for freestanding skilled nursing facilities. <u>For skilled nursing facility Medicaid certified units providing preauthorized specialized rehabilitation services for persons with brain injuries, the payment rate shall be usual and customary actual billed charges up to a maximum of $335 per diem.</u> The maximum payment amounts will be adjusted each July 1, beginning with July 1, 1985, so that the maximum payment amount

for the prospective uniform rate year will be at 102 percent of the median per diem allowable costs for the class (SNF or ICF) on July 1 of that year. For purposes of administrative ease in computations normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits will not be altered due to revisions or corrections of data. For ICF-MRs, there is no administratively established upper limit. To accomplish federally mandated program improvements, effective July 1, 1989, and continuing through June 30, 1991, the allowable per diem cost for each SNF or ICF shall include one (1) dollar and twenty (20) cents for nurse aide training and one (1) dollar and thirty-eight (38) cents for implementation of universal precautions for disease control, and ICFs shall be paid an additional four (4) cents for medical director costs; these allowable cost amounts shall not be subject to adjustment or cost settlement. [Effective January 1, 1987, and continuing through the rate years beginning July 1, 1987, and July 1, 1988, the allowable cost for each facility shall include a patient care labor intensity factor of two and six-tenths (2.6) percent applied to that portion of the facilities' operating costs attributable (based on averages for the class of facility) to labor costs. This allowance is generally intended for the purpose of direct service staff improvements to enhance patient care.]

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy services which shall be paid on a prospective rate basis. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement. Ancillary costs may be subject to maximum allowable cost limits under federal regulations. Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the cabinet exceeding twenty-five (25) percent of billed charges, or where an evaluation by the cabinet of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent. A refund will be requested from a facility if the amount paid to the facility for legend drugs, covered legend devices and nonlegend drugs, if applicable, exceeds the program's computed maximum allowable cost. The amount of refund will be determined by conducting a statistically accurate sample of the Medicaid patients for the facility's fiscal year. The percentage that a facility is over the computed maximum allowable cost will be multiplied by the amount paid by the program for drugs for the fiscal year under review.

(4) Interest expense used in setting the prospective rate is an allowable cost if permitted under Title XVIII-A principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates will be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relates to providing patient care. The form of such indebtedness may include, but is not limited to, notes, advances and various types of receivable financing;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets will not be considered an allowable cost.

(5) Compensation to owner/administrators will be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function. Compensation includes the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator. Payment for services requiring a licensed or certified professional performed on an intermittent basis will not be considered a part of compensation. "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service. Reasonableness of compensation will be based on total licensed beds (all levels). Compensation for owners and nonowner administrators (except for nonowner administrators of intermediate care facilities for the mentally retarded and dual licensed pediatric facilities) shall not exceed the amounts specified in the Intermediate Care/Skilled Nursing Facility Reimbursement Manual.

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except when it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship will be considered to exist when an individual or individuals possess five (5) percent or more of ownership or equity in the facility and the supplying business; however, an exception to the relationship shall be determined to exist when fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for general intermediate care facilities entering into lease/rent arrangements prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and skilled nursing facilities entering into lease/rent arrangements prior to December 1, 1979, the cabinet will determine the

allowable costs of such arrangements based on the general reasonableness of such costs.

(8) The following provisions are applicable with regard to median per diem cost center upper limits:

(a) For facilities (except ICF-MRs) beginning participation in the Medicaid program on or after April 1, 1981, (and classified as newly participating facilities for purposes of this subsection), the following upper limits (within the class) shall be applicable with regard to otherwise allowable per diem costs, by cost center: for nursing services, 125 percent of the median; for dietary services, 125 percent of the median; for capital costs, 105 percent of the median; and for all other costs, 105 percent of the median.

(b) Facilities participating in the Medicaid program prior to April 1, 1981, shall be classified as newly participating facilities (solely for purposes of this subsection) when either of the following occurs on or after April 1, 1981: first, when the facility expands its bed capacity by expansion of its currently existing plant or, second, when a multilevel facility (one providing more than one (1) type of care) converts existing personal care beds in the facility to either skilled nursing or intermediate care beds, and the number of additional or converted personal care beds equals or exceeds (in the cumulative) twenty-five (25) percent of the Medicaid certified beds in the facility as of March 31, 1981; however, as an exception to the conditions specified in this subsection a facility will not be considered as newly participating if it increases its certified bed capacity by no more than a cumulative total of thirty-five (35) beds (on or after April 1, 1981) so long as its new total certified bed capacity does not exceed sixty-five (65) beds. Facilities participating in the Medicaid program prior to April 1, 1981 shall not be classified as newly participating facilities solely because of changes of ownership.

(c) For purposes of application of this subsection the facility classes are basic intermediate care and skilled nursing care. The "median per diem cost" is the midpoint of the range of all facilities' costs (for the class) which are attributable to the specific cost center, which are otherwise allowable costs for the facilities' prior fiscal year, and which are adjusted by trending, indexing and the occupancy factor. The median for each cost center for each class shall be determined annually using the same cost data for the class which was used in setting the maximum payment amount. The Department for Medicaid Services shall notify all participating facilities of the median per diem cost center upper limits currently in effect.

(d) A facility may request that the Reimbursement Review Panel grant a waiver of its status as a newly participating facility based upon a presentation of facts showing that the provider had already incurred a substantial material financial obligation or binding commitment toward building or expanding a facility prior to April 1, 1981. The obtaining of a certificate of need shall not be construed, in itself, to be sufficient to justify approval of a waiver request, and a waiver, if granted, shall be applicable only with regard to that building or expansion for which the waiver was requested and approved.

(e) Intermediate care facilities for the mentally retarded (ICF-MRs) are not subject to the median per diem cost center upper limits shown in this subsection.

(f) Effective with regard to services provided on or after October 1, 1988, skilled nursing facilities with a mental retardation specialty (SNF/MRS) are not subject to the median per diem cost center upper limits shown in this subsection.

(9) Certain costs not directly associated with patient care will not be considered allowable costs. Costs which are not allowable include political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), specified vehicle costs as shown in the Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual, and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs unless such costs are incurred by administrators or owners.

(10) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods will be used for changes of ownership occurring before July 18, 1984:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain is defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale is any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which is usually fair market value. Lease-purchase agreements or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner are not considered sales until legal ownership of the property is transferred.

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis will be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(11) Notwithstanding the provisions contained in subsection (10) of this section, or in any other section or subsection of this regulation or the "Kentucky Medical Assistance Program Intermediate Care/Skilled Nursing Facility Reimbursement Manual," the cost basis for any facility changing ownership on or after July 18, 1984 (but not including changes of ownership pursuant to an enforceable agreement entered into prior to July 18, 1984 as specified in subsection (10)(e) of this section) shall be determined in accordance with the methodology set forth herein for the reevaluation of assets of skilled nursing and intermediate care facilities.

(a) No increase will be allowed in capital

costs.

(b) The allowable historical base for depreciation for the purchaser will be the lesser of the allowable historical cost of the seller less any depreciation allowed to the seller in prior periods, or the actual purchase price.

(c) The amount of interest expense allowable to the purchaser is limited to the amount that was allowable to the seller at the time of the sale.

(12) Each facility shall maintain and make available any records (in a form acceptable to the cabinet) which the cabinet may require to justify and document all costs to and services performed by the facility. The cabinet shall have access to all fiscal and service records and data maintained by the provider, including unlimited on-site access for accounting, auditing, medical review, utilization control and program planning purposes.

(13) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and will be used in establishing prospective rates and setting ancillary reimbursement amounts.

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program are to be so indicated with a description and rationale as a supplement to the cost report.

(c) Cabinet approval or rejection of projections or expansions will be made on a prospective basis in the context that if expansions and related costs are approved they will be considered when actually incurred as an allowable cost. Rejection of items or costs will represent notice that such costs will not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval will relate to the substance and intent rather than the cost projection.

(d) When a request for prior approval of projections or expansions is made, absence of a response by the cabinet shall not be construed as approval of the item or expansion.

(14) The cabinet shall review each year-end cost report to determine the necessity for and scope of an audit in relation to routine and ancillary service cost. If an audit is not performed, the report will be settled without audit. If an audit is indicated, it will be either a limited-scope audit or a full field audit. An audit may be conducted for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; audits may be conducted annually or at less frequent intervals. An audit of ancillary cost will be conducted as needed.

(15) Year-end adjustments of the prospective rate and a retroactive cost settlement will be made when:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser.

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts, effective September 1, 1988.

(16) Reimbursement paid shall not exceed the facility's customary charges to the general public for such services, except in the case of public facilities rendering inpatient services at a nominal charge (which may be reimbursed at the prospective rate established by the cabinet).

(17) The cabinet may develop and utilize methodology to assure an adequate level of care. Facilities determined by the cabinet to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(18) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the cabinet's concurrence).

(19) Effective September 26, 1985 (for services provided on or after September 1, 1985), a participating skilled nursing facility may be paid for care provided to Medicaid eligible patients who meet intermediate care patient status criteria subject to the following criteria or conditions:

(a) The payment shall be made at the upper limit for payments to intermediate care facilities, or the skilled nursing rate for the facility if lower;

(b) The patient is required to be in the skilled nursing facility bed awaiting placement to an intermediate care bed; and

(c) The patient is required to have been reclassified from SNF patient status to ICF patient status; or, alternatively, the patient is required to meet ICF patient status criteria, and the appropriate representative of the Department for Social Services is required to certify that no ICF bed is available and that an emergency exists so that placement in the SNF bed offers the best alternative in the circumstances. Payment made based on the certification that no ICF bed is available and that an emergency exists may be made for no more than thirty (30) days; however, the certification and declaration of emergency may be renewed by the Department for Social Services as appropriate and payment may be made pursuant to such renewal.

Section 5. Prospective Rate Computation. The prospective rate for each facility will be set in accordance with the following:

(1) Determine allowable prior year cost for routine services.

(2) The allowable prior year cost, not including fixed or capital costs, will then be trended to the beginning of the uniform rate year and increased by a percentage so as to reasonably take into account economic conditions and trends. Such percentage increase shall be known as an inflation factor.

(3) The unadjusted basic per diem cost (defined as the unadjusted allowable cost per patient per day for routine services) will then be determined by comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with

procedures set by the cabinet. The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates). The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy. The cabinet may impose a lower occupancy rate for newly constructed or newly participating facilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area. The cabinet may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing skilled nursing facility participates in the program under this payment system.

(4) Cost center median related per diem upper limits will then be applied as appropriate to the unadjusted basic per diem cost. The resultant adjusted amounts (and unadjusted amounts, as applicable) will be combined (or recombined) to arrive at the basic per diem cost (defined as the adjusted allowable cost per patient per day for routine services).

(5) To the basic per diem cost shall be added a specified dollar amount for investment risk and an incentive for cost containment in lieu of a return on equity capital, except that no return for investment risk shall be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the investment or incentive return.

(a) Cost incentive and investment schedule for general intermediate care facilities:

(Effective 7-1-89 [7-1-88])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$36.99 & below [$32.99 & below]	$.92	$.58
37.00 - 37.99 [33.00 - 33.99]	$.86	$.50
38.00 - 38.99 [34.00 - 34.99]	$.78	$.41
39.00 - 39.99 [35.00 - 35.99]	$.70	$.32
40.00 - 40.99 [36.00 - 36.99]	$.61	$.21
41.00 - 41.99 [37.00 - 37.99]	$.51	$.09
42.00 - 43.78 [38.00 - 38.61]	$.35	-

Maximum Payment $43.78 [38.61]

(b) Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 7-1-87)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$86.99 & below	$1.38	$.87
87.00 - 92.99	$1.29	$.75
93.00 - 98.99	$1.18	$.62
99.00 -104.99	$1.06	$.47
105.00 -110.99	$ .92	$.31
111.00 -116.99	$ .76	$.13
117.00 -123.49	$ .53	-

(c) Cost incentive and investment schedule for skilled nursing facilities:

(Effective 7-1-89 [7-1-88])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$49.99 & below [$43.99 & below]	$.92	$.58
50.00 - 51.99 [44.00 - 45.99]	.86	.50
52.00 - 53.99 [46.00 - 47.99]	.78	.41
54.00 - 55.99 [48.00 - 49.99]	.70	.32
56.00 - 57.99 [50.00 - 51.99]	.61	.21
58.00 - 59.99 [52.00 - 53.99]	.51	.09
60.00 - 62.32 [54.00 - 56.07]	.35	-

Maximum Payment $62.32 [56.07]*

*The maximum payment for hospital based skilled nursing facilities is set at $75.69 effective July 1, 1988 and $70.09 effective January 1, 1989.

(d) Cost incentive and investment schedule for skilled nursing facilities with mental retardation specialty:

(Effective 7-1-89 [10-1-88])

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$56.99 & below [$53.99 & below]	$1.38	$.87
57.00 - 59.99 [54.00 - 55.99]	1.29	.75
60.00 - 62.99 [56.00 - 57.99]	1.18	.62
63.00 - 65.99 [58.00 - 59.99]	1.06	.47
66.00 - 68.99 [60.00 - 61.99]	.92	.31
69.00 - 71.99 [62.00 - 63.99]	.76	.13
72.00 - 74.78 [64.00 - 67.28]	.53	-

Maximum Payment $74.78 [67.28]*

(6) The prospective rate is then compared, as appropriate, with the maximum payment. If in excess of the program maximum, the prospective rate shall be reduced to the appropriate maximum payment amount. The maximum payment amounts have been set to be at or about 102 percent of the median of adjusted basic per diem costs for the class, recognizing that hospital based skilled nursing facilities and, effective October 1, 1988, skilled nursing facilities with a mental

retardation specialty have special requirements that are required to be considered. The cabinet has determined that the maximum payment rates shall be reviewed annually against the criteria of 102 percent of the median for the class and that adjustments to the payment maximums will be made effective July 1, 1985 and each July 1 thereafter. This policy shall allow, but does not require lowering of the maximum payments below the current levels if application of the criteria against available cost data should show that 102 percent of the median is a lower dollar amount than has been currently set.

Section 6. Reimbursement Review and Appeal. Participating facilities may appeal cabinet decisions as to application of the general policies and procedures in accordance with the following:

(1) First recourse shall be for the facility to request in writing to the Director, Division of Reimbursement and Contracts, a reevaluation of the point at issue. This request is required to be received within forty-five (45) days following notification of the prospective rate or forwarding of the audited cost report by the program. The director shall review the matter and notify the facility of any action to be taken by the cabinet (including the retention of the original application of policy) within twenty (20) days of receipt of the request for review or the date of the program/vendor conference, if one is held, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue.

(2) Second recourse shall be for the facility to request in writing to the Commissioner, Department for Medicaid Services, a review by a standing review panel to be established by the commissioner. This request is required to be postmarked within twenty (20) days following notification of the decision of the Director, Division of Reimbursement and Contracts. Such panel shall consist of three (3) members: one (1) member from the Division of Reimbursement and Contracts, one (1) member from the Kentucky Association of Health Care Facilities, and one (1) member from the Department for Medicaid Services (but not within the Division of Reimbursement and Contracts) as designated by the Commissioner, Department for Medicaid Services, with such designated member to act as chairperson of the review panel. A date for the reimbursement review panel to convene will be established within twenty (20) days after receipt of the written request. The panel shall issue a binding decision on the issue within thirty (30) days of the hearing of the issue, except that additional time may be taken as necessary to secure further information or clarification pertinent to the resolution of the issue. In carrying out the intent and purposes of the program the panel may take into consideration extenuating circumstances which are required to be considered in order to provide for equitable treatment and reimbursement of the provider. The attendance of the representative of the Kentucky Association of Health Care Facilities at review panel meetings shall be at the cabinet's expense.

Section 7. Implementation Date. The amendments to this regulation shall be effective with regard to payments for services provided on or after July 1, 1989 [January 1, 1989 except as specified in Sections 1(14), 4(2), 4(8)(f), 5(5)(d) and 5(6) of this regulation and as specified in the incorporated material with regard to respiratory therapy services and services provided by a skilled nursing facility with a mental retardation specialty, which are effective September 1, 1988 and October 1, 1988, respectively].

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 27, 1989
FILED WITH LRC: July 5, 1989 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1989, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All skilled nursing and intermediate care facilities which participate in Medicaid.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $15.0 million (costs).

2. Continuing costs or savings: $15.0 million (costs).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(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 Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:045. Payments for mental health center services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for mental health center services.

Section 1. Mental Health Centers. In accordance with 42 CFR 447.325, the cabinet shall make payment to Kentucky based (in-state) providers who are appropriately licensed and have met the conditions for participation (including the signing of such contractural arrangements as the cabinet may require of this class of provider) set by the cabinet, on the following basis:
(1) Payment shall be on a prospective basis based on reasonable allowable prior year costs (utilizing the latest audited annual cost report or unaudited report if an audited report is not available) not to exceed usual and customary charges or the upper limits on payments. Allowable costs shall be trended to the beginning of the rate year and indexed for the rate year, so as to more accurately approximate actual costs which will be incurred during the year. (If an unaudited report is used, cost will not be adjusted based on audit.)
(2) Payment amounts shall be determined by application of the "Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement Manual," (revised December 20, 1988) developed and issued by the cabinet, (incorporated by reference to the extent that such policies, guidelines and principles are applicable to Title XIX services and reimbursement, and filed herein), supplemented by the use of Title XVIII reimbursement principles. The Kentucky Medical Assistance Program Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.
(3) Allowable costs shall not exceed customary charges which are reasonable. Allowable costs shall not include the costs associated with political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), the costs of motor vehicles used by management personnel which exceed $15,000 total valuation annually (unless such excess cost is considered as compensation to the management personnel), and legal fees for unsuccessful lawsuits against the cabinet. However, costs (excluding transportation costs) for training or educational purposes outside the state are allowable costs.
(4) The prospective rate shall not exceed 110 percent of the median of the reasonable allowable cost for each reimbursable departmental cost center (i.e., inpatient, outpatient, partial hospitalization and personal care) for all participating facilities. For services provided on or after July 1, 1989 [October 1, 1988], a funding adjustment of one (1) dollar and eleven (11) [fifty-five (55)] cents will be added to the outpatient (clinical) per unit rate.

Section 2. Implementation of Payment System. (1) Payments may be based on units of service such as fifteen (15) minute or hourly increments, or at a daily rate, depending on the type of service.
(2) Overpayments discovered as a result of audits may be settled in the usual manner, i.e., through recoupment or withholding.
(3) The vendor shall complete an annual cost report on forms provided by the cabinet not later than sixty (60) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.
(4) Each community mental health center provider shall make available to the cabinet at the end of each fiscal reporting period, and at such intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet. Notwithstanding this general requirement, the provider need not make available (for purposes of determining Medicaid payment amounts) staff notes or treatment records which show treatment details for non-Medicaid covered services; for such services, the information required shall be limited to a case summary sheet or listing which shows, at a minimum, the type of service provided, the staff member who provided the service, the date of the service, and appropriate identifying information relating to the patient.
(5) Payments due the community mental health center shall be made at reasonable intervals but not less often than monthly.

Section 3. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this regulation for services not covered by 907 KAR 1:044, community mental health center services, nor for that portion of a community mental health center's costs found unreasonable or nonallowable in accordance with the cabinet's "Community Mental Health Center General Policies and Guidelines and Principles of Reimbursement."

Section 4. Reimbursement of Out-of-state Providers. The cabinet shall make payment to out-of-state mental health center providers who

are appropriately licensed, participate with their state's Title XIX Medicaid Program, and have met the Kentucky Medical Assistance Program conditions of participation. The payment rate will be the lower of charges, or the facility's rate as set by the state Medicaid Program in the other state, or the upper limit for that type of service in effect for Kentucky providers.

[Section 5. The amendments to this regulation shall be effective with regard to payments for services provided on or after October 1, 1988.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 26, 1989
FILED WITH LRC: July 5, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1989, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All mental health centers participating in the Medicaid Program.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: Budget neutral.*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: *The same $1.3 million figured for a 9 month period which resulted in the $1.55 rate for October 1, 1988 will now be figured for a 12 month period which results in the $1.11 rate for July 1, 1989.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:055. Payments for primary care center services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for primary care center services.

Section 1. Primary Care Centers. In accordance with 42 CFR 447.325, the cabinet shall make payment to providers who are appropriately licensed and have met the conditions for participation set by the cabinet, on the following basis:
(1) Payment shall be made on the basis of reasonable allowable cost.
(2) Payment amounts shall be determined by application of the "Primary Care Center General Policies and Guidelines and Principles of Reimbursement Manual" (revised July [January] 1, 1989, and hereby incorporated by reference) developed and issued by the cabinet, supplemented by the use of title XVIII-A reimbursement principles. The Kentucky Medical Assistance Program Primary Care Center General Policies and Principle of Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m.) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office.
(3) Allowable costs shall not exceed customary charges which are reasonable.
(4) For services provided prior to July 1, 1985, reimbursement for medical and nursing cost center costs shall be subject to adjustment for a growth allowance. The growth allowance shall be computed for the year beginning each July, and shall be based on a projection of the change in the medical component of the Consumer Price Index over the previous year as applied to the median service cost of medical and nursing services, on a per visit basis, for all participating providers. Increases in medical and nursing center costs in excess of the growth allowance shall be disallowed. For those facilities with medical and nursing cost

increases which are less than the growth allowance, the difference between the two (2) shall be reimbursable as a cost containment incentive payment at the time of the usual cost settlement.

(5) For services provided on or after July 1, 1985, the average allowable cost per visit for the medical and nursing services cost center shall not exceed the lesser of actual allowable costs, or charges, or the actual allowable average cost per visit for medical and nursing center services for the facility fiscal year ending prior to July 1, 1985 (not adjusted to the lower of cost or charges) plus an additional growth allowance of twenty (20) cents per visit per month (if such cost is incurred) for each month after the facility's fiscal year end but prior to July 1985; effective with regard to services provided on or after July 1, 1989, facilities whose established rates on July 1, 1985 were below the median cost and which currently have an actual cost for medical and nursing services equal to or exceeding the median cost established on July 1, 1985 will receive the median cost as their rate, and facilities with an actual cost per service which is less than the median will be limited to actual costs. Primary care centers beginning participation on or after July 1, 1985, or which have less than two (2) full years of program participation on that date, shall be reimbursed on the basis of the lower of reasonable allowable costs or charges (as shown in subsections (1) through (3) of this section) for the first two (2) years of participation in the program. For the third and subsequent years, the average allowable cost per visit may not exceed the lower of the facility's actual allowable costs, or charges, or the facility's actual allowable costs (not adjusted to the lower of cost or charges) for the second year of participation.

(6) During the first six (6) months after the implementation of the policy contained in subsection (4) of this section, centers with fiscal year endings occurring in the six (6) month period shall not have medical and nursing center costs disallowed as a result of imposition of the growth allowance upper limit, but shall be entitled to receive any applicable incentive payment.

(7) The amount of any allowable incentive payment determined pursuant to the policy specified in subsection (4) of this section may not exceed the growth allowance, and must be added to allowable costs for application of the lower of costs or charges principle.

(8)(a) Effective January 1, 1989 all primary care centers will be placed on a universal rate year for purposes of upper limits. Except as specified in subsection (9) of this section, the following upper limits shall be applied on a prospective basis: medical and nursing services, 105 percent of the weighted median per visit cost with the upper limit for centers with a teaching component through affiliation with a medical school (University of Kentucky or University of Louisville) set at 135 percent of the weighted median per visit cost effective January 1, 1989, 120 percent effective January 1, 1990, and 105 percent effective January 1, 1991 and thereafter; pharmacy service cost shall be limited to the average amount paid by the Department for Medicaid Services to providers through the pharmacy element of the Medicaid program as determined from the most recent state fiscal year data, trended and indexed; and dental service cost shall be limited to the average amount paid per utilizer by the Department for Medicaid Services to providers through the dental element of the Medicaid program as determined from the most recent state fiscal year data, trended and indexed.

(b) A newly participating center shall not be included in the cost array and shall not be subject to upper limits until the center has one (1) full year of audited data resulting from Medicaid program participation.

(c) For the purpose of calculating interim rates and establishing prospective upper limits, costs from the most recent audited cost report will be used with costs trended to the beginning of the upper limit year (e.g., to January 1, 1989 for the first universal rate year) and indexed for inflation to the end of that year.

(9) As an incentive for cost efficiency, providers which at the beginning of the universal rate year have medical and nursing costs in the lowest one-fourth (1/4) of the array will receive an incentive payment which is set at twenty (20) percent of the average composite interim rate of the incentive eligible group, with the incentive to be paid only on visits which are not in excess of 10,000. The entire interim payment will be considered prospective in nature for the incentive eligible group in that there will be no settlement after audit requiring a payback unless charges are less than payments; to the extent that cost exceeds the interim payments, an upward adjustment will be made to compensate for the additional costs, subject to the upper limits on July 1, 1985 medical and nursing services cost limit. At the time of settlement, the center shall receive the greater of the interim payment, or actual cost up to the upper limits, not to exceed charges.

(10) Effective with regard to services provided on or after October 1, 1988, the cost of drugs for specified immunizations as shown in 907 KAR 1:054 which are provided free from the Department for Health Services to primary care centers shall be paid by the Department for Medicaid Services to the Department for Health Services upon receipt of notice from the primary care centers that the drugs were used to provide immunizations to Medicaid recipients.

(11) Effective with regard to services provided on or after January 1, 1989, the cost of drugs for specified immunizations as shown in 907 KAR 1:054 shall not be considered an allowable cost even though the drugs are purchased on the open market so long as the drugs could have been obtained free from the Department for Health Services.

Section 2. Implementation of the Payment System. (1) The reimbursement system developed by the cabinet for primary care centers is supported by the Title XVIII-A reimbursement principles which will serve as guidelines for determining reasonable allowable cost in areas not addressed specifically by the cabinet.

(2) The system shall utilize a method whereby primary care providers are paid an interim rate based on a reasonable estimation of current year costs followed by a year end adjustment to actual reasonable allowable costs. When the need can be demonstrated, adjustment to an interim rate will be made.

(3) The vendor shall complete an annual cost report on forms provided by the cabinet not later than sixty (60) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(4) Each primary care center provider shall make available to the cabinet at the end of each fiscal reporting period, and at such intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet.

(5) Interim payments due the primary care center shall be made at reasonable intervals but not less often than monthly.

Section 3. Prohibition against Joint Participation. Dual or joint participation in the medical assistance program by a primary care center is not permitted. When a primary care center elects to participate as such in the medical assistance program it may not participate concurrently under other regular ongoing elements of the medical assistance program, including the rural health clinic services element. In addition, when a center elects to participate as such in the medical assistance program, it is considered to elect participation for all eligible service elements, components, or subunits of the center.

Section 4. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this regulation for services not covered by 907 KAR 1:054, primary care center services, nor for that portion of a primary care center's costs found unreasonable or nonallowable in accordance with the cabinet's "Primary Care Center General Policies and Guidelines and Principles of Reimbursement." In addition, when the utilization review processes of the cabinet find that costs have been incurred through provision of unnecessary medical treatment services, such costs shall be disallowed.

[Section 5. Effective Dates. The provisions of this regulation as amended shall be effective with regard to services provided on or after January 1, 1989.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 26, 1989
FILED WITH LRC: July 5, 1989 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1989, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: 6 primary care centers.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $300,000 (cost)
2. Continuing costs or savings: $300,000 (cost)
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(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 Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:402. Incorporation by reference of the Physician Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the physician services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the

cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Physician Services Manual, revised December [September] 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: May 31, 1989
FILED WITH LRC: June 22, 1989 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1989, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of physician services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(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: There is no direct or indirect costs or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:416. Incorporation by reference of the Pharmacy Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the pharmacy services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Pharmacy Services Manual, revised June 1, 1989 [September 1, 1988], used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an

appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 27, 1989
FILED WITH LRC: July 5, 1989 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1989, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of pharmacy services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(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: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

PROPOSED REGULATIONS RECEIVED THROUGH JULY 15, 1989

JUSTICE CABINET
Department of State Police

502 KAR 45:125. Oath of office.

RELATES TO: KRS 16.080(2)
STATUTORY AUTHORITY: KRS 16.080(1)
NECESSITY AND FUNCTION: KRS 16.080(2) requires the Commissioner of the Department of State Police and each officer of the department to take the constitutional oath of office before entering upon the discharge of their official duties. This regulation clarifies when the oath is to be administered and when appointees become officers.

Section 1. Appointees shall, upon reporting for duty as directed by the commissioner, take the constitutional oath of office for the position of cadet trooper.

W. MICHAEL TROOP, Secretary
APPROVE BY AGENCY: June 26, 1989
FILED WITH LRC: June 26, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1989 at 10 a.m. at Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 20, 1989, 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: Lieutenant Thomas P. Hazlette, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Lieutenant Thomas P. Hazlette
(1) Type and number of entities affected: All cadets entering KSP Academy.
(a) Direct and indirect costs or savings to those affected: No fiscal impact.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No change in amount.
(2) Effects on the promulgating administrative body: Changes time oath of office is administered to cadets.
(a) Direct and indirect costs or savings: No fiscal impact.
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: No fiscal impact.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method is available.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Conflicts with 502 KAR 45:010, which is also being amended.
(a) Necessity of proposed regulation if in conflict: Clarifies time oath as required by statute is to be administered.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. This regulation is applicable to all cadets equally and will be applied uniformly.

TRANSPORTATION CABINET

600 KAR 3:020. Grave relocation.

RELATES TO: KRS Chapter 176, 177, 183.120
STATUTORY AUTHORITY: KRS 176.050,177.020, 183.024
NECESSITY AND FUNCTION: In the course of constructing or reconstructing transportation facilities, cemeteries or graves on occasion need to be relocated. This administrative regulation sets forth the provisions for relocation of cemeteries or graves from state-owned property.

Section 1. Notification of Next-of-kin. The Transportation Cabinet shall make every effort to locate the next-of-kin of those interred in the cemetery to be relocated. If there are unidentified remains or if a next-of-kin cannot be located, the Transportation Cabinet shall publish its intention to relocate graves in the local newspapers. This public notice shall include the name and location of the cemetery to be relocated and shall request assistance from anyone having knowledge of persons buried in the cemetery of their next-of-kin. This notice shall be published once each week for a period of sixty (60) days in all local newspapers that are published at least weekly. If the next-of-kin cannot be located after these efforts, the Transportation Cabinet shall request authorization from the county fiscal court to relocate the grave.

Section 2. Location of Reinterment. Unless the next-of-kin prefers another location or it is economically unfeasible, the remains shall be relocated to the closest perpetually maintained public cemetery. If the next-of-kins selects a cemetery located in another county or out-of-state for the reinterment, he shall pay any additional cost incurred by the Transportation Cabinet.

Section 3. Reserved Spaces in the Cemetery. If a family has reserved space adjoining the deceased in the disinterment cemetery and requests a reserved space adjoining the deceased

in the reinterment cemetery, this space shall be provided. The Transportation Cabinet shall attempt to honor other requests for reserved space in the reinterment cemetery from living persons with a reserved space in the disinterment cemetery.

Section 4. Disinterment-reinterment Permit. The Transportation Cabinet shall obtain the Disinterment-reinterment Permit required by 901 KAR 5:090.

Section 5. Contractor Eligibility. Only a person licensed as a funeral director under the provisions of KRS 316.090 shall be eligible to bid as a contractor on a Transportation Cabinet grave relocation project. The Transportation Cabinet shall maintain a list of licensed funeral directors wishing to bid on grave relocation projects. Annually, the cabinet shall advertise statewide for funeral directors interested in providing this service. All qualified respondents as well as funeral directors who have actually relocated graves for the Transportation Cabinet shall be placed on the list. All interested funeral directors shall be required to provide proof of current licensing.

Section 6. Contract Procedures. (1) All funeral directors on the list of those interested in grave relocation and who are located in the county or a county contiguous to the county of the grave relocation project shall be notified of the grave relocation project. In addition, those funeral directors who have requested to be notified of a grave relocation project within certain parameters shall be notified if those parameters are met. Each shall be provided an opportunity to view the grave to be relocated and the reinterment site. If a funeral director expresses interest in the project, he shall be provided a bid proposal.

(2) All properly completed bid forms received prior to the bidding deadline shall be considered. No bid received or completed after the deadline shall be considered.

(3) The contract shall be awarded to the lowest acceptable bid.

(4) If a funeral director contractor has a contract claim or requests relief from the Transportation Cabinet, the procedures set forth in 603 KAR 2:015 shall be followed.

Section 7. Memorial Service. If a brief memorial or religious service is requested by the deceased's next-of-kin, permission for the service shall be granted. However, during the disinterment or reinterment of the deceased only the next-of-kin, Transportation Cabinet employees, and funeral director and his employees shall be present.

B. G. BODNER, Executive Director
O. GILBERT NEWMAN, State Highway Engineer
MILO D. BRYANT, Secretary

APPROVED BY AGENCY: May 15, 1989

FILED WITH LRC: June 16, 1989 at 9 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on August 22, 1989 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 August 17, 1989 so notify this agency. 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 comment 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 administrative regulation. If the hearing is cancelled, written comments will only be accepted until August 17, 1989. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10the Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: Relatives of persons buried in graves needing to be relocated and funeral directors.

(a) Direct and indirect costs or savings to those affected: None - The Transportation Cabinet pays the cost of relocating the grave and obtains the necessary permits.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The Transportation Cabinet as part of a construction project on rare occasions is required to bear the cost of relocating a grave. The cost each year averages less than $100,000.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The Transportation Cabinet is required to obtain the disinterment-reinterment permit and notify next-of-kin.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None. The cabinet recognizes that its procedure on notification of next-of-kin and selection of a funeral director by the requirements of KRS Chapter 13A should be in administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. There are very few graves relocated each year. They should all be treated the same.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

704 KAR 3:291. Repeal of 704 KAR 3:290.

RELATES TO: KRS 156.010, 156.031, 156.035
STATUTORY AUTHORITY: KRS 156.031, 156.035, 156.070
NECESSITY AND FUNCTION: KRS 156.010, 156.031, and 156.035 set forth authority to develop state plans and other regulatory requirements and prerequisites for receiving and allocating federal funds, but the federal Chapter 1 program no longer requires a state plan. The state plan which has been incorporated by reference in 704 KAR 3:290 is no longer necessary.

Section 1. 704 KAR 3:290, Chapter 1, ECIA annual program plan, is hereby repealed.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: July 12, 1989
FILED WITH LRC: July 14, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 23, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Elementary and Secondary Education at its July meeting. Those persons wishing to provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 18, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Joanne Brooks
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: LEA may continue to claim indirect cost or per indirect cost formula approved by the Kentucky Department of Education.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Must continue to file monthly financial reports.
(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: SEA will continue to generate approximately $2 million for administration over a three-year period. The LEAs will continue to generate approximately $200 million over a three-year period.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Federal law and regulations no longer require a State Chapter 1 Plan.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
(6) Any additional information or comments:
TIERING: Was tiering applied? No

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

704 KAR 3:365. Chapter I complaint procedure.

RELATES TO: KRS 156.010, 156.031, 156.035, 34 CFR §200.73, §201.47
STATUTORY AUTHORITY: KRS 156.031, 156.035, 156.070
NECESSITY AND FUNCTION: KRS 156.010, 156.031, and 156.035 provide the state statutory framework for complying with federal funding programs and for receiving and allocating federal education funds; and 34 CFR §200.73 and 34 CFR §201.47 require the Department of Education, when applying for participation in programs for disadvantaged children under Chapter I of Public Law 100-297 (the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988), to show written evidence of complaint procedures particular to disadvantaged and migrant children under Chapter I. This regulation establishes such complaint procedures.

Section 1. (1) Complaints originating at the local level relative to disadvantaged and migrant children under federal Chapter 1 programs shall be entertained by the Department of Education only after such complaints have been filed and heard at the local level in accordance with local education agency policy. Such complaints shall be in written form. Persons making written complaints shall register such complaints with the Director, Division of Compensatory Education, Kentucky Department of Education, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.
(2) Written complaints requiring a formal hearing shall be referred to a complaint committee. Members of this committee shall include, as a minimum, the Deputy Superintendent for Instruction (or designee); Director, Division of Compensatory Education; unit director; and the program consultant serving the affected LEA. The committee shall conduct a hearing within thirty (30) days following the receipt of complaints requesting a formal hearing.

Section 2. Upon receipt of the request for a formal hearing, the Department of Education shall make the necessary on-site investigation of the complaint. Such on-site investigation shall:
(1) Be made following adequate advance notice to the parties involved;
(2) Include the gathering of information through interviews and examination of records, considerating each allegation of the complaint; and
(3) Provide appropriate opportunities for the complainant(s) and the LEA to present evidence concerning the allegations.

Section 3. Opportunity shall be provided for the complainant or the complainant's representative, or both, and the LEA involved to submit evidence, including the opportunity to question parties to the dispute or any of their witnesses. All investigations and the solutions of complaints shall be completed within sixty (60) days unless the complainant(s) is notified, in writing, to the contrary.

Section 4. An involved party may appeal the final Department of Education resolution to the United States Commissioner of Education if notice of such appeal is filed with the commissioner within thirty (30) days of the receipt of the Department of Education's written decision.

Section 5. If the LEA fails to take corrective action following a final determination of a formal complaint, the Department of Education shall use one (1) or more of the following methods to assure such action:
(1) Follow-up visits by Department of Education staff to determine whether the agency is taking the required corrective action;
(2) Compliance agreement; and
(3) Withholding of funds.

Section 6. Dissemination, free of charge, of information concerning these procedures shall be made to all interested parties including district and school advisory councils.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: July 12, 1989
FILED WITH LRC: July 14, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 23, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Elementary and Secondary Education at its July meeting. Those persons wishing to provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 18, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Joanne Brooks
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: All LEAs operating Chapter 1 programs and parents of such children - potential 177 LEAs.
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: Filing a written document in the event of a complaint.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Operational costs to investigate complaints.
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: SEA files written findings to complaints.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Federal law requires this complaint procedure.
(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: None
TIERING: Was tiering applied? No

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Education for Exceptional Children

707 KAR 1:140. Qualifications for approved classroom assignment of teachers of exceptional children.

RELATES TO: KRS 157.200 to 157.290, 157.360, 161.030
STATUTORY AUTHORITY: KRS 156.070, 157.360, 161.030
NECESSITY AND FUNCTION: KRS 157.200 to 157.290 set forth the state statutory framework for special education programs for exceptional children; KRS 157.360 provides the mechanism for state financial support of local school district programs for exceptional children; and KRS 161.030 rests teacher certification authority with the State Board for Elementary and Secondary Education. This regulation establishes the qualifications for approval of classroom teaching personnel for classroom unit allocation for exceptional pupils.

Section 1. Educable Mentally Handicapped. Teachers holding the following certification may be assigned to classes established to serve educable mentally handicapped pupils, grades K-12 or any combination of grades thereof:
(1) Certification for learning and behavior disorders, grades K-12 or 7-12.
(2) Certification for teaching the educable mentally retarded, emotionally disturbed, or neurologically impaired, for grades 1-12, 1-8, or 7-12.

Section 2. Emotionally Disturbed. Teachers holding the following certification may be assigned to classes established to serve emotionally disturbed pupils, grades K-12, or any combination of grades thereof:
(1) Certification for learning and behavior disorders, grades K-12 or 7-12.
(2) Certification for teaching the educable mentally retarded, emotionally disturbed, or neurologically impaired, or handicapped for grades 1-12, 1-8, or 7-12.

Section 3. Learning Disabilities. Teachers holding the following certification may be assigned to classes established to serve learning disabled pupils, grades K-12, or any combination of grades thereof:

(1) Certification for learning and behavior disorders, grades K-12 or 7-12.
(2) Certification for teaching the educable mentally retarded, emotionally disturbed, or neurologically impaired, for grades 1-12, 1-8, or 7-12.

Section 4. Physically Handicapped. Teachers holding the following certification may be assigned to classes established to serve physically handicapped pupils, grades K-12, or any combination of grades thereof:
(1) Certification for learning and behavior disorders, grades K-12 or 7-12.
(2) Certification for teaching the educable mentally retarded, emotionally disturbed, neurologically impaired, or orthopedically handicapped for grades 1-12, 1-8, or 7-12.

Section 5. Trainable Mentally Handicapped. Teachers holding the following certification may be assigned to classes established to serve trainable mentally handicapped pupils, grades K-12, or any combination of grades thereof:
(1) Certification for trainable mentally handicapped, grades K-12.
(2) Certification for teaching the trainable mentally retarded, grades 1-12, 1-8, or 7-12.
(3) Certification for teaching the severely/profoundly handicapped.

Section 6. Severely Profoundly Handicapped. Teachers holding the following certification may be assigned to classes established to serve pupils classified as severely/profoundly handicapped at any grade level:
(1) Certification for teaching the trainable mentally handicapped, or trainable mentally retarded, grades K-12, 1-8, or 7-12.
(2) Certification for teaching the severely/profoundly handicapped.

Section 7. Multiple Handicapped. (1) Teachers of classes established where the majority of students are multiple handicapped whose intellectual functioning is trainable mentally handicapped or below shall hold the following certification:
(a) Certification for teaching the trainable mentally handicapped or trainable mentally retarded, grades K-12, 1-8, or 7-12.
(b) Certification for teaching the severely/profoundly handicapped.
(2) Teachers of classes established where the majority of students are multiple handicapped whose intellectual functioning is educable mentally handicapped or above, and with no students whose intellectual functioning is within the range for severely/profoundly handicapped, shall hold the following certification:
(a) Certification for teaching the educable mentally retarded, emotionally disturbed, neurologically impaired, or orthopedically handicapped for grades 1-12, 1-8, or 7-12.
(b) Certification for learning and behavior disorders, grades K-12, or 7-12.

Section 8. Visually Handicapped. Teachers holding the following certification may be assigned to classes established to serve pupils classified as visually impaired at any grade level: certification for teaching the partially seeing, blind, or visually impaired, grades 1-12, 1-8, or 7-12.

Section 9. Hearing Impaired. Teachers holding the following certification may be assigned to classes established to serve pupils classified as hearing impaired at any grade level: certification for teaching the hard of hearing, deaf, or hearing impaired, grades K-12, 1-12, 1-8, or 7-12.

Section 10. Speech-Language Disorders. Teachers holding the following certification may be assigned to serve pupils at any grade level who have been identified as needing instruction for speech or language disorders:
(1) Certification for speech and hearing, grades 1-12.
(2) Certification for speech and communication disorders, grades K-12.
(3) Certification for communication disorders.

Section 11. Exceptional Children Kindergarten Classes. Teachers holding the following certification may be assigned to serve kindergarten age pupils classified as handicapped:
(1) Certification for teaching the educable mentally retarded, emotionally disturbed, neurologically impaired, orthopedically handicapped, trainable mentally handicapped, visually impaired, partially seeing, deaf, hard of hearing, hearing impaired, grades 1-12, 1-8, or 7-12.
(2) Certification for learning and behavior disorders, trainable mentally handicapped, and severely or profoundly handicapped, grades K-12.

Section 12. Replacement Teacher for Special Education Classes. When a local school district loses the services of the approved, certified special education teacher after September 15, a replacement teacher may be assigned to a classroom unit for exceptional children under the following priority order.
(1) A teacher holding certification for the assignment as identified in Sections 1 through 11 of this regulation.
(2) If a teacher is not available who holds certification identified in subsection (1) of this section, the local school district may apply to the Office of Education for Exceptional Children for approval of qualifications for a replacement teacher, with the exception of speech language disorders, who meets the following criteria:
(a) The application shall document the following:
1. Teachers with certification in special education are not available within the local school district for the position.
2. Efforts have been made to recruit a teacher certified in special education for the vacant position. The vacancy has been publicized by appropriate means, including advertisement of the vacant position.
3. The position will be filled by the best certified person available giving preference to the factors of academic preparation, prior successful teaching experience or related educational work.
(b) The replacement teacher shall hold a classroom teaching certificate valid for the same grade level of the assignment.
(c) The replacement teacher shall not be employed for the same teaching assignment for the following academic year without obtaining appropriate certification.

(d) The approval shall be effective from the date the application for approval is received by the Office of Education for Exceptional Children.

Section 13. Combinations of grades to be served within all categorical areas remain subject to age range requirements as set forth in 707 KAR 1:052 through 707 KAR 1:059.

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: July 12, 1989
FILED WITH LRC: July 14, 1989 at 10 a.m.
PUBLIC HEARING: A public hearing has been scheduled on Wednesday, August 23, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Elementary and Secondary Education at its July meeting. Those persons wishing to provide written testimony or attend and testify shall contact in writing: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 18, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nancy LaCount
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The information in the new regulation was previously renewed on a year by year basis in 707 KAR 1:051. The new regulation presents the same information in a separate regulation, making it easier for local school districts to access and use.
(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. Federal and state mandates do not allow for tiering of certification requirements for service providers.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 300.12
2. State compliance standards. Established by this regulation.
3. Minimum or uniform standards contained in the federal mandate. Federal mandate does not set minimum uniform standards for certification but merely requires that personnel providing services to handicapped students be "qualified". (34 CFR 300.12) Qualified is defined in the federal mandate as meeting state agency approved or recognized certification, licensing or other comparable requirements which apply to the area in which he or she is providing special education and related services. Thus, the federal mandate allows states to set their own minimum uniform standards for certification.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, see above.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Adult and Community Education

709 KAR 1:051. Repeal of 709 KAR 1:050.

RELATES TO: KRS 156.032, 156.035, 156.070
STATUTORY AUTHORITY: KRS 156.032, 156.035, 156.070
NECESSITY AND FUNCTION: KRS 156.032, 156.035, and 156.070 direct the State Board for Adult, Vocational Education and Vocational Rehabilitation to be responsible for, and adopt administrative regulations for, adult education programs and services in Kentucky. The state plan for the next applicable time period, however, contains program plans and assurances to the federal government that do not constitute material designated by KRS Chapter 13A as regulatory in nature, and therefore the plan as a whole no longer needs to be incorporated by reference.

Section 1. 709 KAR 1:050, Adult plan, is hereby repealed.

C. RICHARD WARNER, Vice Chairman
APPROVED BY AGENCY: June 20, 1989
FILED WITH LRC: July 3, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing has been scheduled on August 25, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Adult, Vocational Education and Vocational Rehabilitation at its June meeting. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult, Vocational Education and Vocational Rehabilitation, 2013 Capital Plaza Tower, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 21, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Brenda Rollins
(1) Type and number of entities affected: All entities - local school districts, community

based organizations and others - that receive funding under P.L. 100-297, The Adult Ed. Act.
(a) Direct and indirect costs or savings to those affected: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: There will be no impact.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives available.
(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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
2. State compliance standards. The Adult Education Act, P.L. 100-297, requires a state plan containing program plans and assurances that do not constitute material designated by KRS Chapter 13A as regulatory in nature. Therefore, only those parts of the plan requiring regulations will be incorporated as such in the future.
3. Minimum or uniform standards contained in the federal mandate. The Adult Education Act, P.L. 100-297, requires a state plan containing program plans and assurances that do not constitute material designated by KRS Chapter 13A as regulatory in nature. Therefore, only those parts of the plan requiring regulations will be incorporated as such in the future.
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

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Adult and Community Education

709 KAR 1:090. Approval of applications under Section 322 of Adult Education Act.

RELATES TO: KRS 156.032, 156.035, 156.070
STATUTORY AUTHORITY: KRS 156.032, 156.035, 156.070
NECESSITY AND FUNCTION: KRS 156.032, 156.035, and 156.070 direct the State Board for Adult, Vocational Education and Vocational Rehabilitation to be responsible for, and adopt administrative regulations for, adult education programs and services in Kentucky. This regulation prescribes the policies, activities, and procedures for approving local applications for grants of federal funds for adult education programs under Section 322 of the Adult Education Act.

Section 1. Eligible Recipients. (1) The eligible recipients for federal adult education funds are as follows:
(a) Local educational agencies;
(b) Public or private nonprofit agencies, organizations, or institutions; and
(c) A consortium of public or private nonprofit agencies, organizations, or institutions that includes a for-profit agency, organization, or institution that can make a significant contribution to attaining the objectives of the Adult Education Act.
(2) Public and private agencies, organizations, or institutions shall submit, in addition to their proposals, documentation of consultation with the applicable local educational agency. The applicant shall allow sufficient time for the applicable local educational agency to have an opportunity to comment on the application before its submission to the Department of Education. The nonprofit agency, organization, or institution shall then have an opportunity to respond to the local educational agency's comments. Both the comments and the responses shall be attached to the application.
(3) For a recipient consortium, the local educational agency or public or private nonprofit agency, organization, or institution shall enter into a contract with the for-profit entity. Funds shall be awarded only to the local educational agency or the public or private nonprofit entity that applies on behalf of the consortium.
(4) The Kentucky Department of Education shall give preference in the awarding of grants to those local applicants who have demonstrated or can demonstrate a capability to recruit and serve educationally disadvantaged adults.

Section 2. Notice of Availability. The availability of funds shall be announced annually through a variety of methods to ensure that eligible applicants have ample opportunity to apply. In April of each year, the Division of Adult Basic Education shall make an announcement through the Department of Education's Division of Public Information, which shall send information to all newspapers and radio and television stations in the state, that funds will be available for adult education programs and activities. The Office of Adult and Community Education shall place a similar announcement in its newsletter and other newsletters published by the Department of Education. The division shall also announce the availability of funds on KNET, the computer network serving many local school districts. In addition, announcements shall be sent to those who request information about the application process and the availability of funds.

Section 3. Application Process. (1) All applications shall be submitted to the Kentucky Department of Education by May 15 of each year. Applicants may be local educational agencies,

including local school districts, area vocational schools, technical institutes, or community colleges; other colleges; universities; other public or private agencies or institutions; or consortia of such agencies or institutions.

(2) An application for an adult education program under Section 322 of the federal act shall be signed either by the local director of adult education or the superintendent of the school system; or, when appropriate, completed and signed by the proper officials of a private or public nonprofit agency, organization, institution, or consortium.

(3) Application forms are available from the Division of Adult Basic Education, 20th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601. Applications shall include the required budget, assurances, and the information requested about proposed activities and programs. Four (4) copies of each application shall be submitted to the Division of Adult Basic Education.

Section 4. Review Process. Applications shall be reviewed with respect to the eligibility of applicants and the completeness of the information provided; and based upon the criteria given in Section 5 of this regulation. The Superintendent of Public Instruction shall determine the applications to be approved and the funding levels.

Section 5. Criteria for Evaluating Applications. Applications for funds under Section 322 of the Adult Education Act shall be evaluated according to the following criteria:

(1) The characteristics or needs of the population to be served;

(2) The extent to which the applicant proposes projects to reach educationally disadvantaged adults and those most in need of assistance, e.g., the illiterate, the unemployed, the handicapped, the institutionalized, and those with limited English proficiency;

(3) The extent to which the applicant gives special emphasis to adult literacy and basic education projects;

(4) The extent to which the proposed programs, activities, and services address the identified needs;

(5) The resources available to the applicant, other than federal and state adult education funds, to meet those needs;

(6) The adequacy of outreach activities, including flexible scheduling, convenience of facilities to target populations, and availability of day care and transportation services;

(7) The extent to which the project objectives can be accomplished within the amount of the budget request;

(8) The adequacy of the evaluation procedures detailed;

(9) Current programs, activities, and services receiving assistance from federal, state, and local sources in the area proposed to be served by the applicant;

(10) Cooperative arrangements that have been made to deliver services to adults, including arrangements with business, industry, and volunteer literacy organizations; and

(11) Nonduplication and coordination of programs, services, or activities made available to adults under other federal, state, and local programs.

Section 6. Distribution of Funds. (1) The Kentucky Department of Education shall determine the allocation of funds under Section 322 of the Adult Education Act. The funds available for this purpose shall be the amount remaining after the state's basic grant under Section 321 is reduced by the amount of funds needed for state administration, instruction in institutions, discretionary set-aside, and special projects and teacher training (Section 353 projects).

(2) The department shall give preference to those applicants who have demonstrated or can demonstrate a capability to recruit and serve the largest numbers of educationally disadvantaged adults. Because of budgetary constraints, the department encourages the consolidation of very small programs that are in geographical proximity and shall no longer provide state or federal funds to programs that have averaged serving fewer than six (6) adult learners.

(3) Funds shall be awarded for continuation programs on the basis of the numbers served in the previous year, consideration of the population to be served, and the availability of funds. For new applicants, awards shall be based on consideration of the population to be served, the extent to which project objectives can be accomplished within the budget proposed, prior experience with similar activities, and the availability of funds.

Section 7. Administrative Costs. At least ninety-five (95) percent of the federal funds provided by the Kentucky Department of Education to local agency recipients shall be spent for adult education instructional activities. Local costs for administration, planning, personnel development, and interagency cooperation shall not exceed five (5) percent of the federal funds awarded. Where local administrative costs may exceed that amount, the Department of Education shall negotiate with local grant recipients to determine whether to provide supplementary state funds for noninstructional purposes.

C. RICHARD WARNER, Vice Chairman
APPROVED BY AGENCY: June 20, 1989
FILED WITH LRC: July 3, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing has been scheduled on August 25, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Adult, Vocational Education and Vocational Rehabilitation at its June meeting. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult, Vocational Education and Vocational Rehabilitation, 2013 Capital Plaza Tower, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 21, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Brenda Rollins

(1) Type and number of entities affected: All entities - local school districts, community based organization and others - that provide adult education programs and services. Approximately 300.

(a) Direct and indirect costs or savings to

those affected: NA
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: NA
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: Will meet regulations required to receive federal grant.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods not available.
(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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
2. State compliance standards. The Adult Education Act, P.L. 100-297, does not require a change in Kentucky's process for allocating dollars to provider of adult education program and services. This process does not exceed the minimum federal requests.
3. Minimum or uniform standards contained in the federal mandate. Same as 2 above.
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. No

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Adult and Community Education

709 KAR 1:100. Approval of applications under Section 353 of Adult Education Act.

RELATES TO: KRS 156.032, 156.035, 156.070
STATUTORY AUTHORITY: KRS 156.032, 156.035, 156.070
NECESSITY AND FUNCTION: KRS 156.032, 156.035, and 156.070 direct the State Board for Adult, Vocational Education and Vocational Rehabilitation to be responsible for, and adopt administrative regulations for, adult education programs and services in Kentucky. This regulation prescribes the policies, activities and procedures for approving local applications for grants of federal funds for adult education special demonstration and teacher training projects under Section 353 of the Adult Education Act.

Section 1. Application, Funding, and Appeal Process. (1) Announcement of availability of funds. In April of each year, the Division of Adult Basic Education shall make an announcement through the Department of Education's Division of Public Information that funds will be available for special demonstration and teacher training projects, and shall place a similar announcement on KNET, the computer network serving many local school districts. In addition, announcements shall be sent to those who request information about the application process and the availability of funds.
(2) Proposal submission.
(a) All applications shall be submitted to the Kentucky Department of Education. Applicants may be local educational agencies, including local school districts, area vocational schools, technical institutes, or community colleges; other colleges; universities; other public or private agencies or institutions; or individuals. The chief administrative officer of the local educational agency, or an official designee, shall be the person responsible for submitting applications. Each applicant shall submit seven (7) copies of each proposal to the state Superintendent of Public Instruction or a designated representative.
(b) Applications for all special experimental demonstration projects and teacher training projects shall describe the nature, duration, purpose and plan of the projects, including a statement of the problem, a review of related literature or other background information, statement of objectives, procedures, time schedule, qualifications of personnel, facilities to be used, dissemination procedures, and the proposed budget, including a justification of the amount of funds requested and the portion of the cost to be borne by the applicant.
(3) Review of applications. The Superintendent of Public Instruction or the representative designated to review applications shall name a panel of three (3) to five (5) staff members of the Kentucky Department of Education who are knowledgable in the area of adult education. Each panel member shall rate the applications independently according to a rating scale based on the priorities and criteria described in Section 2 of this regulation. The panel shall arrive at a composite score for each application after discussion of the application. The panel shall then recommend to the Superintendent of Public Instruction the proposals to be approved and the amount of funds to be granted. All proposals for which adult education funds are requested are subject to approval by the Superintendent of Public Instruction.
(4) Appeal process. The Superintendent of Public Instruction or the designated representative shall notify the applicant of the disposition of the application, which may be approval, disapproval, deferral, or a request for modification. Deferral or disapproval of an application shall not preclude its reconsideration or resubmission at a later date.

Section 2. Priorities and Criteria. (1) The Kentucky Department of Education shall provide funds for special experimental demonstration projects and teacher training projects as prescribed by the Adult Education Act. In addition, mini-grants shall be available for proposals that target specific local needs.

Funds shall not be provided under Section 353 for instructional or support services that would normally be part of a regular program of classroom instruction. These funds also cannot underwrite any activity that requires ongoing funds beyond the special grant period. Mini-grants for innovative or developmental projects shall be restricted to programs of adult basic and secondary instruction funded through the Division of Adult Basic Education. The department may, at its discretion, use Section 353 funds for allowable activities that do not fit into one of the other funding categories. The agency may support activities either through direct expenditure or through contracts with outside parties. The agency may set aside a specific sum for these supplemental purposes. In determining the allocation of funds for special experimental demonstration projects and teacher training, priority shall be given to the following types of projects:

(a) A statewide resource center to serve the needs of adult education programs operated by the Department of Education and the Kentucky Literacy Commission;

(b) A statewide training conference for adult education teachers, paraprofessionals, tutors, and volunteers;

(c) On-site demonstration projects in workplace literacy;

(d) Demonstration projects in computerized program management to facilitate reporting procedures;

(e) Regional in-service training projects; and

(f) Demonstration projects involving the development and dissemination of curricular and instructional materials for adult education programs.

(2) The Division of Adult Basic Education shall use the following criteria to evaluate and recommend approval of proposals for grants for special experimental demonstration projects and teacher training:

(a) Educational significance.

1. The proposal focuses on a problem of major importance to adult education;

2. The anticipated outcomes of the project or program will be of value to adult education on a local, state, regional, or national basis;

3. The project is consistent with the annual and long-range plans for adult education; and

4. The project is one that can be adopted or adapted by other local educational agencies.

(b) Adequacy of design or program plan.

1. The proposal must clearly define the problem to be resolved through the project;

2. The proposal clearly states the project objectives;

3. The proposal reflects a sound work plan and time schedule;

4. The application reflects adequate research and development strategies related to the proposed activities; and

5. The proposal fully describes the procedures to be followed and provides information on any data collection or statistical analyses to be undertaken as part of the project.

(c) Personnel and facilities.

1. The key personnel are qualified by training and experience to carry out the project; and

2. Adequate facilities are available to enable the participants to carry out the project.

(d) Economic efficiency.

1. The cost is reasonable as compared with the cost of other possible approaches to the problems;

2. The expenditure is justified by the probable value of the results of the project; and

3. The proposal demonstrates effort on the part of the applicant through the use of local funds, personnel, or facilities.

(3) Each director or supervisor of adult education shall be notified annually of the availability of funds for mini-grants for innovative or special training projects and shall disseminate this information to program staff members. The Department of Education shall set priorities for mini-grants but will accept proposals that do not address these priorities if the proposals address specific needs at local levels. Before a formal application is submitted, applicants for mini-grants must file an "intent to submit" form signed by the program director or supervisor. The following criteria shall be used in reviewing proposals for mini-grants:

(a) The applicant adequately explains the program's need for the project;

(b) The applicant states what results are expected and why they are important;

(c) The applicant plans a realistic, appropriate approach to the problem and describes the specific steps to be taken;

(d) The applicant provides a plan to keep the information or records;

(e) The applicant describes the credentials and experience of the staff personnel involved in the project;

(f) The proposal is unique and innovative, could benefit students, and may be relevant to the needs of other programs;

(g) The applicant addresses needs identified as priorities for mini-grants for that funding year; and

(h) The proposed budget is reasonable in terms of anticipated outcomes.

Section 3. Dissemination and Adoption. Each project approved under Section 353 shall include a plan for disseminating its results. This plan shall show that the results will be disseminated to the U.S. Secretary of Education, the adult education clearinghouse, the state director of adult education, adult education departments of colleges and universities, other selected Section 353 projects, and local adult education personnel in Kentucky. Additional information about the projects shall be made available to local district personnel in Kentucky and other states who are interested in adopting similar projects or otherwise making use of the results of projects undertaken under Section 353.

Section 4. Monitoring. An assigned monitor from the adult education staff of the Kentucky Department of Education shall visit each program receiving funds under Section 353 once each quarter and shall submit a monitoring report after each visit. Each project shall be required to submit quarterly narrative and financial reports and to provide an annual report to the Division of Adult Basic Education within thirty (30) days after termination of the project.

Section 5. Evaluation of State Discretionary Program. At the completion of each fiscal year, the review panel shall evaluate the Section 353 projects as a whole, using the criteria listed in Section 2 of this regulation. Special consideration for future adoption or

continuation shall be given to projects that could feasibly be duplicated on a statewide basis.

Section 6. Evaluation of Individual Projects. Upon the termination of each Section 353 project, the Kentucky Department of Education shall use data gathered from the monitoring of projects and the reports submitted for the projects to assess the effectiveness of each activity. Members of the state adult education staff shall also survey the beneficiaries of each project to obtain their reactions to the activity. The department shall base the criteria used in measuring effectiveness upon the goals and objectives proposed in the application for funds and the extent to which they were achieved. Within ninety (90) days after the close of the program year, an evaluation of each funded project shall be sent to the U.S. Department of Education.

Section 7. Continuation of Activities and Services. Each school district or other organization receiving funds for Section 353 projects shall be encouraged to continue the activities and services of the project after the Section 353 funding ceases. This continuation shall be encouraged by the following techniques:

(1) Each district or organization shall be notified as to how the project can receive funds under the Adult Education Act.

(2) Each district or organization shall be given information about agencies or organizations that provide funds or services to assist in the continuation of projects of this particular type.

(3) Each district or organization shall be given information about submitting its project to the National Diffusion Network for adoption as an exemplary program.

Section 8. Current Programs, Activities, and Services in the Area. Each applicant shall be required to describe the current programs, activities, and services receiving assistance from federal, state, and local sources in the area proposed to be served.

Section 9. Cooperative Arrangements. Each project applicant shall be required to list and explain the cooperative arrangements that have been made to deliver educational services to adults.

Section 10. Nonduplication of Services. The information given by the applicant in Section 8 of this regulation shall determine whether the proposed project would represent a duplication of programs, services, or activities already available to adults in the area proposed to be served by the applicant.

Section 11. Assurances. All assurances applicable to the Adult Education Act are applicable to the submission of Section 353 projects. The priorities established for these projects are designed to help the state achieve its goals under the State Plan for Adult Education and are consistent with the state's educational program.

Section 12. Teacher Training. (1) The needs of adult education teachers are determined by needs assessments, both formal and informal. The staff development coordinator in the Kentucky Department of Education plans and implements local and statewide in-service sessions based upon those assessments and current national priorities in adult education. All teacher training projects approved under Section 353 shall meet these needs and priorities.

(2) In addition to in-service sessions, adult education teachers shall receive the following services:

(a) Clearinghouse of adult education materials, including software and videotapes, for teacher and student use;

(b) Instructional publications, including handbooks, bibliographies, and reviews of new materials;

(c) Daily technical assistance as required on test administration, teaching techniques, recruitment, and materials; and

(d) Preservice training for new teachers, including instruction in characteristics of adult learners, test administration, management of instructional programs, teaching techniques and materials, and ways of helping adults with special needs.

C. RICHARD WARNER, Vice Chairman
APPROVED BY AGENCY: June 20, 1989
FILED WITH LRC: July 3, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing has been scheduled on August 25, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Adult, Vocational Education and Vocational Rehabilitation at its June meeting. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult, Vocational Education and Vocational Rehabilitation, 2013 Capital Plaza Tower, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 21, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Brenda Rollins

(1) Type and number of entities affected: Entities applying for P.L. 100-297 funds for innovative and training purposes. Approximately 40.

(a) Direct and indirect costs or savings to those affected: N/A

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: N/A

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: Meets regulations to receive federal grant.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives available.

(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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
2. State compliance standards. The Adult Education Act, P.L. 100-297, requires each state to use not less than ten percent of the funds allocated under Section 313 for innovative and training programs. This regulation sets forth the application and funding process and does not exceed the minimum federal requirements reports.
3. Minimum or uniform standards contained in 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? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Adult and Community Education

709 KAR 1:110. Approval of applications under English literacy program.

RELATES TO: KRS 156.032, 156.035, 156.070
STATUTORY AUTHORITY: KRS 156.032, 156.035, 156.070
NECESSITY AND FUNCTION: KRS 156.032, 156.035, 156.070 direct the State Board for Adult, Vocational Education and Vocational Rehabilitation to be responsible for, and adopt administrative regulations for, adult education programs and services in Kentucky. This regulation prescribes the policies, activities, and procedures for approving local applications for grants of federal funds for educational programs for adults of limited English proficiency under Section 372 of the Adult Education Act.

Section 1. Goals of Activities. The goals of all activities receiving grants under this regulation shall be to help adults of limited English proficiency learn to communicate more effectively and carry out the daily affairs of life; to improve their employability through more proficient use of English; and, for those wishing to seek U.S. citizenship, to prepare them for citizenship as effective, functional members of society.

Section 2. Submission of Applications. Applications for grants under Section 372 of the the Adult Education Act shall be submitted to the Kentucky Department of Education by May 15 of each year. Grants shall be awarded under the same policies and procedures applicable to grants awarded for adult education programs under Section 322 of the Act, as set forth in 709 KAR 1:090.

Section 3. Cooperation with Community-based Organizations. These funds shall be used to supplement the funds used under the basic state grant to provide English as a second language and citizenship classes for adults of limited English proficiency. The Department of Education shall work cooperatively with community-based organizations in urban areas to reach those most in need of services and to expand the number of persons served in these programs. When a notice of availability of funds is issued, the department shall specify that fifty (50) percent of the funds are reserved for community-based organizations that have demonstrated their capability to administer English proficiency programs.

Section 4. Criteria for Review of Applications. In reviewing applications for funds under the English literacy program, the Division of Adult Basic Education shall consider the following criteria:
(a) The adequacy of recruitment plans;
(b) The adequacy of educational assessment strategies;
(c) The extent to which the proposed activities address the identified needs for English literacy;
(d) The adequacy of retention strategies;
(e) The adequacy of evaluation plans;
(f) The extent to which such support services as transportation, child care, and counseling can be provided;
(g) The planned coordination with other agencies and organizations; and
(h) The extent to which the objectives can be accomplished within the budget requested.

Section 5. Evaluation of Programs. Each program receiving funds under Section 372 of the Adult Education Act shall be evaluated on the basis of the measurable goals and objectives set forth in the application. Grant recipients shall submit reports comparing the stated objectives to the program accomplishments at the end of the program year.

Section 6. State Administration. The Kentucky Department of Education shall not use more than five (5) percent of the funds available under Section 372 for state administration, technical assistance, and training.

C. RICHARD WARNER, Vice Chairman
APPROVED BY AGENCY: June 20, 1989
FILED WITH LRC: July 3, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing has been scheduled on August 25, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Adult, Vocational Education and Vocational Rehabilitation at its June meeting. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult, Vocational Education and Vocational Rehabilitation, 2013 Capital Plaza Tower, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 21, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Brenda Rollins
(1) Type and number of entities affected: This will only involve Kentucky. This is an enabling regulation to meet federal requests for applying for English literacy funds.
(a) Direct and indirect costs or savings to those affected: NA
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: NA
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: Meets the requirements to apply for and obtain federal grants.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods available.
(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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
2. State compliance standards. The Adult Education Act, P.L. 100-297, requires a process for receiving and administering federal funds for limited English speaking individuals to be contained in the state plan. This process does not exceed minimum standards suggested.
3. Minimum or uniform standards contained in the federal mandate. Same as 2 above.
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. No

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Adult and Community Education

709 KAR 1:120. Approval of applications under workplace literacy program.

RELATES TO: KRS 156.032, 156.035, 156.070
STATUTORY AUTHORITY: KRS 156.032, 156.035, 156.070
NECESSITY AND FUNCTION: KRS 156.032, 156.035, 156.070 direct the State Board for Adult, Vocational Education and Vocational Rehabilitation to be responsible for, and adopt administrative regulations for, adult education programs and services in Kentucky. This regulation prescribes the policies, activities, and procedures for approval of demonstration grants to exemplary educational partnerships under Section 371 of the Adult Education Act to pay the federal share of the cost of adult education programs that teach literacy skills needed in the workplace.

Section 1. Program Requirements. Grants under this regulation may be used to fund seventy (70) percent of the cost of programs meeting the requirements of this regulation, and for administrative costs incurred by state and local educational agencies in establishing and evaluating the programs. Programs funded under this section shall be designed to improve the productivity of the work force through improvement of the literacy skills needed in the workplace by:
(1) Providing adult literacy and other basic skills services and activities;
(2) Providing adult secondary education services and activities that may lead to the completion of a high school diploma or its equivalent;
(3) Meeting the literacy needs of adults with limited English proficiency;
(4) Upgrading or updating basic skills of adult workers in accordance with changes in workplace requirements, technology, products, or processes;
(5) Improving the competency of adult workers in speaking, listening, reasoning, and problem-solving; or
(6) Providing educational counseling, transportation, and nonworking-hours child care services to adult workers while they participate in programs funded under this authority.

Section 2. Eligibility. An application to receive funds under this regulation shall be submitted jointly by:
(1) A business, industry, or labor organization, or private industry council; and
(2) A state educational agency, local educational agency, institution of higher education, or school (including an area vocational school, an employment and training agency, or a community-based organization).

Section 3. Application Requirements. The application shall set forth the respective roles of each member of the partnership, include evidence of the applicant's experience in providing literacy services to working adults, describe the program and services to be offered, provide assurances that the funds received shall be used to supplement and not supplant funds otherwise available for this purpose, and describe the evaluation procedures to be used to measure student achievement and the overall effectiveness of the program.

Section 4. Criteria for Evaluating Applications. Applications shall be evaluated according to the criteria listed below:
(1) The quality of the plan of operation, including program design, implementation, and evaluation components;
(2) The commitment of each of the members of the partnership to the purposes of the program;
(3) The applicant's previous experience in providing literacy services to working adults;
(4) The extent to which the objectives can be

accomplished within the budget requested; and
(5) The extent to which the program supplements existing services and does not duplicate other programs provided for working adults under other federal, state, and local programs.

Section 5. Evaluation. In addition to the evaluation of each program by the recipient of funds under this regulation, the Kentucky Department of Education shall use the state procurement procedures to issue a contract with a third party to evaluate student achievement and overall effectiveness of the workplace literacy program.

C. RICHARD WARNER, Vice Chairman
APPROVED BY AGENCY: June 20, 1989
FILED WITH LRC: July 3, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing has been scheduled on August 25, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Adult, Vocational Education and Vocational Rehabilitation at its June meeting. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult, Vocational Education and Vocational Rehabilitation, 2013 Capital Plaza Tower, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 21, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Brenda Rollins
(1) Type and number of entities affected: Entities wishing to apply for demonstration grants from the Secretary of Education. As many as 300 could apply.
(a) Direct and indirect costs or savings to those affected: NA
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: NA
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: Meets the federal requirements for receiving federal funds.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods available.
(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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
2. State compliance standards. The Adult Education Act, P.L. 100-297, requires a process for grants involving workplace literacy. This regulation meets the minimum federal standard for receiving the funds without adding other state requirements.
3. Minimum or uniform standards contained in the federal mandate. Same as 2 above.
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. No

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Adult and Community Education

709 KAR 1:130. Approval of applications for migrant farmworker and immigrant education.

RELATES TO: KRS 156.032, 156.035, 156.070
STATUTORY AUTHORITY: KRS 156.032, 156.035, 156.070
NECESSITY AND FUNCTION: KRS 156.032, 156.035, 156.070 direct the State Board for Adult, Vocational Education and Vocational Rehabilitation to be responsible for, and to adopt administrative regulations for, the administration of adult education programs and services in Kentucky. This regulation prescribes the purposes of grants to be awarded under Section 381 of the federal Adult Education Act to support the planning, development, and evaluation of programs designed to provide adult education services and activities to meet the special needs of migrant farmworkers and immigrants.

Section 1. Projects for Migrant Farmworkers. The types of projects appropriate for meeting the needs of migrant farmworkers in Kentucky are those that provide adult literacy skills; adult high school or General Educational Development instruction; basic skills needed in the workplace, and the updating of those skills; and counseling, transportation, and child care services for students enrolled in literacy or GED programs.

Section 2. Projects for Immigrants. The types of projects appropriate for meeting the needs of immigrants include those listed above, plus projects that provide literacy skills for adults of limited English proficiency and preparation for becoming U.S. citizens.

C. RICHARD WARNER, Vice Chairman
APPROVED BY AGENCY: June 20, 1989
FILED WITH LRC: July 3, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing has been scheduled on August 25, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Adult, Vocational Education and Vocational Rehabilitation at its June meeting. Those persons wishing to attend and testify shall

contact in writing: Audrey T. Carr, Secretary, State Board for Adult, Vocational Education and Vocational Rehabilitation, 2013 Capital Plaza Tower, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 21, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Brenda Rollins
(1) Type and number of entities affected: Entities that provide adult education to migrant farmworkers and immigrants as provided. Any of the approximately 300 providers would be affected.
(a) Direct and indirect costs or savings to those affected: NA
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: NA
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: Meets the requirements for receiving federal funds.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods available.
(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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
2. State compliance standards. The Adult Education Act, P.L. 100-297, requires state plans to set forth the types of projects for migrant farmworkers and immigrants to be eligible for federal funds for this program. This regulation does not exceed the minimum standards suggested.
3. Minimum or uniform standards contained in the federal mandate. Same as 2 above.
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. No

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Adult and Community Education

709 KAR 1:140. Reporting requirements for adult education programs.

RELATES TO: KRS 156.032, 156.035, 156.070
STATUTORY AUTHORITY: KRS 156.032, 156.035, 156.070
NECESSITY AND FUNCTION: KRS 156.032, 156.035, 156.070 direct the State Board for Adult, Vocational Education and Vocational Rehabilitation to be responsible for, and to adopt administrative regulations for, the administration of adult education programs and services in Kentucky. This regulation prescribes the required reports, time lines, and areas of required reporting for recipients of grants of federal funds for adult education programs under the Adult Education Act.

Section 1. At the close of each program year, the supervisor of each adult education program shall submit a final report to the Division of Adult Basic Education describing the extent to which the program succeeded in reaching the goals set in the application. Enrollment and separation forms shall be submitted on all students within thirty (30) days after the close of the program. Final reports shall address the following questions:
(1) Percent of the target population served;
(2) Number of students served;
(3) Number removed from public assistance (if available);
(4) Number obtaining employment (if available);
(5) Number obtaining raises or promotions (if available);
(6) Number who improved reading skills;
(7) Number who improved writing skills;
(8) Number who made at least two (2) grade-level gains in math, reading, science, social studies, and language;
(9) Number who passed the GED tests;
(10) Number who enrolled in vocational school;
(11) Number who enrolled in college;
(12) Number of students receiving financial assistance or scholarships to further their education;
(13) Number who learned English as a second language;
(14) Number who were taught by volunteers;
(15) Whether enrollment forms were completed on each student attending twelve (12) hours;
(16) Whether separation forms were completed on each student;
(17) Whether forms were mailed to Frankfort monthly;
(18) The number of the various kinds of classes or programs approved in the contract;
(19) The number of the various kinds of classes or programs actually operated;
(20) Whether other funding sources were utilized to expand and complement the program;
(21) Whether the program worked with other agencies that provided services other than funding;
(22) The provisions made to evaluate students' progress, including TABE locator or SelectABLE, TABE or ABLE, GED practice tests, and others;
(23) Whether all funds allocated in the budget were utilized, and whether enough funding to meet your program needs was available;
(24) Whether student enrollment increased,

decreased, or stayed the same;
(25) Whether in-service training was provided for the staff, whether the Kentucky Department of Education provided effective leadership to the program, whether the Kentucky Department of Education provided effective technical assistance to the program, and whether any adult education conferences or workshops were attended;
(26) Whether the Resource Center and the toll-free number were utilized, and whether the assistance obtained was of value, whether all teachers and paraprofessionals received the newsletter and whether the newsletter was informative;
(27) Whether there was follow-up on KET-GED study-at-home referrals (and the number if available), and whether students enrolled in the KET program were served;
(28) Whether recognition certificates were presented to students enrolled in the program, whether there was a recognition ceremony, whether there was a GED graduation ceremony, whether GED scholarships were awarded, and whether any other kind of recognition activity was sponsored;
(29) How many volunteers were utilized in the program, and in what capacity;
(30) Whether the program has an adult education advisory council; and
(31) The types of advertising and recruitment activities that were used the last year.

Section 2. The following information shall be submitted by volunteer literacy programs. The individual submitting the report may include additional comments or explanations:
(1) The number of students served by the literacy program;
(2) The number of new volunteers recruited and trained the last year;
(3) The number of volunteers returned or continued from the previous year;
(4) Whether volunteers contributed in one (1) or more of the capacities of tutoring, serving as a classroom aide, training, clerical assistance, recruitment, or any other activity;
(5) The number of hours of training offered to each volunteer;
(6) The number of volunteers completing basic training;
(7) The number of total hours contributed by volunteers in the program the last year;
(8) A description of special recruitment efforts to attract low-level readers;
(9) A description of volunteer recognition events and awards;
(10) A description of student recognition events or awards;
(11) A description of referrals or other services to the program from agencies and organizations such as social service agencies and service organizations; and
(12) A description of contributions of business and industry to the reporting agency's literacy program.

C. RICHARD WARNER, Vice Chairman
APPROVED BY AGENCY: June 20, 1989
FILED WITH LRC: July 3, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing has been scheduled on August 25, 1989 at 10 a.m. (EDT) in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky, to review the regulation adopted by the State Board for Adult, Vocational Education and Vocational Rehabilitation at its June meeting. Those persons wishing to attend and testify shall contact in writing: Audrey T. Carr, Secretary, State Board for Adult, Vocational Education and Vocational Rehabilitation, 2013 Capital Plaza Tower, Capital Plaza Tower, Frankfort, Kentucky 40601, on or before August 21, 1989. If no requests to testify have been received by that date, the above regulation will be removed from the agenda.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Brenda Rollins
(1) Type and number of entities affected: The Kentucky Department of Education.
(a) Direct and indirect costs or savings to those affected: N/A
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: NA
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: Meets the requirements for receiving federal funds.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods available.
(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? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
2. State compliance standards. The Adult Education Act, P.L. 100-297, requires certain reporting of data, use of funds, etc., to be eligible for federal funding. This meets the minimal federal requirements for reporting without adding state requests.
3. Minimum or uniform standards contained in the federal mandate. Same as 2 above.
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. No

CABINET FOR HUMAN RESOURCES
Office of the Inspector General

902 KAR 20:280. Standards for prescribed pediatric extended care.

RELATES TO: KRS 216.875, 216.880, 216.885
STATUTORY AUTHORITY: KRS 216.042, 216.890
NECESSITY AND FUNCTION: KRS 216.042 mandates that the Kentucky Cabinet for Human Resources regulate health facilities and health services. KRS 216.890 mandates that the Kentucky Cabinet for Human Resources promulgate standards to regulate prescribed pediatric extended care (PPEC) services.

Section 1. Definitions. (1) "Protocol of care" is the comprehensive plan for implementation of medical, nursing, psychosocial, developmental, and educational therapies to be provided by the PPEC. An individualized protocol of care shall be developed upon admission and shall be revised to include recommended changes in the therapeutic plans. The disposition to be followed in the event of emergency situations shall be specified in the protocol of care.
(2) "Prescribing physician" is the physician who signs the order admitting the child to the PPEC.
(3) "Primary physician" is the physician who maintains overall responsibility for the child's medical management and is available for consultation and collaboration with the PPEC staff.
(4) "Medical director" is a board certified pediatrician who serves as the liaison between the PPEC and the medical community, reviews the quality and appropriateness of PPEC services, and is available for consultation to the PPEC staff.
(5) "Nursing director" is a licensed registered nurse responsible for providing continuous supervision of PPEC services and managing the daily operations of the facility.
(6) "Occupational therapist" means a person who is licensed pursuant to KRS Chapter 319A.
(7) "Speech pathologist" means a person who is licensed pursuant to KRS Chapter 334A.
(8) "Social worker" means a person who is licensed pursuant to KRS 335.090, if applicable, and who is a graduate of a school of social work accredited by the Council on Social Worker Education.
(9) "Physical therapist" means a person who is licensed pursuant to KRS Chapter 327.
(10) "Child life specialist" is an individual with baccalaureate preparation in child life, early childhood education, or a related field and current experience in planning and implementing developmental stimulation programs for children.

Section 2. Scope of Operation and Services. The prescribed pediatric extended care (PPEC) center is a nonresidential health care service which provides an important link in the continuum of care for medically or technologically dependent children. The (PPEC) center provides the following triad of necessary services for dependent children and their parents: day health care, developmental interventions, and parental training.

Section 3. Applicability. (1) All prescribed pediatric extended care facilities shall be equipped and staffed to accommodate no fewer than three (3) medically/technologically dependent children and shall meet standards established herein.
(2) All PPEC facilities shall have a minimum full-time equivalent staff of two (2) registered nurses and one (1) nursing assistant. Thereafter, the ratio of staff to children shall be maintained at one (1) RN staff for every six (6) children; or one (1) staff (LPN or nursing assistant) to every three (3) children.

Section 4. Criteria for Admission. (1) Infants and children considered for admission to the PPEC facility shall be those with complex medical conditions requiring continual care, including but not limited to, supplemental oxygen, ventilator dependence, cystic fibrosis, apnea, spinal cord injury and malignancy, etc.
(2) Children with risk of infection shall not be admitted unless authorized by the prescribing physician.
(3) The primary physician, in consultation with the parent(s) or legal guardian(s), shall recommend placement in a PPEC facility, taking into consideration the medical, emotional, psychosocial and environmental factors.
(4) The child shall be medically stabilized, require ongoing nursing care, and other interventions.

Section 5. Preadmission Conference. (1) If the child meets the admission criteria, the primary physician or his/her designate shall contact the medical or nursing director of the PPEC to schedule a preadmission conference.
(a) If the child is hospitalized at the time of referral, preadmission planning shall include the parent(s) or guardian(s), relevant hospital medical, nursing, social services and developmental staff to assure that the discharge plans shall be accommodated following placement in the PPEC.
(b) If the child is not hospitalized at the time of referral, preadmission planning shall be conducted with the primary physician, parent(s) or guardian(s), PPEC representatives and representatives of other relevant agencies as determined by the primary physician, and nursing director of the PPEC.
(c) Preadmission planning shall be scheduled within seventy-two (72) hours and allow sufficient time to assure that the therapeutic plan can be implemented upon placement in the PPEC.
(d) The protocol for care shall be developed by the PPEC staff following preadmission planning.
(e) The protocol for care shall include specifications of criteria for discharge from the PPEC.
(2) A consent form, outlining the purpose of a PPEC facility, family responsibilities, authorized treatment and appropriate liability releases, and emergency disposition plans shall be signed by the parent(s) or guardian(s) and witnessed prior to admission to the PPEC facility. The parent(s) or guardian(s) and the PPEC facility shall be provided a copy of the consent form.

Section 6. Admission Procedure. (1) Infants and children shall be considered for admission to the PPEC facility if they have complex medical conditions requiring skilled nursing

care, e.g., children with conditions including but not limited to, supplemental oxygen, ventilator dependence, cystic fibrosis, apnea, spinal cord injury and malignancy, etc.

(2) In consultation with the parent(s) or legal guardian(s), a child may be referred to the PPEC medical or nursing director for determination of placement.

(3) All children placed in the PPEC facility shall have documentation of a physician's written order placed in the child's medical record. A copy of the order shall be provided to the child's parent(s) or guardian(s).

(4) Prior to placement, preadmission planning conferences shall be held for the purpose of developing a protocol for care.

(5) The protocol for care shall be developed under the direction of the PPEC nursing director and shall specify the treatment plan needed to accommodate the medical, nursing, psychosocial and educational needs of the child and family. Specific goals for care shall be identified. Plans for achieving the goals shall be determined and a schedule for evaluation of progress shall be established. The protocol shall include specific discharge criteria.

(6) The protocol shall be signed by the physician, authorized representative of the PPEC and parent(s) or guardian(s). Copies of the protocol shall be given to the parent(s) or guardian(s). Copies of the protocol shall be given to the parent(s) or guardian(s) primary physician, PPEC staff and other agencies as appropriate.

(7) A consent form, outlining the purpose of a PPEC facility, family responsibilities, authorized treatment, appropriate liability releases, and emergency disposition plans shall be signed by the parent(s) or guardian(s) and witnessed prior to admission to the PPEC facility. The parent(s) or guardian(s) and the facility shall be provided a copy of the consent form.

Section 7. Provision of Services. (1) Medical staff services.

(a) Children shall be admitted to the PPEC upon prescription by the child's primary physician or by the medical director.

(b) The child's primary physician shall maintain responsibility for the overall medical therapeutic plan and shall be available for consultation and collaboration with the PPEC medical and nursing personnel.

(c) The medical director shall participate in reviews of the protocol for care. Prescribed therapies shall be adjusted in consultation with the primary physician to accommodate the child's condition.

(d) The PPEC shall coordinate the prescribed therapies for the child.

(2) Nursing staff services.

(a) A PPEC nursing staff member shall participate in preadmission planning.

(b) Nursing personnel, under the direction of the nursing director, shall be responsible for implementing the nursing care.

(c) Nursing personnel shall be responsible for monitoring and documenting the effects of prescribed therapies.

(d) Nursing personnel shall inform the primary physician and medical director of the results of therapeutic interventions.

(e) Nursing personnel shall participate in interdisciplinary staffings regarding the child's progress.

(f) Nursing personnel shall assure that the PPEC provides an environment conducive to the stabilization of the child's medical condition and the promotion of the child's development.

(g) Nursing personnel shall be responsible for maintaining the child's record in accordance with facility policies and procedures.

(h) Nursing personnel shall instruct the parent(s) or guardian(s) in how to provide the necessary therapies in the home.

(3) Developmental services.

(a) Each child shall have a functional assessment and an individualized program plan to accommodate the child's developmental needs. The following functional areas shall be included as appropriate: self care, communication skills, social skills, motor skills, preacademic areas, play with toys/objects, growth and development appropriate for age.

(b) The child's program plan shall include specific programs and action steps to facilitate developmental progress and shall be reviewed at least quarterly.

(c) The child's developmental and educational needs shall be incorporated into the protocol for care.

(d) The child's program plan shall include:

1. Measurable goals in need areas or goals to enhance and normalize independent functioning in daily activities.

2. A description of the patient's strengths and present performance level with respect to each goal;

3. Skill areas in priority order;

4. Anticipatory planning for specific areas identified as at-risk for future problems.

(e) The child life specialist shall participate in regularly scheduled interdisciplinary staffings.

(f) A program for parent(s) or guardian(s) shall be provided to prepare parent(s) or guardian(s) to accommodate the child's developmental needs.

(g) The PPEC shall provide parent(s) or guardian(s) education services by including them in care-related conferences and teaching them how to perform necessary therapies and how to meet the developmental and psychosocial needs of their child at home.

(h) PPEC staff shall make referrals to appropriate resources, facilitate access to community, social, educational and financial services, and shall provide counseling to enhance coping skills, interpersonal relationships and family functioning.

(4) Nutritional services.

(a) If needed, the services of a registered dietition shall be available regarding the nutritional needs and special diets of individual children.

(b) All food and formula except for specialized formula shall be provided by PPEC staff under the supervision of the nursing director.

(c) Prepared foods shall be kept under refrigeration with identifying dates and patient names.

Section 8. Quality Assurance. (1) The PPEC center shall ensure that there is an effective, quality assurance program to evaluate the provision of patient care.

(2) The quality assurance program shall be ongoing and have a written plan of

implementation.

(a) All organized services related to patient care, including services furnished by a contractor, shall be evaluated, semiannually.

(b) Nosocomial infections and medication therapy shall be evaluated.

(c) Evidence of parent(s) or guardian involvement shall be evaluated semiannually.

Section 9. Administration. (1) The administrative structure of the PPEC shall include a policy and procedure manual which reveal all operational aspects of the service.

(2) Personnel policies and procedures shall specify qualifications and required ratios of staff members employed by PPEC and shall include: a current personnel file, positions descriptions, employee benefits, policies for overtime, compensatory time, performance evaluations, termination of employment.

(3) A formal orientation and development program is required for all PPEC employees and staff.

(4) The facility shall be administered on a sound financial basis consistent with good business practice. Financial records which identify all income by source and describe all expenditures by category in such a manner as to be auditable by commonly recognized procedures.

(5) Policies and procedures pertaining to PPEC services shall be available to the public and shall include:

(a) A procedure manual with specifications for each therapeutic intervention shall be available for use by all staff involved in the care of the children; the manual shall be reviewed every six (6) months to assure that procedures conform to prevailing and acceptable treatment modalities.

(b) An admission and discharge register, listing clients admitted by name with identifying information about each and the source from which the child was admitted, the reason for disposition, adequate identifying information and the place to which the individual is to be discharged;

(c) A daily census record;

(d) An accident and incident record;

(e) A complete medical and nursing history shall be maintained for each child;

(f) Periodic review of each child's protocol of care to update the protocol in consultation with other professionals involved in the child's care. Changes in the orders shall be documented and signed by the primary physician;

(g) Prior to a discharge, conferences involving PPEC staff, the primary physician, the parent(s) or guardian(s) and staff of other agencies involved in the patient's care shall be held to discuss postdischarge care and follow-up;

(h) A discharge order written by the primary physician shall be documented and entered in the child's record. A discharge summary, which includes the reason for discharge, shall also be included in the record.

(i) Except in emergency situations, other agencies involved in the care of the patient/family shall be notified prior to the discharge date.

(j) The center shall have linkage agreements through written agreements with providers of other levels of care which may be medically needed to supplement the services available at the center.

(k) The center shall have written policies which assure the reporting of cases of abuse, neglect, or exploitation of children to the Cabinet for Human Resources pursuant to KRS 199.335.

Section 10. Personnel. (1) A board certified pediatrician shall serve as the medical director for the PPEC facility. Responsibilities shall include:

(a) Participation in preadmission planning to establish a protocol of care with the primary physician, parent(s) or guardian(s) and staff of the PPEC center;

(b) Periodic review of services to assure acceptable levels of quality;

(c) Maintenance of a liaison role with the medical community;

(d) Advisement on the development of new programs and modifications of existing programs; and

(e) Assurance that medical consultation shall be available in the event of his/her absence.

(2) A nursing director shall be employed to provide continuous supervision of PPEC services and shall be responsible for daily operations of the facility.

(a) In addition the nursing director shall be responsible for:

1. All services rendered at the center;
2. Personnel management;
3. Organization and implementation of in-service education programs for staff;
4. Assistance to medical director in determining patient eligibility for admission to PPEC;
5. Assurance of adequate nursing representation at preadmission conference; and
6. Supervision of all patient records and documentation of center's activities to assure compliance to rules and regulations.

(b) Credentials and training.

1. Registered nurse with a current license in the state of Kentucky.

2. Nursing services shall be provided within their respective scope of practice pursuant to KRS Chapter 314 and any regulations promulgated thereunder.

3. The nursing director shall have at least two (2) years nursing experience of which six (6) months shall have been spent in a pediatric intensive care or neonatal intensive care setting during the previous five (5) years.

(3) Staffing.

(a) The PPEC center shall employ nursing and ancillary staff that are necessary to provide the services essential to the center's operation.

(b) There shall be an individual personnel record for each person employed by the center which includes the following:

1. Resume with employee's training and experience;
2. Evidence of current licensure or registration;
3. Reports of all accidents occurring on duty; and
4. Current certification in basic life support.

(c) The following categories of personnel shall be available to the PPEC on an in-house or consultant basis:

1. Child life specialist.
2. Occupational therapist.
3. Physical therapist.
4. Speech pathologist.
5. Social worker.

Section 11. In-service Training for

Staff/Parents and Guardian(s). (1) Monthly staff development programs appropriate to the category of personnel shall be conducted to maintain quality patient care.

(2) All staff development programs shall be documented.

(3) All personnel shall be expected to maintain current certification in basic life support.

(4) Each new employee shall participate in orientation to acquaint the employee with the philosophy, organization, program, practices, and goals of the PPEC facility.

(5) A comprehensive orientation to acquaint the parent(s) and/or guardian(s) with the philosophy and services shall be provided at the time of the child's placement in the PPEC.

(6) Staff development programs shall be provided to:

(a) Facilitate the ability of the staff to function as a member of an interdisciplinary team which includes health professionals and the parent(s) and/or guardian(s).

(b) Improve communication skills to facilitate a collaborative relationship between parent(s) and/or guardian(s) and professionals.

(c) Increase understanding the effects childhood illness has on the child's development and the parent(s) and/or guardian(s).

(d) Increase understanding and coping with the effects of childhood illnesses and shall cover a variety of topics including: issues of death and dying; awareness of services available at the hospital, school, community, state, and professional organizations, and fostering of advocacy skills.

(e) Develop case management skills to assist the family in setting priorities and planning and implementing the child's care at home.

(f) Provide training in the implementation of new technology.

(g) Develop a comprehensive protocol for care which includes the medical, nutritional, developmental and psychosocial needs of medically/technologically dependent children.

(h) Prepare for management of emergency situations.

Section 12. Physical Environment. (1) Accessibility. The PPEC shall meet requirements for making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and regulations promulgated thereunder.

(2) Fire safety. The PPEC shall be approved by the Fire Marshal's office before licensure and relicensure is granted by the licensure agency.

(3) Housekeeping and maintenance services.

(a) Housekeeping. The center shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other sources.

(b) Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

1. The center shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair.

2. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair.

3. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

4. A pest control program shall be in operation in the centers pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

5. Sharp wastes, including needles, scalpels, razors or other sharp instruments used for patient care procedures shall be segregated from other wastes and aggregated in puncture resistant containers immediately after use. Needles and syringes shall not be recapped, cut, dismantled, or destroyed after use, but shall be placed intact directly into a puncture resistant container. The containers of sharp wastes shall either be incinerated, on site or off site, or rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Human Resources and the Natural Resources and Environmental Protection Cabinet.

6. The center shall establish a written policy for the handling and disposal of all infectious, pathological, and contaminated waste if the center generates them. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 or 401 KAR 61:010.

a. Infectious waste shall be placed in double impervious plastic bags and each bag shall be two (2) mils in thickness. A bag, when full, shall not exceed twenty-five (25) pounds. All bags shall be securely closed and a tag, which reads "INFECTIOUS WASTE" and identifies the center from which the waste is being removed and shall be attached to the bag in a conspicuous manner.

b. The following wastes shall be disposed of by incineration or, be autoclaved before disposal, or be carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

Section 13. Emergency Procedures. (1) A copy of the current annual fire inspection report, shall be on file with the licensing agency.

(2) There shall be a working telephone, which is neither locked nor a pay station, in the center.

(3) Emergency telephone numbers shall be posted on or in the immediate vicinity of all telephones.

WILLIAM M. GARDNER, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 16, 1989
FILED WITH LRC: June 19, 1989 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1989 at 9 a.m. in the Vital Statistics Conference Room, 1st Floor East, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by August 16, 1989 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Delano Miller
(1) Type and number of entities affected: Unknown/new service. Less than ten (10) services are projected during the first year.
(a) Direct and indirect costs or savings to those affected:
1. First year: Less than $1,300 in licensure fee.
2. Continuing costs or savings: $650 in licensure fees.
3. Additional factors increasing or decreasing costs (note any effects upon competition): All PPEC services are required to be licensed. Any additional costs incurred will be the result of negative survey findings.
(b) Reporting and paperwork requirements: Written policies and personnel records are required.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $100 for reproduction of regulation.
2. Continuing costs or savings: $50 for new copies of survey report forms.
3. Additional factors increasing or decreasing costs: No additional surveyors are anticipated because of this service.
(b) Reporting and paperwork requirements: Additional forms for surveyors.
(3) Assessment of anticipated effect on state and local revenues: $1,300 increase in revenue due to licensure fees.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The regulation is mandated by KRS 216.890.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No overlapping, conflicting, or duplication exists.
(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. KRS 216.890 requires the Cabinet for Human Resources to promulgate licensure standards for all PPEC services. These standards apply to all PPEC services.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 6:040. Termination of funding and hearing procedures.

RELATES TO: KRS 273.451
STATUTORY AUTHORITY: KRS 194.050, 273.448
NECESSITY AND FUNCTION: This regulation establishes the conditions by which the cabinet can terminate Community Services Block Grant (CSBG) funding to a grantee. This regulation also addresses the grantee's right to request and receive a hearing before a qualified hearing officer. Definitions for this regulation are the same as listed in the rest of this regulation.

Section 1. Grantee Termination. For the purpose of this part, administrative requirements specified in P.L. 97-35 and KRS 273.451 are applicable.
(1) Any community action agency (CAA), either established (i.e., local designation and state recognition) under the Community Services Block Grant Act (the Act) or under the Kentucky CSBG program in accordance with the Act and the Community Action Law in KRS Chapter 273 shall be awarded continuing CSBG program administering responsibilities in its established jurisdiction unless the following shall occur:
(a) The CAA submits written communication to the Department for Social Services stating its desire to discontinue operation of the program;
(b) Material failure by the CAA to comply with Sections 673, 675, 677, or 680 of the Act; or 45 CFR 96.30, 96.51, 96.90, or 96.91 (1986); the provisions of the state CSBG plan or any provisions of KRS 273.405-273.453; or 905 KAR 6:010. Material failure includes, but is not limited to: fraud, disallowance of costs which could render a CAA insolvent, or denial of access to records of grant-related transactions.
(c) The CAA does not have the authority or capability to receive, administer, and account for funds in a manner that conforms with applicable federal or state requirements or with generally accepted accounting principles.
(d) The CAA is not capable of effectively planning, conducting, administering, or evaluating CSBG funded programs or projects;
(e) The CAA fails to conform in one (1) or more ways to the assurances relating to the structure and operation of CSBG program contractors that the Commonwealth of Kentucky has provided the United Stated Department of Health and Human Services, including prohibitions regarding partisan political activities, voter registration, and transportation of voters to the polls; or
(f) The CAA is structured and functions in a manner inconsistent with state or federal laws or regulations.
(2) Upon discovery of one (1) or more of the conditions noted in paragraphs (b) through (f) of this subsection, the cabinet shall notify the CAA in writing of its initiation of the termination process and the reasons for termination. The notice will advise the CAA that, in accordance with this section and Section 675(c)(11) of the Act, it is entitled to an informal hearing.

Section 2. Hearing Procedures. The CAA will be given fifteen (15) days from receipt of such notification to inform the cabinet in writing that it wishes to exercise its right to a hearing. The hearing will be conducted within thirty (30) days of the original notification of initiation of the termination process. The notification shall also include:
(1) A requirement that the CAA, in order to receive continued CSBG funding, shall agree to cooperate with the cabinet appointed hearing officer throughout the termination process.
(2) In the event the CAA does not agree to submit to the cabinet review specified in Section 1 of this regulation, the cabinet shall send to the CAA a notice of funding suspension, pending termination, pursuant to these regulations and KRS 273.451. Simultaneous with suspension notice to the CAA's, the cabinet will notify the U.S. Department of Health and Human Services of same and the department will advise the suspended CAA of its right to seek direct funding from the U.S. Department of Health and

Human Services.

(3) The services of an impartial hearing officer will be obtained by the cabinet. Notice of the hearing time and date will be provided, with proof of receipt of notice, to both the CAA or appropriate public officials at least ten (10) days prior to the hearing. The cost for the hearing officer and the services of the certified reporter and the original transcript of the proceedings shall be borne by the Cabinet for Human Resources. The CAA shall bear the cost of its copy of the transcript of proceedings.

(4) The hearing shall be conducted in accordance with due process before a qualified hearing officer. The report of the hearing officer will be sent via registered mail to both parties within thirty (30) days of the completion of the hearing.

(5) The cabinet will review the hearing officer's recommendation and will base its decision on findings of fact and conclusions of laws that substantiate grant termination pursuant to this regulation. The cabinet will notify the CAA of the cabinet's final determination within thirty (30) days.

(6) If the cabinet's decision is to suspend or terminate funding to the CAA the cabinet shall also, with its notice to the CAA, advise the CAA of the provisions for review of the termination proceedings to the Secretary of the U.S. Department of Health and Human Services pursuant to Section 676(a) of the Act.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 12, 1989
FILED WITH LRC: June 22, 1989 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on August 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1989: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Thyra Whitford

(1) Type and number of entities affected: 23 federally funded community action agencies will be affected by the proposed regulations. The regulations will affect all of the community action agencies throughout the state as all receive federal Community Services Block Grant funds from the Department of Social Services.

(a) Direct and indirect costs or savings to those affected: There will not be any direct and indirect costs or savings to the community action agencies as the proposed regulations only add detail and clarify issues that were required or recommended by the federal monitors during their last program site review. Failure to make the requested changes may result in the reduction or loss of federal funding for these programs.

1. First year: There will not be any direct and indirect costs or savings during the first year for the community action agencies because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

2. Continuing costs or savings: There will not be any continuing costs or savings for the community action agencies because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the community action agencies because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

(b) Reporting and paperwork requirements: There will not be any change in the community action agencies reporting and paperwork requirements because the agencies are currently regulated by the same kind of regulations. For example, the agencies are monitored each fiscal year by the Department for Social Services using the current regulations during their review process. If any deficiencies are discovered during the review, the agency has to prepare and submit a plan of corrective action to the department. The proposed regulations will not change the monitoring review process nor the plan of corrective action process. There will not be any increase because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

(2) Effects on the promulgating administrative body: There will not be any cost or saving to the Department for Social Services as the proposed regulations only add detail and clarify issues in the current regulations. The proposed regulations will improve the language of the regulation but does not effect the way in which the department administers the community action agencies.

(a) Direct and indirect costs or savings: There will not be any direct and indirect costs or savings to the Department for Social Services as the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

1. First year: There will not be any direct and indirect costs or savings during the first year for Department for Social Services because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

2. Continuing costs or savings: There will not be any continuing costs or savings for the Department for Social Services because the proposed regulations add detail and clarify issues in order to improve the already existing regulations.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or effect competition for the Department for Social Services because the proposed regulations add details and clarify issues in order to improve the already existing regulations.

(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements because the community action agencies are currently regulated by the same kind of regulations. For example, the agencies are monitored each fiscal year by the Department for Social Services using the current regulations during their review process. If any deficiencies are discovered during the review,

the agency has to prepare and submit a plan of corrective action to the department. The proposed regulations will not change the monitoring review process nor the plan of corrective action process. There will not be any increase because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect of state and local revenues as the proposed regulations will not affect the community action agencies' funds.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(6) Any additional information or comments: There is no additional comment or information.

TIERING: Was tiering applied? No. Tiering was not applied as the existing community action agencies are the only entities in the state that are eligible to receive Community Services Block Grant funds funded by the U.S. Department of Health and Human Services made available by P.L. 97-35 and its successors.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 6:050. CSBG program state plan.

RELATES TO: KRS 273.410 to 273.453
STATUTORY AUTHORITY: KRS 194.050, 273.448
NECESSITY AND FUNCTION: P.L. 97-35, Subtitle B - "Community Services Block Grant Program," enacted August 13, 1981, authorizes grants to states to ameliorate the causes of poverty in communities within the state. KRS 194.050 authorizes the Cabinet for Human Resources to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to implement the Kentucky Community Services Block Grant Program in accordance with applicable state and federal laws and regulations. This regulation includes the substance of 905 KAR 6:020; therefore, 905 KAR 6:020 is no longer necessary.

Section 1. The "Community Services Block Grant Program Plan for the Commonwealth of Kentucky" for the Fiscal Year 1989, is hereby adopted by reference as the plan for utilization of CSBG funds. The plan includes assurances as required by federal law and regulations, provisions for use of funds by community action agencies, programmatic considerations such as geographic areas to be served, client eligibility, and complaint procedures, and fiscal considerations such as administration, required match, and allocation formula. The "Community Services Block Grant Program Plan" may be reviewed during regular working hours at the Office of the Commissioner, Department for Social Services, 275 East Main Street, Frankfort, Kentucky.

Section 2. 905 KAR 6:020, State Plan for CSBG Program, is hereby repealed.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 12, 1989
FILED WITH LRC: June 22, 1989 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on August 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1989: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Thyra Whitford

(1) Type and number of entities affected: 23 federally funded community action agencies will be affected by the proposed regulations. The regulations will affect all of the community action agencies throughout the state as all receive federal Community Services Block Grant funds from the Department of Social Services.

(a) Direct and indirect costs or savings to those affected: There will not be any direct and indirect costs or savings to the community action agencies as the proposed regulations only add detail and clarify issues that were required or recommended by the federal monitors during their last program site review. Failure to make the requested changes may result in the reduction or loss of federal funding for these programs.

1. First year: There will not be any direct and indirect costs or savings during the first year for the community action agencies because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

2. Continuing costs or savings: There will not be any continuing costs or savings for the community action agencies because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the community action agencies because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

(b) Reporting and paperwork requirements:

There will not be any change in the community action agencies reporting and paperwork requirements because the agencies are currently regulated by the same kind of regulations. For example, the agencies are monitored each fiscal year by the Department for Social Services using the current regulations during their review process. If any deficiencies are discovered during the review, the agency has to prepare and submit a plan of corrective action to the department. The proposed regulations will not change the monitoring review process nor the plan of corrective action process. There will not be any increase because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

(2) Effects on the promulgating administrative body: There will not be any cost or saving to the Department for Social Services as the proposed regulations only add detail and clarify issues in the current regulations. The proposed regulations will improve the language of the regulation but does not effect the way in which the department administers the community action agencies.

(a) Direct and indirect costs or savings: There will not be any direct and indirect costs or savings to the Department for Social Services as the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

1. First year: There will not be any direct and indirect costs or savings during the first year for Department for Social Services because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

2. Continuing costs or savings: There will not be any continuing costs or savings for the Department for Social Services because the proposed regulations add detail and clarify issues in order to improve the already existing regulations.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or effect competition for the Department for Social Services because the proposed regulations add details and clarify issues in order to improve the already existing regulations.

(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements because the community action agencies are currently regulated by the same kind of regulations. For example, the agencies are monitored each fiscal year by the Department for Social Services using the current regulations during their review process. If any deficiencies are discovered during the review, the agency has to prepare and submit a plan of corrective action to the department. The proposed regulations will not change the monitoring review process nor the plan of corrective action process. There will not be any increase because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect of state and local revenues as the proposed regulations will not affect the community action agencies' funds.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(6) Any additional information or comments: There is no additional comment or information.

TIERING: Was tiering applied? No. Tiering was not applied as the existing community action agencies are the only entities in the state that are eligible to receive Community Services Block Grant funds funded by the U.S. Department of Health and Human Services made available by P.L. 97-35 and its successors.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 6:060. CSBG audit specifications.

RELATES TO: KRS 273.410 to 273.468
STATUTORY AUTHORITY: KRS 194.050, 273.448
NECESSITY AND FUNCTION: P.L. 97-35, Subtitle B - "Community Services Block Grant Program" (CSBG), enacted August 13, 1981, authorizes block grants to states to ameliorate the causes of poverty in communities within the state. KRS 194.050 authorizes the Cabinet for Human Resources to adopt such rules and regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. The function of this regulation is to establish the criteria and methodology that will be used to measure compliance with applicable state and federal laws and regulations. This regulation includes the substance of 905 KAR 6:030; therefore, 905 KAR 6:030 is no longer necessary.

Section 1. CSBG Audit Guide. The Cabinet for Human Resources hereby adopts, by reference, the Community Services Block Grant Audit Specifications, dated July 1, 1988, as the document to be used in auditing state agency expenditures of federal CSBG funds as well as CSBG funds expended through contract services. The guide makes provision for the performance of an audit in three (3) basic areas of interest: compliance audit; federal financial participation audit; and statement of compliance and fraud, abuse or illegal acts. The CSBG audit specifications shall be available for review during regular working hours at the Office of the Commissioner, Department for Social

Services, 275 East Main Street, Frankfort, Kentucky.

Section 2. 905 KAR 6:030, CSBG audit guide, is hereby repealed.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 12, 1989
FILED WITH LRC: June 22, 1989 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on August 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by August 16, 1989: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Thyra Whitford
(1) Type and number of entities affected: 23 federally funded community action agencies will be affected by the proposed regulations. The regulations will affect all of the community action agencies throughout the state as all receive federal Community Services Block Grant funds from the Department of Social Services.
(a) Direct and indirect costs or savings to those affected: There will not be any direct and indirect costs or savings to the community action agencies as the proposed regulations only add detail and clarify issues that were required or recommended by the federal monitors during their last program site review. Failure to make the requested changes may result in the reduction or loss of federal funding for these programs.
1. First year: There will not be any direct and indirect costs or savings during the first year for the community action agencies because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.
2. Continuing costs or savings: There will not be any continuing costs or savings for the community action agencies because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors that would increase or decrease costs or effect competition for the community action agencies because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.
(b) Reporting and paperwork requirements: There will not be any change in the community action agencies reporting and paperwork requirements because the agencies are currently regulated by the same kind of regulations. For example, the agencies are monitored each fiscal year by the Department for Social Services using the current regulations during their review process. If any deficiencies are discovered during the review, the agency has to prepare and submit a plan of corrective action to the department. The proposed regulations will not change the monitoring review process nor the plan of corrective action process. There will not be any increase because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.
(2) Effects on the promulgating administrative body: There will not be any cost or saving to the Department for Social Services as the proposed regulations only add detail and clarify issues in the current regulations. The proposed regulations will improve the language of the regulation but does not effect the way in which the department administers the community action agencies.
(a) Direct and indirect costs or savings: There will not be any direct and indirect costs or savings to the Department for Social Services as the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.
1. First year: There will not be any direct and indirect costs or savings during the first year for Department for Social Services because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.
2. Continuing costs or savings: There will not be any continuing costs or savings for the Department for Social Services because the proposed regulations add detail and clarify issues in order to improve the already existing regulations.
3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or effect competition for the Department for Social Services because the proposed regulations add details and clarify issues in order to improve the already existing regulations.
(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements because the community action agencies are currently regulated by the same kind of regulations. For example, the agencies are monitored each fiscal year by the Department for Social Services using the current regulations during their review process. If any deficiencies are discovered during the review, the agency has to prepare and submit a plan of corrective action to the department. The proposed regulations will not change the monitoring review process nor the plan of corrective action process. There will not be any increase because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.
(3) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect of state and local revenues as the proposed regulations will not affect the community action agencies' funds.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered because the proposed regulations only add detail and clarify issues in order to improve the already existing regulations.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.
(a) Necessity of proposed regulation if in conflict: There is no statute, administrative

regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate in the proposed regulations.

(6) Any additional information or comments: There is no additional comment or information.

TIERING: Was tiering applied? No. Tiering was not applied as the existing community action agencies are the only entities in the state that are eligible to receive Community Services Block Grant funds funded by the U.S. Department of Health and Human Services made available by P.L. 97-35 and its successors.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:450. Nurse aide training criteria and registry.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the nurse aide training and competency evaluation program requirements and specifies the establishment and function of the nurse aide registry.

Section 1. Definitions. The following definitions shall be applicable to this regulation unless the specific context dictates otherwise:

(1) "Nurse aide training and competency evaluation programs" means the program(s) of nurse aide training and competency evaluation for nurse aides required by Title XIX of the Social Security Act to be in place for Title XIX participating nursing facilities (skilled nursing or intermediate care), when the program is approved by the state in which the nursing facility is located.

(2) "Competency evaluation program" means the competency evaluation program required by Title XIX of the Social Security Act for nurse aides employed by Title XIX participating nursing facilities prior to July 1, 1989, when the program is approved by the state in which the nursing facility is located.

(3) "Nurse aide" means any individual providing nursing or nursing related services to residents in a nursing facility but does not include an individual who is a licensed health professional or volunteers who provide the nursing or nursing-related services without monetary compensation.

(4) "Licensed health professional" means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

(5) "The state approved program" means the nurse aide training and competency evaluation program requirements shown in the manual entitled "Kentucky Department for Medicaid Services Nurse Aide Training and Competency Evaluation Program" (dated July 1989) which is hereby incorporated by reference. Nurse aide training and competency evaluations shall be performed by or for nursing facilities located in the state of Kentucky in accordance with the terms, conditions, and criteria specified in the manual for the state approved program.

Section 2. General Requirements. A participating nursing facility shall not use nurse aides on or after January 1, 1990 for more than four (4) months unless the nurse aide has completed the nurse aide training and competency evaluation program, or the competency program if the individual was used by the facility prior to July 1, 1989 as a nurse aide, or is deemed to meet the competency evaluation prior to January 1, 1989, as specified in the manual for the approved state program.

Section 3. Regular In-service Education and Ongoing Staff Development. Following successful completion of the nurse aide competency evaluation program, each nursing facility is required to provide and document (as specified in the state approved program manual) six (6) hours of ongoing staff development per quarter for each nurse aide.

Section 4. Minimum Curriculum and Content Requirements. The "basic course" of nurse aide training consists of a minimum of forty-five (45) classroom hours for theory and laboratory time and thirty (30) hours of clinical experience for a total of seventy-five (75) hours. Criteria for primary instructors, program coordinators, trainers, resource people, and curriculum content are shown in the manual for the state approved program.

Section 5. Approval, Initial Postapproval Review, and Ongoing Review of Nurse Aide Training Programs. The nurse aide training program may be conducted by means of an Office of Vocational Education program, nursing facility program, community college or university program or a licensed proprietary education program. Each agency wishing to provide nurse aide training must request and receive approval of the agency's training program by the Department for Medicaid Services prior to operating the nurse aide training program in accordance with the criteria shown in the manual for the state approved program. After initial approval, the Department for Medicaid Services shall conduct an initial one (1) year postapproval review. After the one (1) year postapproval review, each program will be monitored as follows:

(1) Approved nurse aide training programs conducted by nursing facilities shall be monitored on site by the Division of Licensing and Regulation, Office of the Inspector General, during the regularly scheduled annual survey for compliance with conditions of participation.

(2) Approved nurse aide training programs conducted by the Office of Vocational Education shall be monitored on site by that office at least every two (2) years; a self-evlauation

shall be submitted by the training program to the on-site review agency each year that an on-site review is not performed.

(3) The Department for Medicaid Services shall conduct an on-site review of all other approved nurse aide training programs at least every two (2) years, and the training program provider shall submit to the department a self-evaluation in each year than an on-site review is not performed.

Section 6. Termination of Nurse Aide Training Programs. The Department for Medicaid Services shall terminate from participation in the training program those previously approved nurse aide training programs not meeting minimum requirements and which do not submit an acceptable plan of correction.

Section 7. Final Examination/Competency Evaluation. The Department of Education, Office of Vocational Education, shall be (by agreement with the Department for Medicaid Services) responsible for the final written or oral examination and the skills demonstration aspect of the competency evaluation. The test is validated by the Department of Education to ensure its reflection of the material presented in the training, and the Department of Education has responsibility to maintain the integrity of the test and the individual examinations.

Section 8. State Nurse Aide Registry. The Division of Licensing and Regulation, Office of the Inspector General shall (by agreement with the Department for Medicaid Services) be responsible for establishing and maintaining a registry of all nurse aides who have satisfactorily completed a nurse aide training and competency evaluation program. In addition to the names of individuals having satisfactorily completed the nurse aide training and competency evaluation program, or the competency evaluation program, the registry shall include specific documented findings by the state of individual resident abuse or neglect or misappropriation of resident property by nurse aides listed in the registry (determined in accordance with statutory requirements shown in Section 1919(g) of the Social Security Act), and a brief statement (if any) by the nurse aide disputing the finding(s); a finding may be included on the registry only after the nurse aide has been provided at least ten (10) days advance notice of the proposed finding and an opportunity for a hearing (if desired) for the nurse aide to rebut allegations. In the case of an inquiry to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of any nurse aide statement of rebuttal in the registry relating to the finding or a clear and accurate summary of such a statement.

Section 9. Reciprocity. A nurse aide who has completed a nurse aide training and competency evaluation program in another state and is on that state's nurse aide registry shall be granted reciprocity in Kentucky if the following conditions are met:

(1) The other state's registry must provide appropriate written documentation showing the individual is on the other state's registry;

(2) An employment record must be provided to the Division of Licensing and Regulation sufficient to verify that the aide has been employed in a nursing home since the training and twenty-four (24) months have not elapsed since the individual worked for pay as a nurse aide; and

(3) There must be no documented findings on the registry of individual resident abuse or neglect or misappropriation of resident funds for the individual on the registry.

Section 10. The manual incorporated by reference in this regulation may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 27, 1989
FILED WITH LRC: July 5, 1989 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1989, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $50,000 (costs)*
2. Continuing costs or savings: $32,000 (costs)
3. Additional factors increasing or decreasing costs: First year costs include start-upcosts.
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: *The cost of the nurse aide training program is shown in 907 KAR 1:036.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:474. Incorporation by reference of the Durable Medical Equipment Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the durable medical equipment component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Durable Medical Equipment Manual, effective July 1, 1989, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: June 27, 1989
FILED WITH LRC: July 5, 1989 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1989 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 16, 1989, 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. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of durable medical equipment are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(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: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any direct or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the July 5 and 6, 1989 Meeting

The July meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, July 5, 1989 at 2 p.m. and on Thursday, July 6, 1989 at 10 a.m. in Room 107. Representative Mark D. O'Brien, Chairman, called the meeting to order, and the secretary called the roll. On motion of Senator Quinlan, seconded by Representative Bruce, the minutes of the June 1 and 2, 1989 meeting were approved.

Present July 5, 1989 were:

Members: Representative Mark D. O'Brien, Chairman; Senators Gene Huff, Pat McCuiston and Bill Quinlan; Representatives Jim Bruce, Ronny Layman and Tom Kerr.

Present July 6, 1989 were:

Members: Representative Mark D. O'Brien, Chairman; Senators Gene Huff, Pat McCuiston and Bill Quinlan; Representative Tom Kerr.

Guests: Michael Gardone, Debbie McGuffey, Rita Snider, Council on Higher Education; John W. Crimmins, Ann Z. Stewart, Secretary of State; Joe Billy Jones, Board of Claims; Greg Holmes, Board of Claims/KY Athletic Commission; Mike Haydon, Peggy Satterly, Department of Local Government; John Phillips, Thomas A. Young, Department of Fish and Wildlife Resources; John C. Runda, Ph.D., Parole Board; Michael Bradley, Ellen Tharpe, Corrections Cabinet; Sandra G. Pullen, Transportation Cabinet; Wendell D. Bruce, Clara DeMoss, Joyce Logan, Perry Watson, Hanson Williams, Department of Education; Glenn Schilling, Department of Workers' Claims; Allen Rose, Workers' Compensation Task Force; Mike Fulkerson, State Racing Commission; Carl B. Larsen, Harness Racing Commission; Bill Martin, State Fire Marshal; Judith G. Walden, Department of Housing, Buildings and Construction; Barbara Coleman, E. P. Conyers, Mel Counts, Truett DeMoisey, Eric Friedlander, Ryan M. Halloran, Linda Howard, Frank Kirk, E. Edsel Moore, George Robertson, Mark Yancey, Cabinet for Human Resources; Jack Eversole, Barren River ADD; Roger Recktenwald, Big Sandy ADD; John L. Bruner, II, Cumberland Valley, ADD; Rosalie Frederick, Michael A. Luvisi, Linda Shelburne, Alliant Health System; William Summitt, Ph.D., Crawford & Company; Dandridge F. Walton, Hospice; Nancy P. McElwain, Humana Hospital Suburban; Cathy Dawson, Intracorp; Therese Marshall, KY Chapter National Association of Rehabilitation Professionals in the Private Sector; Nancy Galvagni, KY Hospital Association; John Cooper, Bill Doll, KY Medical Association; Nelson Weaver, Trover Clinic.

LRC Staff: Susan Wunderlich, Joe Hood, Gregory Karambellas, Susan Eastman, Donna Pierce, Ann Gordon and Carla Arnold.

Press: Joseph W. Ward, Courier-Journal.

The Administrative Regulation Review Subcommittee met on July 5 and 6, 1989, and submits this report:

The Subcommittee determined that the following administrative regulation does not comply with KRS Chapter 13A and attached a statement of objection:

Public Protection and Regulation Cabinet: Department of Housing, Buildings and Construction: Hazardous Materials

815 KAR 30:050 (Fireworks; approval of exempted novelties.) The Subcommittee approved a motion that this regulation did not comply in that it provided a longer period for the approval of submitted fireworks that authorized by KRS 227.740. Agency personnel stated that this regulation would be amended in the future to conform.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Council on Higher Education: Public Educational Institutions

13 KAR 2:020 (Guidelines for undergraduate admission to the state-supported institutions of higher education in Kentucky.) In Section 3(1) the word "including" has been deleted from each of the first four groups of required areas of study to be completed to gain entrance into a Kentucky university. This has the effect of making the courses listed specific requirements rather than a group of units including the courses listed. Although Section 4 permits an option for a maximum of 20 percent of applicants, the question arises that this may be difficult if not impossible for a great number of upper level students to comply with the requirements in their last year or two of high school for entrance requirements into a Kentucky university. The Subcommittee approved a motion to attach a statement of objection that this regulation is ambiguous and, therefore, does not comply with the requirements of KRS Chapter 13A. On July 6, the Subcommittee approved a motion to reconsider this regulation. The promulgating agency and Subcommittee agreed to amend the regulation by leaving the word "including" in the four groups of required areas of study. The Subcommittee passed a motion that the regulation be approved as amended, with no statement of objection attached.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:005 (Safety regulations.) Section 2(1)(b) and (c) were amended to incorporate the enumerated sections of the federal regulations rather than adopt. Section 3(2) was deleted as being redundant.

Public Protection and Regulation Cabinet: State Racing Commission: Thoroughbred Racing Rules

The following administrative regulations were amended in order to conform to the drafting requirements of KRS Chapter 13A. The amendments did not alter any substantive requirement as there was no objection to the substance of these regulations.

810 KAR 1:001 (Definitions.)
810 KAR 1:011 (Pari-mutuel wagering.)
810 KAR 1:013 (Entries, subscriptions and declarations.)
810 KAR 1:050 (Steeplechase racing.)

Harness Racing Commission: Harness Racing Rules

The following administrative regulations were amended in order to conform to the drafting requirements of KRS Chapter 13A. The amendments did not alter any substantive requirement as there was no objection to the substance of these regulations.

811 KAR 1:085 (Conduct of racing.)

Quarter Horse, Appaloosa and Arabian Racing Rules

811 KAR 2:065 (Registration; racing requirements.)

Cabinet for Human Resources: Department for Social Insurance: Food Stamp Program

904 KAR 3:060 (Administrative disqualification hearings and penalties.) This administrative regulation was amended as follows: (1) Amend STATUTORY AUTHORITY to delete "7 CFR Part 270 through 280" and to insert in lieu thereof, "7 CFR 273.15, FNS/Sero Regulations Supplement, 273.15-a-1 (82-14) (7-28-82); 7 CFR 273.16, FNS/Sero Regulations Supplement, 273.16-a-1 (83-5) (12-15-82)"; (2) Amend NECESSITY AND FUNCTION to delete "7 CFR Part 270 through 280", and to insert in lieu thereof "applicable federal regulations and interpretations thereof".

904 KAR 3:070 (Fair hearings.) This administrative regulation was amended as follows: (1) Amend STATUTORY AUTHORITY to add "7 CFR 273.15, FNS/Sero Regulations Supplement, 273.15-a-1 (82-14) (7-28-82); 7 CFR 273.16, FNS/Sero Regulations Supplement, 273.16-a-1 (83-5) (12-15-82)"; (2) Amend NECESSITY AND FUNCTION to delete "7 CFR Part 270 through 280", and to insert in lieu thereof "applicable federal regulations and interpretations thereof".

For both regulations, it was noted that 45 CFR 205.10(2) could not be authority for telephonic hearings relating to food stamp issues since this CFR applies only to Medicare and certain other benefit programs. In addition, the agency will file a further amendment to include a manual that contains specific requirements for telephonic hearings that conform to the above cited CFRs and supplements. Since telephonic hearings will not begin before this amendment is made, these regulations, as amended, conform.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Secretary of State: Corporations

30 KAR 1:010 (Certificates of existence or authorization; status of good standing.)

Board of Claims: Practice and procedure

108 KAR 1:010 (Board operation and claim procedure.) Chairman O'Brien stated that an objection had been raised to this administrative regulation concerning the restrictions on testimony or oral argument before the board. He added that there were arguments for and against such restriction. Chairman O'Brien recommended that the Subcommittee take no action against this regulation since the issue raised was part of the administrative hearings study being conducted by the Subcommittee, and the issue would be resolved upon completion of the study. The Subcommittee agreed.

General Government Cabinet: Department for Local Government: Boards

109 KAR 5:010 (District boards; directors, terms.)

Athletic Commission

201 KAR 27:016 (Bond required to cover compensation of officials, boxers, and wrestlers.)

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:111 (Deer and turkey hunting on special areas.)

301 KAR 2:210 (Antlerless deer permits.)

Corrections Cabinet: Kentucky Parole Board

501 KAR 1:030 (Determining parole eligibility.)

Office of the Secretary

501 KAR 6:030 (Kentucky State Reformatory.)

501 KAR 6:040 (Kentucky State Penitentiary.)

501 KAR 6:050 (Luther Luckett Correctional Complex.)

501 KAR 6:120 (Blackburn Correctional Complex.)

501 KAR 6:130 (Western Kentucky Farm Center.)

Education and Humanities Cabinet: Department of Education: State Board for Elementary and Secondary Education: Office of Administration and Finance

Pupil Transportation

702 KAR 5:040 (District board's responsibilities.)

Office of Instruction: Teacher Certification

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

704 KAR 20:198 (Director of special education.)

704 KAR 20:320 (Beginning teacher internship program.)

State Board for Adult, Vocational Education and Vocational Rehabilitation: Office of Vocational Education: Fiscal Management

705 KAR 2:120 (Distribution of funds for local operation of area vocational education centers and local vocational departments.)

Public Protection and Regulation Cabinet: State Racing Commission: Thoroughbred Racing Rules

810 KAR 1:099 (Repeal of 810 KAR 1:022.)

Department of Housing, Buildings and Construction: Plumbing

815 KAR 20:020 (Parts or materials list.)

Cabinet for Human Resources: Department for Health Services: State Health Plan

902 KAR 17:010 (State health plan.)

Office of Inspector General: Health Services and Facilities

902 KAR 20:140 (Operation and services; Hospice.) A question had been raised as to the services provided by Section 4(5)(d). Agency personnel explained the federal requirements. The Subcommittee had no objection to this regulation.

Hazardous Substances

902 KAR 47:010 (Definitions.)

Department for Social Insurance: Public Assistance

904 KAR 2:055 (Hearings and appeals.)

Department for Medicaid Services: Medicaid Services

907 KAR 1:030 (Home health agency services.)

907 KAR 1:034 (Early and periodic screening, diagnosis and treatment.

907 KAR 1:044 (Mental health center services.)
907 KAR 1:350 (Coverage and payments for organ transplants.)
907 KAR 1:439 (Repeal of 907 KAR 1:438.)
907 KAR 1:470 (Durable medical equipment.)
907 KAR 1:472 (Payments for durable medical equipment.)

The Subcommittee deferred the following regulation at the request of the promulgating administrative body:

Education and Humanities Cabinet: Department of Education: State Board for Elementary and Secondary Education: Office of Instruction: Teacher Certification
704 KAR 20:550 (Professional school certificate for college faculty.) This regulation creates a certificate for teaching or administrative assignment in a school district for college faculty. Section 1(2) delegates to the local school district the determination of the appropriate academic qualifications that would be required of the faculty member. Questions were raised as to the possibility of unconstitutional delegation of authority. Also, the necessity and function clause of this regulation points out that KRS 161.020, 161.025 and 161.030 require that teachers and other professional school personnel shall hold certificates issued upon completion of programs preparation prescribed by the Kentucky Council on Teacher Education and Certification and approved by the State Board for Elementary and Secondary Education. The promulgating agency agreed to defer the regulation until the July 6 portion of this meeting. On July 6, there was no agency representative present to respond to questions, and in accordance with KRS 13A.290(4), the regulation was deferred to the August meeting.

Labor Cabinet: Department of Workers' Claims: Workers' Compensation Board
803 KAR 25:090 (Workers' compensation medical fee schedule.
803 KAR 25:100 (Procedures for workers' compensation rehabilitation.

The Subcommittee had no objections to emergency regulations which had been filed.

OTHER BUSINESS:

Education and Humanities Cabinet: Department of Education: Office of Local Services: School District Finance
702 KAR 3:135 (Bidding procedures.) Representatives of the Department of Education were present to answer questions which have been raised concerning the bidding and procurement process provided for in this regulation. In the necessity and function clause, the regulation states that KRS 45A.350 authorizes an election in the procurement process, although that statute was repealed in 1984. Also, it refers to "the old method of procurement" without explaining if that method is the method prescribed within the body of the regulation. Finally, the $5,000 amount differs from the $7500 threshold now existing in KRS Chapter 45A. The agency representative stated that they had reviewed the regulation and found that it is ambiguous, and agreed to file an amendment to correct the ambiguities and contradictions with the statute.

The Subcommittee adjourned at 10:30 a.m. until August 3, 1989 at 10 a.m.

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 HEALTH & WELFARE
Meeting of June 21, 1989

The Interim Joint Committee on Health and Welfare met on Wednesday, June 21, 1989, but took no action on the following administrative regulations:

904 KAR 2:006 & E
904 KAR 2:016 & E
907 KAR 1:019
907 KAR 1:020
908 KAR 3:070
908 KAR 3:080
908 KAR 3:090
908 KAR 3:100
908 KAR 3:110
908 KAR 3:120
908 KAR 3:130
908 KAR 3:140
908 KAR 3:150
908 KAR 3:160
908 KAR 3:180

TASK FORCE ON ECONOMIC DEVELOPMENT & TOURISM
Meeting of June 23, 1989

Pursuant to KRS Chapter 13A, the Task Force on Economic Development and Tourism has completed its review of 307 KAR 1:020 & E. A hearing was held by the task force on June 23, 1989, at 8:30 a.m., at the Executive West in Louisville, Kentucky. Upon completion of said hearing the task force unanimously approved 307 KAR 1:020 & E, finding said regulations in compliance with appropriate laws of the Commonwealth.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
Meeting of June 28, 1989

The Interim Joint Committee on Agriculture and Natural Resources met Wednesday, June 28, 1989, and submits this report:

The committee determined that the following administrative regulations comply with KRS Chapter 13A: Department for Surface Mining Reclamation and Enforcement administrative regulations 405 KAR 8:010, 405 KAR 8:020, 405 KAR 8:030, 405 KAR 8:040, and 405 KAR 24:040, and Department of Fish and Wildlife Resources administrative regulations 301 KAR 2:045, 301 KAR 2:047, 301 KAR 2:170, 301 KAR 2:240, 301 KAR 3:021, 301 KAR 3:030, 301 KAR 4:031, and 301 KAR 4:090, as amended by the Administrative Regulation Review Subcommittee.

The committee adjourned at 3:40 p.m., June 28, 1989.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT
Meeting of July 12, 1989

The Interim Joint Committee on State Government met July 12, 1989, and submits this report.

The Committee determined that the following administrative regulation complies with KRS Chapter 13A:
Board of Claims: 108 KAR 1:010 (Board operation and claim procedure)

INTERIM JOINT COMMITTEE ON BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of July 14, 1989

The Interim Joint Committee on Business Organizations and Professions met on Friday, July 14, 1989, and submits this report:

The Committee determined that the following regulations complied with KRS Chapter 13A:

Board of Embalmers & Funeral Directors.
201 KAR 15:010
Kentucky Athletic Commission
201 KAR 27:016 & E
Harness Racing Commission
811 KAR 1:085
811 KAR 2:065
Kentucky State Racing Commission
810 KAR 1:001
810 KAR 1:011
810 KAR 1:050
810 KAR 1:099

The Committee deferred the following regulation at the agency's/agencies' request:

Kentucky State Racing Commission
810 KAR 1:013

The Committee adjourned at 12:30 p.m.

CUMULATIVE SUPPLEMENT

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LOCATOR INDEX -- EFFECTIVE DATES

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

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101 KAR 3:040E	2210	4-5-89
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108 KAR 1:010E	2373	5-3-89
Replaced	2415	7-12-89
200 KAR 6:021E	2212	3-30-89
Replaced	2327	7-7-89
201 KAR 8:400E	3	6-13-88
201 KAR 8:410E	4	6-13-88
201 KAR 27:016E	2375	5-3-89
Replaced	2418	7-14-89
307 KAR 1:020E	2375	4-17-89
Replaced	2330	6-23-89
501 KAR 1:030E	2381	5-12-89
501 KAR 6:020E	2385	4-27-89
Replaced	2259	7-7-89
501 KAR 6:040E	2386	4-27-89
Replaced	2263	7-7-89
501 KAR 6:080E	2387	4-27-89
Replaced	2265	7-7-89
501 KAR 6:130E	2212	3-16-89
600 KAR 3:010E	2213	3-27-89
Replaced	2269	7-7-89
806 KAR 17:065E	1629	11-23-88
Expired		3-31-89
902 KAR 17:010E	2388	4-17-89
903 KAR 5:290E	2214	4-10-89
Replaced	2303	7-7-89
904 KAR 2:006E	2388	4-18-89
Replaced	2304	6-21-89
904 KAR 2:016E	2392	4-18-89
Replaced	2308	6-21-89
904 KAR 2:022E	2214	3-15-89
Replaced	2177	5-17-89
907 KAR 1:026E	2397	5-3-89
Expired		7-14-89
907 KAR 1:027E	2398	5-3-89
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907 KAR 1:470E	2400	5-3-89
907 KAR 1:472E	2400	5-3-89

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13 KAR 2:020	(See 16 Ky.R.)	
30 KAR 1:010		
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101 KAR 2:100	(See 16 Ky.R.)	
101 KAR 3:040	(See 16 Ky.R.)	
103 KAR 43:120		
Repealed	2194	5-25-89
103 KAR 43:121	2194	5-25-89
108 KAR 1:010		
Amended	2415	7-12-89
109 KAR 5:010		
Amended	2416	
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Repealed	2212	3-30-89
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200 KAR 16:010	2195	5-25-89
201 KAR 2:130		
Amended	837	
201 KAR 14:051	2465	
201 KAR 15:010	(See 16 Ky.R.)	
201 KAR 27:016		
Amended	2418	7-14-89
301 KAR 2:045		
Amended	2242	6-28-89
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Amended	2254	6-28-89
301 KAR 3:021		
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301 KAR 3:030		
Amended	2258	6-28-89
301 KAR 4:030		
Repealed	2328	6-28-89
301 KAR 4:031	2328	6-28-89
301 KAR 4:090	(See 16 Ky.R.)	
307 KAR 1:020	2330	6-23-89
405 KAR 8:010		
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405 KAR 8:020		
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405 KAR 8:030		
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405 KAR 8:040		
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Amended	2267	7-7-89
Amended	2432	
501 KAR 6:130		
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600 KAR 3:010		
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