Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 17, NUMBER 7
TUESDAY, JANUARY 1, 1990

Administrative Regulation Review Subcommittee, January Agenda.....2141
Regulation Review Procedure.....2143

Emergency Regulations Now In Effect:
Board of Pharmacy.....2144
Agriculture.....2145
Corrections.....2147
Insurance.....2149
Human Resources.....2150

As Amended:
Personnel Department.....2171
Board of Pharmacy.....2175
Board of Architects.....2177
Education.....2183
Workforce Development.....2192
Alcoholic Beverage Control.....2192
Human Resources.....2193

Amended After Hearing:
Justice.....2203
Transportation.....2203
Housing, Buildings and Construction.....2205

Proposed Amendments Received through December 15, 1990:
Revenue.....2209
Board of Pharmacy.....2212
Real Estate Commission.....2213
Justice.....2218
Corrections.....2221
Education.....2227
Housing, Buildings and Construction.....2248
Human Resources.....2277

Proposed Regulations Received Through December 15, 1990:
Revenue.....2293
Board of Pharmacy.....2293
Real Estate Commission.....2294
Agriculture.....2302
Justice.....2303
Transportation.....2306
Education.....2311
Insurance.....2311
Human Resources.....2316

Dec. Minutes of the Administrative Regulation Review Subcommittee.....2368
Other Committee Reports.....2372

CUMULATIVE SUPPLEMENT
Locator Index - Effective Dates.....G2
KRS Index.....G15
Subject Index.....G26

MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is **tentatively** scheduled on January 3-4, 1991. See **tentative** agenda on pages 2141-2143 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 - January 3, 1991
(2 p.m., Room 327, Capitol)

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Incentive Loan Program
11 KAR 7:010. Incentive loan program; mathematics and science.
11 KAR 7:020. Deferment.

REVENUE CABINET

Ad Valorem Tax; Administration
103 KAR 5:021. Repeal of 103 KAR 5:020 and 103 KAR 5:080.

GENERAL GOVERNMENT CABINET

Board of Dentistry
201 KAR 8:140. Continuing education compliance. (Not Amended After Hearing)
Board of Medical Licensure
201 KAR 9:305. Recertification of athletic trainers. (Deferred from November meeting)
Board of Nursing
201 KAR 20:390 & E. Nursing incentive scholarship fund.

COMMERCE CABINET
Department of Agriculture

Referendums
302 KAR 1:080. Small grain producers referendum.
302 KAR 20:220 & E. Pseudorabies: eradication and control.

TOURISM CABINET
Department of Parks

Parks and Campgrounds
304 KAR 1:050. Metal detectors.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management

Solid Waste Facilities
401 KAR 47:132E. Moratorium on new and modified permits.
401 KAR 47:134 & E. Limitations on amount of waste accepted by residential landfills.
401 KAR 47:136 & E. Diversion of waste.

Division for Air Quality

New Source Standards
401 KAR 59:023. New medical waste or hazardous waste incinerators. (Amended After Hearing) (Deferred since October Meeting)
Existing Source Standards
401 KAR 61:013. Existing medical waste and hazardous waste incinerators. (Amended After Hearing) (Deferred since October Meeting)

CORRECTIONS CABINET

Juvenile Holding Facilities
501 KAR 9:025 & E. Administration; management.

JUSTICE CABINET

Breath Analysis Operators
500 KAR 8:010. Certification of operators. (Amended After Hearing)
Candidate Selection
502 KAR 45:050 & E. Physical examination.

TRANSPORTATION CABINET
Department of Highways

Traffic
603 KAR 5:070. Motor vehicle dimension limits. (Amended After Hearing)
603 KAR 5:071. Bus dimension limits. (Deferred from December)
603 KAR 5:112 & E. Annual permits for moving utility poles or pipes. (Amended After Hearing)

PUBLIC SERVICE COMMISSION
Department of Housing Buildings and Construction

Hazardous Materials
815 KAR 30:060. Certification of underground petroleum storage tank installers. (Am. After Hearing)

CABINET FOR HUMAN RESOURCES
Department for Health Services

Communicable Diseases
902 KAR 2:150. Human Immunodeficiency Virus education, initial professional licensure.
902 KAR 2:160. Human Immunodeficiency Virus education, continuing education for professionals.

Local Health Departments
902 KAR 8:030. Merit system for local health departments.
Health Services and Facilities
902 KAR 20:320 & E. Psychiatric residential treatment facility operation and services.
902 KAR 20:330 & E. Psychiatric residential treatment facilities.

Department for Employment Services

Employment Services
903 KAR 6:070. Classifying a person as unemployed; appeals.

Department for Social Insurance

Public Assistance
904 KAR 2:026. Repeal of 904 KAR 2:025.

Office of Inspector General

Office of Inspector General
906 KAR 1:070. Networks.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - January 4, 1991
(10 a.m., Room 327, Capitol)

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration and Finance

General Administration
702 KAR 1:010. Facilities surveys and plans.
702 KAR 1:040. Procedure for suspending certificate after breach of contract.
702 KAR 1:070. Authority to meet report requirements.
702 KAR 1:115. Annual in-service training of district board members.
702 KAR 1:121. Repeal of 702 KAR 1:120.
School District Finance
702 KAR 3:135. Bidding procedures.
702 KAR 3:150. Audit exceptions and corrections.
702 KAR 3:240. School council funding formula.
Buildings and Grounds
702 KAR 4:005. Recreational facilities; school and community.
702 KAR 4:050. Building sites; inspection, approval.
702 KAR 4:060. Construction criteria.
702 KAR 4:070. Mechanical, electrical, sanitary, heating and ventilation design.
702 KAR 4:080. Temporary or supplemental units.
702 KAR 4:090. Property disposal.
702 KAR 4:100. Emergency school loan fund; repayments.
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.
Pupil Transportation
702 KAR 5:010. Responsibilities of division.
702 KAR 5:030. Superintendents' responsibilities.
702 KAR 5:040. District board's responsibilities.
702 KAR 5:050. Supervision and discipline of pupils.
Food Service Programs
702 KAR 6:010. Local Responsibilities.
702 KAR 6:020. District director.
702 KAR 6:030. Principal's responsibilities.
702 KAR 6:040. Personnel; policies and procedures.
702 KAR 6:045. Personnel; food service employee qualifications.
702 KAR 6:050. Lunch and breakfast requirements.
702 KAR 6:060. Time minimum for meals.
702 KAR 6:090. Competitive food and beverage sales and service requirements.

Office of Instruction

Instructional Services
704 KAR 3:266. Repeal of 704 KAR 3:265.
704 KAR 3:292. Chapter 1, ESSIA migrant education requirements.
704 KAR 3:307. Recognition of credits when transferring without transcript.
704 KAR 3:335. State plan for the administration of Chapter 2, of the Augustus F. Hawkins - Robert T. Stafford Elementary and secondary school improvement amendments of 1988.
704 KAR 3:365. Chapter I complaint procedures.
Health and Physical Education Program
704 KAR 4:010. Physical Education.
Kindergartens and Nursery Schools
704 KAR 5:060. Entrance of five-year olds into primary school program for compulsory attendance purposes.

Student Services
704 KAR 7:011. Repeals 704 KAR 7:010, 704 KAR 7:020, 704 KAR 7:030, and 704 KAR 7:040.
704 KAR 7:050. Student discipline guidelines.
704 KAR 7:055. Corporal punishment of pupils.
704 KAR 7:070. Guidelines for dropout prevention programs.
704 KAR 7:090. Homeless children education program.
Elementary and Secondary Education Act
704 KAR 10:050. Courses not in program of studies; procedure for offering.

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.
Facilities and Equipment
705 KAR 3:140. Area center or public high school, standards for department of.
Instructional Programs
705 KAR 4:040. Cooperative program standards.
705 KAR 4:050. Work experience program standards.
705 KAR 4:080. FFA leadership training center.
705 KAR 4:230. General programs standards for secondary vocational education programs.

Office of Education for Exceptional Children

Surplus Property
707 KAR 1:060. Identification, evaluation and placement policy and procedures.
707 KAR 1:090. Kentucky School for the Deaf; code of conduct.
707 KAR 1:100. Kentucky School for the Deaf; admission policy.
707 KAR 1:110. Kentucky School for the Blind; admission policies.
707 KAR 1:120. Kentucky schools for the blind and deaf; contract teachers service regulation.
707 KAR 1:130. Kentucky schools for the blind and deaf; contract teachers appeal and grievance procedures.

Office of Resource Management

Surplus Property
708 KAR 1:001. Repeal of 708 KAR Chapter 1.

Department of Libraries and Archives

Archives
725 KAR 1:060. Standards for documents presented for recording.

ADMINISTRATIVE 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 administrative regulations received by the deadline required in KRS 13A.050 shall be published in the Administrative Register.

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

Any person interested in attending the scheduled hearing must submit written notification of such to the administrative body at least five (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 the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting following publication. If a proposed administrative regulation is not amended as a result of the hearing or if the hearing is cancelled, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or thirty (30) days after being referred by LRC, whichever occurs first.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

(NOTE: Emergency regulations expire 120 days from publication or upon replacement or repeal.)

STATEMENT OF EMERGENCY
201 KAR 2:111E

The present members of the Kentucky Board of Pharmacy have determined the need for an emergency new regulation to repeal 201 KAR 2:110 for the following reasons:

(1) Composition of the Board of Pharmacy shall change as of January 1, 1991,

(2) New members, replacing those intimately involved in the promulgation of this regulation and the petitions and hearings held since its adoption, will not have had exposure to the information and testimony leading to the final decision,

(3) Federal reimbursement restraints, now not in concert with the more restrictive state mandate, would be eliminated,

(4) Economic hardship would be removed from the professional aspects regarding interchange within the regulation, and

(5) Consumer safety and welfare would not be compromised.

This emergency regulation will be replaced by an ordinary administrative regulation. This ordinary administrative regulation was filed with the Regulations Compiler on December 6, 1990.

WALLACE G. WILKINSON, Governor
RALPH G. DEITEMEYER, President

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy

201 KAR 2:111E. Repeal of 201 KAR 2:110.

RELATES TO: KRS Chapter 217
STATUTORY AUTHORITY: KRS 217.814(7), (8), 217.819(1)
EFFECTIVE: December 11, 1990
NECESSITY AND FUNCTION: 201 KAR 2:110 is no longer required because there are now drug products that FDA considers to be therapeutically equivalent to other pharmaceutically equivalent products, and the adoption of an amendment to an existing regulation will address those products which FDA considers to be therapeutically nonequivalent.

Section 1. 201 KAR 2:110 is hereby repealed.

RALPH G. DEITEMEYER, President
APPROVED BY AGENCY: November 30, 1990
FILED WITH LRC: December 11, 1990 at 2 p.m.

STATEMENT OF EMERGENCY
201 KAR 2:116E

This regulation has been determined by the present members of the Kentucky Board of Pharmacy to be in need of emergency amendment for the following reasons:

(1) Composition of the Board of Pharmacy shall change as of January 1, 1991,

(2) New members, replacing those intimately involved in the promulgation of this regulation and the petitions and hearings held since its adoption, will not have had exposure to the information and testimony leading to the final decision,

(3) Federal reimbursement restraints, now not in concert with the more restrictive state mandate, would be eliminated,

(4) Economic hardship would be removed from the professional aspects regarding interchange within the regulation, and

(5) Consumer safety and welfare would not be compromised.

This emergency regulation will be replaced by an ordinary administrative regulation. This ordinary administrative regulation was filed with the Regulations Compiler on December 6, 1990.

WALLACE G. WILKINSON, Governor
RALPH G. DEITEMEYER, President

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy

201 KAR 2:116E. Drug products with bioinequivalence problems.

RELATES TO: KRS 217.819
STATUTORY AUTHORITY: KRS 217.814(5), (6), (7), (8), 217.819(1)
EFFECTIVE: December 11, 1990
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a nonequivalent drug product formulary of drugs which should not be interchanged by pharmacists. This regulation lists drug products with active ingredients or dosage forms with potential bioequivalence problems, drugs characteristically possessing a narrow therapeutic index, or categories of agents for which there is either documented evidence of inequivalent therapeutic effect or a potential for it based on differences in bioavailability.

Section 1. The following have been determined by the board to be noninterchangeable: drugs, drug products, or dosage formulations considered by the United States Food and Drug Administration not to be therapeutically equivalent to other pharmaceutically equivalent products as published in the "Approved Drug Products with Therapeutic Equivalence Evaluations."

Section 2. [1.] The following have been determined by the board to be noninterchangeable unless the United States Food and Drug Administration considers them therapeutically equivalent to other pharmaceutically equivalent products with no potential bioequivalency problems and are listed as such in "Approved Drug Products with Therapeutic Equivalence Evaluations":

(1) Digitalis glycosides: [:]
[(a) Digoxin; and]
[(b) Digitoxin.]
(2) Antiepileptic drugs: [:]
[(a) Phenytoin;]
[(b) Primidone; and]
[(c) Carbamazephine.]
(3) Antiarrhythmic agents: [:]
[(a) Quinidine; and]

[(b) Procainamide.]
(4) Conjugated estrogens; [:]
[(a) Conjugated; and]
(5) [(b)] Esterified estrogens; [.]
(6) [(5)] Warfarin anticoagulants; [.]
(7) [(6)] Theophylline products; and [.]
(8) [(7)] Thyroid preparations. [:]
[(a) Thyroglobulin, whole grain thyroid;]
[(b) Levothyroxine; and]
[(c) Leothyronine.]

Section 3. "Approved Drug Products with Therapeutic Equivalence Evaluations," 10th Edition, 1990, with Cumulative Supplement January-September 1990, U.S. Food and Drug Administration is incorporated by reference.

RALPH G. DEITEMEYER, President
APPROVED BY AGENCY: November 30, 1990
FILED WITH LRC: December 11, 1990 at 2 p.m.

STATEMENT OF EMERGENCY
302 KAR 20:220E

This administrative regulation establishes the procedures pursuant to KRS 257.110 to control and eradicate the communicable disease pseudorabies in porcine animals in Kentucky and to establish a procedure to indemnify owners for loss occasioned by pseudorabies infection and eradication. In order to permit the state veterinarian to undertake immediate action to control and eradicate pseudorabies without further spread of the communicable disease, and to facilitate the interstate movement of porcine animals under state-federal industry program standards, it is necessary that a pseudorabies control program be implemented immediately; therefore, it is necessary to promulgate this emergency regulation. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulation Compiler on November 13, 1990.

WALLACE G. WILKINSON, Governor
WARD "BUTCH" BURNETTE, Commissioner

DEPARTMENT OF AGRICULTURE
Division of Animal Health

302 KAR 20:220E. Pseudorabies: eradication and control.

RELATES TO: KRS Chapter 257
STATUTORY AUTHORITY: KRS 257.110, 257.120, 257.030, 257.480
EFFECTIVE: November 21, 1990
NECESSITY AND FUNCTION: To provide procedures for enabling the Board of Agriculture to approve a pseudorabies herd cleanup plan and to eradicate pseudorabies from a porcine herd or animal upon a determination of infection or exposure to pseudorabies. These procedures are necessary in order to achieve pseudorabies control and eradication.

Section 1. Definitions. (1) "Breeding swine" means male or female porcines which are sexually intact, six (6) months of age or older, which are specifically used or intended to be used for reproduction.
(2) "Circle testing" means serological sampling of swine required by an official pseudorabies epidemiologist in herds that are within one and one-half (1.5) miles of a known infected herd.
(3) "Depopulation" means a procedure where the premises is cleared of all swine at a specified time.
(a) "Mandatory depopulation" means the required removal of all swine from a premises for which no official herd plan was developed or followed or the herd plan used is not effective in the elimination of pseudorabies.
(b) "Official depopulation" means a herd plan for a herd with an infection rate of more than ten (10) percent recommended by an official epidemiologist where the herd owner agrees to clear the premises of all swine in a manner approved by the state veterinarian and where indemnity is paid on all breeding swine in the herd.
(c) "Voluntary depopulation" means a herd plan for a herd with an infection rate of less than ten (10) percent chosen by the owner where the premises is cleared of all swine and where indemnity is paid only for seropositive breeding swine.
(4) "Exposed swine" means any swine that has been in known contact with an animal infected with pseudorabies. This includes all swine in a known infected herd.
(5) "Herd" shall mean all porcine animals maintained for any purpose on common grounds under common ownership or supervision, including animals which may be geographically segregated and have interchange or movement of animals without regard to health status.
(6) "Indemnity" means monies paid to the owner by the state-federal agencies in addition to the salvage value of the swine.
(7) "Known infected herd" means any herd in which swine have been determined to be infected with pseudorabies by an official pseudorabies epidemiologist or state veterinarian.
(8) "Official herd cleanup plan" means a plan developed by an official pseudorabies epidemiologist in consultation with the herd owner and his or her veterinary practitioner when applicable and approved by the state veterinarian for the purpose of eliminating pseudorabies from the herd. This plan may include test and slaughter, depopulation, offspring segregation with or without vaccination or a combination of any approved procedure.
(9) "Official pseudorabies epidemiologist" means a state or federal employed veterinarian designated by the state veterinarian and the federal veterinarian in charge, to investigate, diagnose, and make recommendations concerning suspected pseudorabies in swine.
(10) "Official pseudorabies test" means any serological test approved by the state veterinarian for the diagnosis of pseudorabies and is licensed or approved by the United States Department of Agriculture.
(11) "Official random sample test" means a group sampling of swine utilizing serological tests which provide a ninety-five (95) percent probability of detecting pseudorabies in a segregated group of swine when at least ten (10) percent of the animals tested are seropositive for pseudorabies.
(12) "Positive animal" means an animal which has given a positive reaction to an official test for the detection of pseudorabies and is so classified by an official epidemiologist or

where the pseudorabies virus has been found in the body of an animal or in the body discharge of an animal.

(13) "Pseudorabies" means a communicable, contagious and infectious disease caused by a herpes virus affecting livestock and other animals.

(14) "Pseudorabies monitored feeder pig herd" means a swine breeding herd in which boars and sows have been sampled and tested negative for pseudorabies during the last twelve (12) months according to the requirements of 302 KAR 20:210.

(15) "Pseudorabies vaccine" means a pseudorabies vaccine licensed by the United States Department of Agriculture.

(16) "Qualified pseudorabies negative herd" means a swine herd that is free of pseudorabies and maintains a pseudorabies free status by periodic testing of breeding swine.

(17) "Quarantine feedlot" means a premises where swine of unknown health status are fed for slaughter under procedures approved by the state veterinarian.

(18) "Salvage value" means the carcass worth of an animal.

(19) "Test and slaughter" means a herd plan where positive animals are removed from the herd within thirty (30) days of classification and additional tests are performed on the herd.

Section 2. Procedures. (1) The owner of a known infected herd shall apply to the state veterinarian for approval of an official herd cleanup plan within thirty (30) days of notification that his herd is classified as a known infected herd.

(2) The official herd cleanup plan shall provide as follows:

(a) Within ninety (90) days from the date of notification of classification as a known infected herd, the owner shall implement an approved herd cleanup plan.

(b) The owner of the herd shall cooperate with the department in conducting the necessary testing, classification and supervision of the herd.

(c) Animals within the herd shall be removed to slaughter or depopulated under the supervision of the state veterinarian and as provided in the official herd cleanup plan.

(d) Pseudorabies vaccine shall be used only with approval of the state veterinarian.

(3) When official depopulation is the approved herd cleanup plan, the plan shall require the premises to be cleared of breeding swine within two (2) months from the date of approval and cleared of all swine within eight (8) months of the plan approval date.

(4) The official herd cleanup plan shall provide for the completion of all requirements set out in the cleanup plan within twenty-four (24) months from the approval date of the plan. However, the state veterinarian may approve additional time to complete the official cleanup plans not to exceed ninety (90) days for completion of all requirements set out in the plan.

(5) The herd cleanup plan may be changed or amended when approved by the official pseudorabies epidemiologist and the state veterinarian.

(6) When the owner of a pseudorabies infected herd does not develop an official herd cleanup plan or when the state veterinarian determines that the official herd cleanup plan has not or will not effectively eliminate pseudorabies from a swine herd, and that approval or continuation of the official herd cleanup plan is unlikely to effectively eliminate pseudorabies from the herd, the board or its authorized agents shall order depopulation as provided by KRS 257.110. The following procedures shall apply:

(a) Notification to the owner of the order of depopulation shall be delivered to the owner or mailed to the owner's business address by certified mail. This notification shall include test results and other appropriate documents supporting the depopulation order.

(b) The owner shall have fifteen (15) days from receipt of notification of the depopulation order to appeal said order by written request to the state veterinarian that he or she disagrees with said order. If no appeal is received within this time, an order of depopulation shall be issued.

(c) The owner may submit written arguments or may schedule a conference with the state pseudorabies epidemiologist and the state veterinarian within fifteen (15) days of the written request appealing said order.

(d) The owner shall be notified by certified mail within seven (7) days after receipt of written arguments or conference as to the state veterinarian's final ruling on the appeal.

(e) When mandatory depopulation is ordered, all breeding swine shall be removed from premises for slaughter within two (2) months and all swine shall be removed from premises within eight (8) months of owner's receipt of depopulation order.

(f) The premises shall meet quarantine release as required in Section 7 of this regulation.

Section 3. Pseudorabies Program Testing. (1) Within thirty (30) days of a request for testing by the department, the owner of swine shall submit their swine for required testing and provide the department with necessary facilities and assistance required for conducting testing.

(2) Pseudorabies testing shall be in addition to the testing requirements set out in 302 KAR 20:210, Section 2, and may include random sample test or complete herd test as determined by the state veterinarian.

(3) An official random sample test shall include all animals in a segregated unit or a minimum of thirty (30) animals, whichever is less.

(4) Expenses incurred in collection of blood samples in infected herds, circle testing, slaughter traces and epidemiological tracings may be paid or reimbursed, if funds are available, in amount specified and approved by the state veterinarian.

(5) Expenses incurred in serological testing may be paid by state-federal funds when samples are submitted to a state-federal laboratory designated by the state veterinarian.

(6) Contract for fee basis. The state veterinarian may provide for reimbursement for payment of the expenses authorized in this regulation by a fee basis contract or agreement with a veterinary practitioner accredited and licensed in Kentucky.

Section 4. Movement of Qualified and Monitored Swine. (1) Testing shall be the responsibility of the seller. All breeding swine in Kentucky offered for sale to a Kentucky producer shall be negative to an official test within thirty (30)

days of the date of change of ownership, or the swine must originate directly from a qualified pseudorabies negative herd.

(2) Feeder pigs from a qualified pseudorabies negative herd or pseudorabies monitored feeder pig herd may be moved without individual identification from the originating Kentucky farm to another Kentucky farm for purposes of feeding for slaughter providing all feeder pigs on the recipient farm are from the same originating herd when all other requirements of 302 KAR 20:210 are met and with specific approval of the Kentucky State Veterinarian.

(3) Swine originating from a state which qualifies for Stage IV or V under the national program standards may enter Kentucky without a test unless a test prior to entry for exhibition or sale is required by the state veterinarian.

Section 5. Quarantine Swine Feed Lots. (1) Quarantine swine feed lots shall be permitted under the authority and direction of the state veterinarian. Quarantine feed lots shall comply with the following requirements to prevent the spread of disease from the premises.

(a) Owner shall have a permit which is issued by the state veterinarian and renewed annually.

(b) All owners are required to have a Kentucky dealer's license.

(c) Known pseudorabies positive or pseudorabies exposed swine shall not enter feed lot premises.

(d) Quarantine feed lots shall not be permitted within a two (2) mile radius of a qualified pseudorabies negative herd or pseudorabies monitored feeder pig herd.

(e) All swine owners within a two (2) mile radius of a quarantine feed lot shall be notified prior to the issuance of a quarantined feed lot permit.

(f) All swine leaving these premises shall be sold for slaughter.

(g) A swine breeding operation shall not be maintained on the same premises or on other farms under the same management without all swine being under quarantine.

(h) Records of sales and purchases shall be kept as directed by the state veterinarian.

(i) All swine entering quarantine feeding premises shall be identified with an official slaughter eartag.

(j) All swine must weigh 150 pounds or more to be eligible for entry to a quarantine feeding premises.

(k) Boars and bred females shall not enter or be maintained in a quarantined swine feed lot.

Section 6. Indemnity. (1) State indemnity funds, if available, shall be paid only for the following classes of swine that are sent directly to slaughter in the following amounts:

(a) Twenty-five (25) dollars per head for all seropositive breeding swine when test and slaughter, voluntary depopulation or a herd plan other than official depopulation or mandatory depopulation is the herd cleanup plan.

(b) Fifty (50) dollars per head on all breeding swine where official depopulation is the official herd cleanup plan.

(2) In order to be eligible for indemnity, any swine on which indemnity is requested must have been in Kentucky for six (6) months prior to the time of the first test determining pseudorabies infection within a herd.

(3) In order to be eligible for state indemnity funds pursuant to this regulation, a written depopulation agreement shall be signed by the owner seeking state indemnity. Authorization for depopulation and for the payment of indemnity shall be approved by the state veterinarian and the amount of indemnity is to be stated prior to the signing of the agreement.

(4) The refusal of the state veterinarian to approve payment of state indemnity for any reason set out in KRS 257.120(4) shall not restrict or otherwise limit the state veterinarian's authority to order slaughter or depopulation of infected or exposed porcine animals.

Section 7. Quarantine Release. (1) Known infected herds and premises shall be released from quarantine when:

(a) The herd has been depopulated for at least thirty (30) days and the premises cleaned and disinfected. If the premises is repopulated, the herd shall have a negative test thirty (30) to sixty (60) days after repopulation.

(b) When test and slaughter was the official herd cleanup plan, the herd shall have two (2) negative tests. The first test shall be no less than thirty (30) days after the last positive animal has been sold to slaughter. The second test shall be more than sixty (60) days after the last positive animal is sold for slaughter. The second test shall include all breeding swine and other swine on the premises shall be random sampled.

(2) Other quarantined herds shall be released after a negative test as directed by the official pseudorabies epidemiologist and quarantine release approved by the state veterinarian.

WARD "BUTCH" BURNETTE, Commissioner
APPROVED BY AGENCY: November 9, 1990
FILED WITH LRC: November 21, 1990 at 4 p.m.

STATEMENT OF EMERGENCY
501 KAR 9:025E

This emergency regulation replaces 501 KAR 9:020 which expired because of an objection by the Administrative Regulation Review Subcommittee.

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

CORRECTIONS CABINET

501 KAR 9:025E. Administration; management.

RELATES TO: KRS 441.057
STATUTORY AUTHORITY: KRS 441.057
EFFECTIVE: November 20, 1990
NECESSITY AND FUNCTION: KRS 441.057 requires the Corrections Cabinet to promulgate regulations establishing minimum standards for facilities. This regulation sets forth procedures to be followed for the administration and management of facilities. This regulation replaces 501 KAR 9:020 which expired because of an objection by the Administrative Regulation Review Subcommittee.

Section 1. Policy and Procedure - Organization. (1) The jailer shall develop and

maintain an organizational chart and an operations manual of policy and procedure which has been adopted by the fiscal court and filed with the Corrections Cabinet.

(2) The written policy and procedures manual shall be made available to employees.

(3) The operations manual shall include but not be limited to the following aspects of the facility's operation:

(a) Administration.
(b) Fiscal management.
(c) Personnel.
(d) Security and control.
(e) Sanitation and hygiene.
(f) Medical services.
(g) Food services.
(h) Emergency and safety procedures.
(i) Classification.
(j) Juvenile programs.
(k) Juvenile services.
(l) Admission and release.
(m) Rules and discipline.
(n) Volunteers.

(4) The operations manual shall be reviewed and updated at least annually. All revisions shall be marked with the effective date and filed with the Corrections Cabinet.

Section 2. Legal Assistance. (1) The jailer shall be represented and advised by the county attorney as provided in KRS 69.210.

(2) The county attorney shall advise the fiscal court in writing when legal representation or legal advisement to the jailer by that office is inappropriate or creates a conflict of interest. The fiscal court shall be encouraged to carry liability insurance for the facility staff and other county officials.

Section 3. Public Information. (1) The jailer shall develop and implement a procedure for the dissemination of information about the facility to the public, to government agencies, and to the media. The public and juveniles shall have access to the procedures.

(2) Representatives of the media shall have access to the facility, consistent with the preservation of juvenile's privacy and the maintenance of order and security in the facility.

(3) All official statements to the news media, relating to facility administration policy, shall be made by the jailer only or his designee.

(a) Governmental agencies shall be provided with information pertinent only to their specific function and with the consent of the juvenile; and

(b) Private citizens shall only be provided with information supplied to the media.

(4) No information shall be released that is detrimental to another juvenile.

Section 4. Information Systems. The jailer shall establish and maintain an information system which shall comply with the requirements of this section.

(1) Facility information and juvenile records shall be retained in written form or within computer records.

(2) Facility information and juvenile records shall be stored in a secure manner so that they are protected from theft, tampering, and destruction. Written guidelines shall specify the length of time a juvenile record shall be maintained after an juvenile's release from custody and the conditions under which archives are maintained.

(3) A written report shall be made of all extraordinary or unusual occurrences within forty-eight (48) hours of the occurrence. This report shall be placed in the facility record. Extraordinary or unusual occurrences shall include but not be limited to:

(a) Death of an juvenile.
(b) Attempted suicide or suicide.
(c) Serious injury, whether accidental or self-inflicted.
(d) Attempted escape or escape from confinement.
(e) Fire.
(f) Riot.
(g) Battery, whether by a staff member or juvenile.
(h) Sexual assaults.
(i) Occurrence of contagious or infectious disease, or illness within the facility.
(j) Violent acts or behavior by either mental inquest detainees held under KRS Chapter 645 or juveniles known to be or suspected to be mentally ill or mentally retarded.

(4) All facilities shall keep a log of daily activity within the facility.

(5) Each facility shall maintain records on the types and hours of training completed by each employee and shall include verification of Justice Cabinet certification. A current and accurate personnel record shall be maintained on each employee. Each employee shall have access to his individual record.

Section 5. Juvenile Records. (1) The information required by 501 KAR 9:120 for admission and release shall be retained for each juvenile. Other information related in each juvenile's facility record shall include but not be limited to:

(a) Court orders.
(b) Personal property receipts.
(c) Infraction reports.
(d) Reports of disciplinary actions.
(e) Program involvement.
(f) Probation officer or case worker assigned.
(g) Unusual occurrences and in the case of death of a juvenile, disposition of the juvenile's property and remains.

(2) Medical records shall be maintained as required by 501 KAR 9:090.

(3) The jailer shall ensure that juvenile records are safeguarded in accordance with relevant federal and state laws and regulations.

(4) The jailer shall require that juveniles sign a "Release of Information Consent Form" prior to the release of information to individuals other than law enforcement or court officials. A copy of the signed consent form shall be maintained in the juvenile's record. This form shall include but not be limited to:

(a) Name of person, agency or organization requesting information.
(b) Name of facility releasing information.
(c) Specific information to be disclosed.
(d) Purpose of the information.
(e) Date consent form is signed.
(f) Signature of juvenile.
(g) Signature of employee witnessing the juvenile's signature.

(5) Juvenile facility records shall be kept separate from adult facility records and shall be made available for examination only as provided in KRS 610.330. Upon an order of

expungement, the jailer shall seal the records and the juvenile's detention shall be deemed never to have occurred.

(6) All facility records maintained on mental inquest detainees held under KRS Chapter 645 shall be kept separate from any other facility records. Mental inquest records are confidential and shall be made available for examination only as provided in KRS 202A.091. Upon an order of expungement pursuant to KRS 202A.091(2), the jailer shall seal the records and the mental inquest detainee's stay in the facility shall be deemed never to have occurred.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: November 15, 1990
FILED WITH LRC: November 20, 1990 at 2 p.m.

STATEMENT OF EMERGENCY
806 KAR 11:020E

This emergency administrative regulation requires multiple employer welfare arrangements to provide information to the Commissioner of Insurance so that the commissioner can enforce the laws that apply to multiple employer welfare arrangements. Currently, there are multiple employer welfare arrangements doing business in Kentucky, but there is no requirement that they notify the commissioner of their existence. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on November 21, 1990.

WALLACE G. WILKINSON, Governor
THEODORE T. COLLEY, Secretary
ELIZABETH P. WRIGHT, Commissioner

PUBLIC PROTECTION & REGULATION CABINET
Department of Insurance

806 KAR 11:020E. Multiple employer welfare arrangements.

RELATES TO: KRS 304.11-030, 304.11-045
STATUTORY AUTHORITY: KRS 304.2-110
EFFECTIVE: November 21, 1990
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation requires multiple employer welfare arrangements to provide information to the Commissioner of Insurance so the Commissioner of Insurance can enforce applicable laws.

Section 1. Definitions. As used in this regulation:

(1) "Commissioner" means the Commissioner of the Kentucky Department of Insurance.

(2) "Doing business" has the meaning set forth in KRS 304.11-030(2).

(3) "MEWA" means a multiple employer welfare arrangement, which is any arrangement which is established or maintained for the purpose of offering or providing health care benefits (other than life insurance benefits) to the employees of two (2) or more employers, or to their beneficiaries. A "MEWA" does not mean an arrangement under which health care benefits are fully insured by an insurer authorized to do business in Kentucky.

Section 2. Information to be Provided to the Commissioner. (1) A MEWA now doing business in Kentucky shall, within twenty (20) days after the effective date of this regulation, file with the commissioner in writing the information set forth in Section 3 of this regulation. The commissioner will then decide which laws apply to the MEWA and direct the MEWA to comply. If the MEWA does not comply with applicable laws of Kentucky, the commissioner shall take appropriate enforcement action.

(2) A MEWA not now doing business in Kentucky shall, prior to doing business in Kentucky, file with the commissioner the written information set forth in Section 3 of this regulation. The commissioner will then decide which laws apply to the MEWA and direct the MEWA to comply. If the MEWA does not comply with the applicable laws of Kentucky, the commissioner shall take appropriate enforcement action.

Section 3. Written Information to be Filed with the Commissioner. The information required to be filed in writing with the commissioner pursuant to Section 2 of this regulation is as follows:

(1) The employer identification number assigned by the Internal Revenue Service to the MEWA;

(2) A copy of any trust document used by the MEWA;

(3) Copies of any health benefits or life benefits plan documents;

(4) Copies of all annual reports made by the MEWA to the Department of Labor (Form 5500);

(5) Copies of any audits conducted with respect to the MEWA;

(6) Copies of actuarial reports prepared for the MEWA;

(7) Copies of any summary annual reports published for participants in the MEWA;

(8) Copies of any contracts with agents or administrators;

(9) The names of insurers and policy numbers for bonds covering fiduciaries of the MEWA;

(10) Copies of any stop loss, excess, or reinsurance policies held by the MEWA;

(11) A list of all Kentucky employers participating in the MEWA, including full mailing addresses;

(12) A list of all officers and trustees of the MEWA;

(13) Copies of any marketing materials and rate manuals;

(14) The total number of employees, dependents, and beneficiaries participating in the MEWA.

Section 4. Effective Date. This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.

ELIZABETH P. WRIGHT, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: November 15, 1990
FILED WITH LRC: November 21, 1990 at 10 a.m.

STATEMENT OF EMERGENCY
902 KAR 20:310E

This emergency regulation implements a new licensure category of psychiatric residential care for children and adolescents. This regulation is necessary for two reasons. Presently, children are either sent out of state, or placed in an acute psychiatric hospital setting. The acute psychiatric setting may become an inappropriate and more restrictive level of care than is needed for severely emotionally disturbed children. Facilities will be able to provide these services immediately following the emergency promulgation of the regulation. The provision of these services by in-state facilities, which are not acute psychiatric facilities, will lessen the financial impact of providing services to this special group of Kentucky children. The emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler before November 15, 1990.

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

CABINET FOR HUMAN RESOURCES
Office of Inspector General

902 KAR 20:320E. Psychiatric residential treatment facility operation and services.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990
STATUTORY AUTHORITY: KRS 216B.042, 216B.105
EFFECTIVE: November 19, 1990
NECESSITY AND FUNCTION: KRS 216B.042 and 216B.105 mandates that the Kentucky Cabinet for Human Resources regulate health facilities and services. This regulation provides minimum licensure requirements regarding the operation of and services provided in psychiatric residential treatment facilities.

Section 1. Definitions. (1) "Clinical privileges" means authorization by the governing body to provide certain resident care and treatment services in the facility specified by the governing body within well-defined limits, based on the individual's license, education, training, experience, competence, and judgment.

(2) "Direct-care staff" means residential or child-care workers who directly supervise residents.

(3) "Freestanding" means a completely detached and separate building, street access, telephone service, dining, and street address.

(4) "Governing body" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the facility is vested.

(5) "Holding" means forced positioning of a resident by staff without use of mechanical devices.

(6) "Licensure agency" means the Division for Licensing and Regulation in the Office of the Inspector General, Cabinet for Human Resources.

(7) "Mental health associate" is an individual with a minimum of a bachelor's degree in a mental health related field.

(8) "Professional staff" means a psychiatrist; a psychologist with Ph.D. or master's degree and autonomous functioning; a social worker with master's degree; a nurse with bachelor's degree and two (2) years' experience in a mental health setting; and other professionals from disciplines related to the treatment of mental illness, such as occupational, expressive, or recreational therapist, with a master's degree in that discipline from a program approved by the Kentucky Department of Education and specialized training or experience in the treatment of mental illness.

(9) "Psychiatric residential treatment facility" means a freestanding facility (other than a psychiatric inpatient hospital) with a maximum of sixteen (16) beds which provides inpatient psychiatric residential treatment to residents age six (6) to twenty-one (21) who are capable of self-preservation during an internal disaster.

(10) "Restraint" means the use of a mechanical device to involuntarily restrain movement of the whole or a portion of a resident's body as a means of controlling a resident's physical activities to protect the resident or others from injury or the use of intravenous, intramuscular, or subcutaneous administration of any pharmacologic or chemical agent to the resident with the sole or primary purpose of controlling or limiting the physical activities of the resident. Restraint is differentiated from mechanisms usually and customarily employed during medical, diagnostic, or surgical procedures.

(11) "Seclusion" means the involuntary confinement of a resident in a room, which the resident is physically prevented from leaving, for any period of time.

(12) "Special treatment procedures" means any procedure such as restraint or seclusion and holding which may have abuse potential or be life threatening.

(13) "Unusual treatment" means any procedure not readily accepted as a standard method of treatment by the relevant professional.

(14) "Home-like" means providing opportunities for adult-child communication, shared tasks, parent-child learning, congregate meals, and living group activities where day-to-day routines for all residents are planned, predictable and appropriate to the ages and levels of functioning of the residents.

(15) "Full-time equivalent (FTE)" for this regulation means one (1) employee working thirty-seven and one-half (37.5) hours per week or a combination of the hours worked by more than one (1) part-time employee totaling thirty-seven and one-half (37.5) hours per week.

Section 2. Applicability. (1) A certificate of need shall be required for all psychiatric residential treatment facilities.

(2) If a residential treatment facility is located on grounds shared by another licensed facility, the following shall apply:

(a) The residents of the residential treatment facility and the licensed facility with which it shares grounds shall not have any joint activities or interactions;

(b) The executive director and direct-care staff shall not serve both the licensed facility with which it shares grounds and the residential treatment facility;

(c) If the provisions of paragraph (a) of this subsection are met, the only services or components of the physical plant that may be shared are those related to housekeeping,

maintenance, dietary and recreational facilities or grounds.

Section 3. Licensure. The psychiatric residential treatment facility shall comply with all the conditions for licensure contained in 902 KAR 20:008.

Section 4. Governing Body. Each facility shall have a governing body with overall authority and responsibility for the facility's operation.

(1) The governing body shall be a legally constituted entity in the Commonwealth of Kentucky by means of a charter, articles of incorporation, partnership agreement, franchise agreement or legislative or executive act.

(2) A facility that is part of a multifacility system or is operated by a government agency must have a written description of the system's administrative structure and lines of authority.

(3) The authority and responsibility of any person designated to function as the governing body must be specified in writing.

(4) If a business relationship exists between a governing body member(s) and the organization, there must be a conflict-of-interest policy that governs the member's participation in decisions influenced by the business interest.

(5) The responsibilities of the governing body shall be stated in writing and shall include at least the following:

(a) Adopting bylaws that describe how the governing body, through the executive director, shall develop policies and procedures and make sufficient resources available (e.g., funds, staff, equipment, supplies, and facilities) to assure that the facility is capable of providing appropriate and adequate services to residents.

(b) Overseeing the system of financial management and accountability.

(c) Adopting a program to monitor and evaluate the quality of all care provided and to appropriately address identified problems in care.

(d) Electing, appointing, or employing the executive director, clinical director, and other supervisors or administrators to direct the clinical and administrative activities of the facility, and defining the qualifications, authority, responsibility, and function of such positions.

(e) Establishing an organization table and establishing bylaws or rules and regulations or policies and procedures to guide the relationships between itself, the administrative staff, the direct-care staff, the professional staff, and the community. The bylaws or rules and regulations or policies and procedures must define the means by which the administrative, direct-care, and professional staffs cooperatively function, participate in the development of policies concerning program management and resident care, and report to the governing body. The bylaws or rules and regulations or policies and procedures must be reviewed at least every two (2) years and revised as necessary.

(f) Approving appointments to the professional staff and granting or revising clinical privileges upon the documented recommendation of the clinical director.

(6) The governing body will meet as a whole at least quarterly and keep records that demonstrate the ongoing discharge of its responsibilities.

(7) When a facility is a component of a larger organization, the facility staff, subject to the overall authority of the governing body, shall be given the necessary authority to plan, organize, and operate the program.

Section 5. Executive Director. (1) The executive director shall be employed by the governing body and shall be responsible for the day-to-day management and ongoing direction of the facility's program. In the event of the executive director's absence, he must designate a person who will be responsible for the day-to-day management of the facility.

(2) The executive director shall be qualified by training and experience to direct a treatment program for children and adolescents with emotional problems. Minimum qualifications shall be a master's degree in psychology, social work, nursing, or education with appropriate licenses. The executive director must have two (2) years experience in services to children or adolescents including administrative responsibility in an organization for children and adolescents; three (3) professional references; two (2) personal references; and a police record check. If there is a prior crime conviction or pleas of guilty pursuant to KRS 17.165 or a Class A felony, the applicant shall not be employed.

(3) The executive director shall be responsible to the governing body in accordance with the bylaws or rules and regulations for the following:

(a) Overseeing the overall operation of the facility, including the control, utilization, and conservation of its physical and financial assets and the recruitment and direction of staff.

(b) Hiring and direction of personnel.

(c) Assuring that sufficient staff meeting minimum standards under appropriate supervision are on duty to meet the needs of the residents at all times.

(d) Approving purchases and payroll.

(e) Assuring that treatment planning, medical supervision, and quality assurance occur as specified in this regulation.

(f) Advising the governing body of all significant matters bearing on the facility's licensure and operations.

(g) Preparation of reports or items necessary to assist the governing body in formulating policies and procedures to assure that the facility is capable of providing appropriate and adequate services to residents.

(h) Preparation of a written manual that defines policies and procedures which is regularly revised and updated.

(4) The executive director shall attend and maintain documentation of attendance and participation of staff in continuing education programs.

Section 6. Administration and Operation. (1) Written plan.

(a) The governing body will formulate and specify the facility's goals and objectives and describe its programs in a written plan so that the facility's performance can be measured.

(b) A copy of the written plan shall be given to all professional staff and to the executive director.

(c) The written plan shall be reviewed at least annually and revised as necessary, in

accordance with the changing needs of the residents and the community and with the overall objectives and goals of the facility when reviewed or revised. Revisions in the plan shall incorporate, as appropriate, relevant findings from the facility's quality assurance and utilization review programs.

(d) The written plan shall include the following:

1. An organizational chart that includes position titles and the name of the person occupying the position, and that shows the chain of command;

2. A service philosophy with clearly defined assumptions and values;

3. Estimates of the clinical needs of the children and adolescents in the area served by the facility;

4. The services provided by the facility in response to needs;

5. The population served, including age groups and other relevant characteristics of the resident population;

6. The intake or admission process, including how the initial contact is made with resident and the family or significant others;

7. The assessment and evaluation procedures provided by the facility;

8. The methods used to deliver services to meet the identified clinical needs of the residents served;

9. The methods used to deliver services to meet the basic needs of residents in a manner as consistent with normal daily living as possible;

10. The methods used to create a home-like environment for all residents;

11. The methods, means and linkages by which the facility will involve all residents in community activities, organization, and events;

12. The treatment planning process and the periodic review of therapy;

13. The discharge and aftercare planning processes;

14. The organizational relationships of each of the facility's therapeutic programs, including channels of staff communication, responsibility, and authority, as well as supervisory relationships;

15. How all professional services will be supervised by qualified, experienced personnel;

16. How all members of the professional and direct-care staff who have been assigned specific treatment responsibilities are qualified by training or experience and demonstrated competence and have appropriate clinical privileges; or are supervised by professional staff members who are qualified by experience to supervise such treatment and;

17. How the facility will be linked to regional interagency councils, psychiatric hospitals, community mental health centers, Department for Social Services offices and facilities, and school systems in the facility's service area; and

18. The means by which the facility provides, or makes arrangements for the provision of:

a. Emergency services and crisis stabilization;

b. Discharge and aftercare planning, that promotes continuity of care; and

c. Education and vocational services, whether provided by the facility or by agreement. Educational services to be provided by local education agency or a private agency, at a minimum, must be arranged for sixty (60) days prior to the need for the service to be provided.

(2) Professional staff.

(a) The facility shall employ sufficient appropriately qualified professional staff to meet the treatment needs of residents and the goals and objectives of the facility.

(b) Professional staff shall meet all requirements in the licensing, registration, or certification laws relating to their respective professions.

(c) Staffing. The facility shall meet the following specific requirements within regard to staffing:

1. A board-eligible or board-certified child psychiatrist or board-certified adult psychiatrist shall be employed to meet the treatment needs of the residents and the functions which must be performed by a psychiatrist specified within this regulation. When a facility has residents ages twelve (12) and under, the psychiatrist shall be board-eligible or board-certified in child psychiatry.

2. A recreational therapist with a master's degree, or bachelor's degree and two (2) years' experience in a residential setting for children and adolescents shall be employed to meet the treatment needs of the residents and the functions which must be performed by a recreational therapist specified within this regulation.

3. A total of at least two (2) full-time staff shall be employed from two (2) of the following professions (i.e., these staff cannot be from the same profession):

a. Psychologist with Ph.D. or master's degree and autonomous functioning;

b. Social worker with master's degree with three (3) years of inpatient or outpatient clinical experience in psychiatric social work; or

c. Nurse with bachelor's degree and three (3) years' supervised experience in a mental health setting.

4. Staff for the profession listed in subsection (3) of this section who is not employed on a full-time basis, shall be employed at least ten (10) percent of full-time equivalency for eight (8) or fewer residents, fifteen (15) percent of the time for between nine (9) to twelve (12), and twenty (20) percent for thirteen (13) to sixteen (16) residents.

5. There shall be a ratio of full-time equivalent professional staff to residents of 1:6.

6. A member of the professional staff shall be on the unit or otherwise interacting with residents, in addition to planned verbal therapies, setting the tone of the therapeutic milieu at least two (2) hours each weekday and four (4) hours one (1) day each weekend during a nonschool waking-hour shift.

7. Appropriate professional staff shall be available to assist on-site in emergencies on at least an on-call basis at all times.

8. A physician shall be available on at least an on-call basis at all times.

(d) Clinical director. The governing body shall designate one (1) member of the full-time professional staff as clinical director.

1. In addition to the requirements related to his profession, the clinical director shall have at least a master's degree in a field related to the treatment of mental illness and two (2) years' supervisory experience in a program for children or adolescents with emotional problems.

2. The governing body shall define the authority and duties of the clinical director in its bylaws.

3. The clinical director may be the executive director if the qualifications of both positions are met.

4. The clinical director shall supervise professional staff and be responsible for the maintenance of the facility's therapeutic milieu.

(e) The clinical director, in consultation with professional staff, shall develop written policies and procedures approved by the governing body that specify the following:

1. The clinical privileges of professional staff;

2. The responsibility of professional staff for supervising and directing individuals who require supervision or direction in the provision of resident care services;

3. The responsibilities of physicians in relation to nonphysician members of the professional staff; and

4. The responsibility of professional staff for accounting to the governing body for the quality of clinical care provided to the residents, and for its ethical conduct and professional practice.

(3) Direct-care staff.

(a) The facility shall employ adequate direct-care staff to ensure the continuous provision of sufficient regular and emergency supervision of all residents twenty-four (24) hours a day.

(b) Direct-care staff shall be a mental health associate or hold a high school diploma or equivalency and have two (2) years' experience in a program in the mental health field serving children or adolescents. Completion of a twenty-hour (24) hour training curriculum meeting the requirements of subsection (8)(f) within one (1) month of employment may be substituted for experience, except that no direct-care staff so qualified shall be given clinical privileges in his first year of employment.

(c) In order to assure that the residents are adequately supervised and are cared for in a safe and therapeutic manner, the direct-care staffing plan shall meet each of the following requirements:

1. At least one (1) direct-care staff member who is a mental health associate shall be assigned direct-care responsibilities for residents of each living unit at all times when residents are not in school.

2. At least three (3) direct-care staff members shall be assigned to direct-care responsibilities for each living unit during normal waking hours when the residents are on the unit; however, if the number of residents present on the unit is six (6) or fewer, the number of direct-care staff members may be reduced to two (2).

3. At least one (1) direct-care staff member shall be assigned to direct-care responsibilities for each three (3) residents who are twelve (12) and under and one (1) for each four (4) adolescents who are over twelve (12) during all hours the residents are awake, not on the living unit, and not in school.

4. At least one (1) direct-care staff member shall be assigned direct-care responsibilities, be awake, and be continuously available on each living unit during all hours the residents are asleep. A minimum of one (1) additional direct-care staff member for each living unit shall be immediately available on-site to assist with emergencies or problems which might arise.

5. When a member of the professional staff is directly involved in an activity with a group of residents, he may meet the requirement for a direct-care staff member.

6. The direct-care staff member who is supervising residents shall know the whereabouts of each resident at all times.

(d) The clinical director, in consultation with professional staff, shall develop written policies and procedures approved by the governing body that:

1. Specify the clinical privileges, if any, of each member of the direct-care staff;

2. Provide for the supervision of the direct-care staff; and

3. Describe the responsibilities of direct-care staff in relation to professional staff.

(4) Support staff.

(a) Environmental services. There shall be an adequate number of domestic and maintenance staff to maintain the facility's buildings and grounds in a healthful, comfortable condition and in good repair. Such services may be provided by contractual agreement.

(b) Clerical staff. The facility shall employ a sufficient number of clerical staff qualified by high school diploma or equivalency to maintain correspondence, records, reports and files.

(5) Student field placements/internships. The facility shall ensure that student interns are supervised directly by an appropriate paid staff member who will act as a liaison between the facility and the school making placements.

(6) Volunteers.

(a) The facility may use volunteers to help meet residents' basic needs for social interaction, self-esteem, and self-fulfillment.

(b) The governing body shall adopt written policies and procedures which address screening, selection and supervision of all volunteers.

(c) Volunteers used within the program must meet the qualifications for the positions for which they volunteer.

(d) Volunteers cannot be used in place of required staff.

(e) Volunteers shall be oriented to the facility's goals and services and given appropriate clinical background regarding the facility's residents.

(7) Part-time employees. Part-time employees shall meet minimum qualifications of full-time staff and shall not be utilized to the extent that continuity in resident care is disrupted by frequent shift changes or changes in personnel from day-to-day.

(8) Staff development.

(a) Appropriate staff development programs shall be provided for administrative, professional, direct-care, and support staff under the supervision and direction of the executive director or designee(s). Responsibility for any part of the staff development program may be delegated to appropriately qualified individuals.

(b) The participation of the executive director and professional, direct-care, and support staff in staff development programs shall be documented.

(c) Professional and direct-care staff shall meet the continuing education requirements of

their profession or be provided with twenty (20) hours per year of in-service training by the facility.

(d) Library services shall be made available to meet the professional and technical needs of the facility staff. A facility which does not maintain a professional library shall have arrangements with a library or institution for use of its professional library.

(e) The facility shall communicate and collaborate, as appropriate, with national, state, and local mental health professional organizations in planning and providing ongoing training.

(f) The executive director shall require that each staff member working directly with residents demonstrate basic knowledge in the following areas:

1. Child and adolescent growth and development;
2. Therapeutic principles and modalities used in the facility;
3. Building and maintaining a positive therapeutic milieu on the living unit;
4. Techniques of group and child management; and
5. Detection and reporting of child abuse and neglect.

(9) Employment practices.

(a) The facility shall have employment and personnel policies and procedures designed, established, and maintained to promote the objectives of the facility, to ensure that an adequate number of qualified personnel under appropriate supervision is provided during all hours of operation, and to support quality of care and functions of the facility.

(b) The policies and procedures shall be written, systematically reviewed and approved on an annual basis by the governing body, and dated to indicate the time of last review.

(c) The policies and procedures shall provide for the recruitment, selection, promotion and termination of staff.

(d) The facility shall maintain job descriptions approved by the governing body for all positions specifying the qualifications, duties and supervisory relationship of the position. Job descriptions shall accurately reflect the actual job situation and shall be revised whenever a change is made in the required qualifications, duties, supervision, or any other major job-related factor. In addition, salary range for each position shall be provided.

(e) The personnel policies and procedures shall be available and apply to all employees and shall be discussed with all new employees. The governing body shall establish a mechanism for notifying employees of changes in the policies and procedures.

(f) Information on the following shall be included in the policies and procedures:

1. Employee benefits;
2. Recruitment;
3. Promotion;
4. Training and staff development;
5. Employee grievances;
6. Safety and employee injuries;
7. Relationships with employee organizations;
8. Disciplinary systems;
9. Suspension and termination mechanisms;
10. Rules of conduct;
11. Lines of authority;
12. Performance appraisals;
13. Wages, hours and salary administration; and
14. Equal employment opportunity and, when required, affirmative action policies.

(g) The personnel policies and procedures shall describe methods and procedures for supervising all personnel, including volunteers.

(h) The policies and procedures shall require appropriate criminal history and police record checks for all staff and volunteers to assure that only persons whose presence does not jeopardize the health, safety, and welfare of residents are employed and used.

(i) The policies and procedures shall provide for reporting and cooperating in the investigation of suspected cases of child abuse and neglect by facility personnel.

(j) A personnel record shall be kept on each staff member and shall contain the following items:

1. Application for employment;
2. Written references and a record of verbal references;
3. Verification of all training and experience and of licensure, certification, registration, or renewals;
4. Wage and salary information, including all adjustments;
5. Performance appraisals;
6. Counseling actions;
7. Disciplinary actions;
8. Commendations;
9. Employee incident reports; and
10. Initial and subsequent health clearances.

(k) The policies and procedures shall assure the confidentiality of personnel records and specify who has access to various types of personnel information.

(l) Performance appraisals shall relate job description and job performance and shall be written. The criteria used to evaluate job performance shall be objective.

Section 7. Resident Rights. (1) The facility shall support and protect the basic human, civil, and constitutional rights of the individual resident.

(2) Written policy and procedure approved by the governing body shall provide a description of the resident's rights and the means by which these rights are protected and exercised.

(3) At the point of admission, the facility shall provide the resident and parent, guardian or custodian with a clearly written and readable statement of rights and responsibilities. The statement shall be read to the resident or parent, guardian, or custodian if either cannot read and shall cover, at a minimum:

(a) Each resident's access to treatment, regardless of race, religion, or ethnicity;

(b) Each resident's right to recognition and respect of his personal dignity in the provision of all treatment and care;

(c) Each resident's right to be provided treatment and care in the least restrictive environment possible;

(d) Each resident's right to an individualized treatment plan;

(e) Each resident's and family's participation in planning for treatment;

(f) The nature of care, procedures, and treatment that he will receive;

(g) The risks, side effects, and benefits of all medications and treatment procedures used; and

(h) The right, to the extent permitted by law, to refuse the specific medications or treatment procedures and the responsibility of the

facility when the resident refuses treatment, to seek appropriate legal alternatives or orders of involuntary treatment, or, in accordance with professional standards, to terminate the relationship with the resident upon reasonable notice.

(4) The rights of residents shall be written in language which is understandable to the resident, his parents, custodians or guardians and shall be posted in appropriate areas of the facility.

(5) The policy and procedure concerning resident rights shall assure and protect the resident's personal privacy within the constraints of his treatment plan. These rights to privacy shall at least include:

(a) Visitation by the resident's family or significant others in a suitable private area of the facility;

(b) Sending and receiving mail without hindrance or censorship; and

(c) Telephone communications with the resident's family or significant others at a reasonable frequency.

(6) If any rights to privacy must be limited, the resident and his parent, guardian or custodian shall receive a full explanation. Limitations shall be documented in the resident's record and their therapeutic effectiveness shall be evaluated and documented by professional staff every seven (7) days.

(7) The right to initiate a complaint or grievance procedure and the means for requesting a hearing or review of a complaint shall be specified in a written policy approved by the governing body and made available to residents, parents, guardians, and custodians responsible for the resident. The procedure shall indicate:

(a) To whom the grievance is to be addressed and

(b) Steps to be followed for filing a complaint, grievance, or appeal.

(8) The resident and his parent, guardian or custodian shall be informed of the current and future use and disposition of products of special observation and audio-visual techniques such as one (1) way vision mirrors, tape recorders, television, movies, or photographs.

(9) The policy and procedure regarding resident's rights shall ensure the resident's right to confidentiality of all information recorded in his record maintained by the facility. The facility shall ensure the initial and continuing training of all staff in the principles of confidentiality and privacy.

(10) The resident shall be allowed to work for the facility only under the following conditions:

(a) The work is part of the individual treatment plan;

(b) The work is performed voluntarily;

(c) The patient receives wages commensurate with the economic value of the work;

(d) The work project complies with applicable law and regulation; and

(e) The performance of tasks related to the responsibilities of family-like living, such as laundry and housekeeping, shall not be considered work for the facility and need not be compensated or voluntary.

(11) Written policy and procedure developed in consultation with professional and direct care staff and approved by the governing body shall provide for the measures utilized by the facility to discipline residents. These measures shall be fully explained to each resident and the resident's parent, guardian or custodian.

(12) The facility shall prohibit all cruel and unusual disciplinary measures including but not limited to the following:

(a) Corporal punishment;

(b) Forced physical exercise;

(c) Forced fixed body positions;

(d) Group punishment for individual actions;

(e) Verbal abuse, ridicule, or humiliation;

(f) Denial of three (3) balanced nutritional meals per day;

(g) Denial of clothing, shelter, bedding or personal hygiene needs;

(h) Denial of access to educational services;

(i) Denial of visitation, mail, or phone privileges for punishment;

(j) Exclusion of the resident from entry to his assigned living unit; and

(k) Restraint or seclusion as a punishment or employed for the convenience of staff.

(13) Written policy shall prohibit residents from administering disciplinary measures upon one another and shall prohibit persons other than professional or direct-care staff from administering disciplinary measures to residents.

(14) Written rules of resident conduct shall be developed in consultation with the professional and direct-care staff and be approved by the governing body. Residents shall participate in the development of the rules to a reasonable and appropriate extent. These rules shall be based on generally acceptable normal and natural behavior for the resident population served.

(15) The application of disciplinary measures should relate to the violation of established rules.

Section 8. Resident Records. (1) The facility shall have written policies or procedures concerning resident records developed in consultation with professional staff and a registered records administrator and approved by the governing body.

(2) The facility shall maintain a written resident record on each resident, to be directly accessible to staff members caring for the resident.

(3) The resident record shall contain at a minimum:

(a) Basic identifying information;

(b) Appropriate court orders or consent of appropriate family members or guardians for admission, evaluation, and treatment;

(c) A provisional or admitting diagnosis which includes a physical diagnosis, if applicable, as well as a psychiatric diagnosis;

(d) The report by the parent, guardian or custodian of the patient's immunization status;

(e) A psychosocial assessment of the resident and his family, including:

1. An evaluation of the effect of the family on the resident's condition and the effect of the resident's condition on the family; and

2. A summary of the resident's psychosocial needs.

(f) An evaluation of the resident's growth and development, including physical, emotional, cognitive, educational, and social development; and needs for play and daily activities;

(g) The resident's legal custody status, when applicable;

(h) The family's, guardian's, or custodian's expectations for, and involvement in, the assessment, treatment, and continuing care of

the resident;
(i) Physical health assessment, including but not limited to evaluations of the following:
1. Motor development and functioning;
2. Sensorimotor functioning;
3. Speech, hearing, and language functioning;
4. Visual functioning; and
5. Immunization status.
(4) The resident record shall also include:
(a) Physician's notes which shall include an entry made at least weekly by the staff psychiatrist regarding the condition of the resident.
(b) Professional progress notes which shall be completed following each professional service except when the service is provided daily to groups of residents, when weekly summaries may be used. Professional progress notes shall be signed and dated by the professional who provided the service.
(c) Direct-care progress notes which shall record implementation of all treatment and any unusual or significant events which occur for the residents. Direct-care progress notes shall be completed at least by the end of each direct-care shift and summarized weekly. Direct-care notes shall be signed and dated by the direct-care staff making the entry.
(d) Special clinical justifications for the use of special and unusual treatment procedures and reports.
(e) Discharge summary.
(f) If a patient dies, the resident record shall include a summation statement in the form of a discharge summary, including events leading to the death, signed by the attending physician.
(5) The facility shall maintain confidentiality of resident records. Resident information shall be released only on written consent of the resident or his parent, guardian or custodian or as otherwise authorized by law. The written consent shall contain the following information:
(a) The name of the person, agency or organization to which the information is to be disclosed;
(b) The specific information to be disclosed;
(c) The purpose of disclosure; and
(d) The date the consent was signed and the signature of the individual witnessing the consent.

Section 9. Quality Assurance. (1) The facility shall have an organized quality assurance program designed to enhance resident treatment and care through the ongoing objective assessment of important aspects of resident care and the correction of identified problems.
(2) The facility shall prepare a written quality assurance plan designed to ensure that there is an ongoing quality assurance program that includes effective mechanisms for reviewing and evaluating resident care, and that provides for appropriate response to findings. The written quality assurance plan shall be approved by the governing body and shall:
(a) Assign responsibility for the monitoring and evaluation activities;
(b) Delineate scope of care provided by the facility;
(c) Identify the aspects of care that the facility provides;
(d) Identify indicators (and appropriate clinical criteria) that can be used to monitor these aspects of care;
(e) Establish thresholds for the indicators at which further evaluation of the care is triggered;
(f) Collect and organize the data for each indicator;
(g) Evaluate the care when the thresholds are reached in order to identify problems or opportunities to improve care;
(h) Take actions to correct identified problems or to improve care;
(i) Assess the effectiveness of the actions and document the improvement in care; and
(j) Communicate relevant information to other individuals, departments, or services and to the facility-wide quality assurance program.
(3) The facility shall record all incidents or accidents that present a direct or immediate threat to the health, safety or security of any resident or staff member. Examples of incidents to be recorded include the following: physical violence, fighting, absence without leave, use or possession of drugs or alcohol, or inappropriate sexual behavior. The record should be kept on file and retained at the facility and shall be made available for inspection by the licensure agency.

Section 10. Admission Criteria. (1) The facility shall have written admission criteria approved by the governing body and which are consistent with the facility's goals and objectives.
(2) Admission criteria shall be made available to referral sources and to parents, guardians, or custodians and shall include:
(a) Types of admission (crisis stabilization, long-term treatment);
(b) Age and sex of accepted;
(c) Criteria that preclude admission;
(d) Clinical needs and problems typically addressed by the facility's programs and services;
(e) Criteria for discharge; and
(f) Any preplacement requirements of the resident, his parents, guardians, custodians, or the placing agency.
(3) A facility may only admit children and adolescents who meet its written admission criteria and for whom the facility finds:
(a) Less-restrictive treatment resources accessible and available in the resident's community will not meet his treatment needs;
(b) Proper treatment of the resident's psychiatric condition requires care and treatment under the direction of a psychiatrist within a residential treatment facility;
(c) Proper treatment of the resident's psychiatric condition requires twenty-four (24) hour care in a facility which provides comprehensive and structured therapeutic mental health treatment in a less structured environment than an inpatient hospital; and
(d) Care and treatment in a residential treatment facility can reasonably be expected to improve the resident's condition or prevent further regression so that residential treatment facility services will no longer be needed, provided that a poor prognosis shall not in itself constitute grounds for a denial of admission if treatment can be expected to effect a positive change in prognosis.
(4) Residents admitted to the facility shall have obtained age six (6), but not attained age eighteen (18). Residents may remain in care until age twenty-one (21) if admitted by their

18th birthday. Admission criteria related to age at admission shall be determined by the age grouping of children currently in residence and shall reflect a range no greater than five (5) years in a living unit.

(5) Children and adolescents who are a danger to self or others for whom the facility is unable to develop a risk-management plan may not be admitted.

Section 11. Resident Management. (1) Intake.

(a) The facility shall have written policies and procedures approved by the governing body for the intake process which addresses at a minimum the following:

1. Referral, records, and statistical data to be kept regarding applicants for residence;

2. Criteria for determining the eligibility of individuals for admission; and

3. Methods used in the intake process which must be based on the services provided by the facility and the needs of residents.

(b) The intake process shall include an initial assessment of the resident done by the professional staff, the results of which are explained to the parent, guardian or custodian if appropriate and to the resident and which result in a conclusion that:

1. The treatment required by the resident is appropriate to the intensity and restrictions of care provided by the facility; and

2. Alternatives for less intensive and restrictive treatment are not available or accessible to the resident.

(c) The intake process shall be designed to provide at least the following information:

1. Identification of agencies who have been involved in the treatment of the resident in the community and the anticipated extent of involvement of those agencies during and after the resident's stay in the facility;

2. Temporary treatment plan including the proposed initial level of intervention with the resident, the health and safety needs, the education and activity plan, and legal, custody and visitation orders; and

3. Proposed discharge plan and anticipated length of stay.

(d) The intake process shall include an orientation for the parent, guardian, or custodian as appropriate and the resident which includes the following:

1. The rights and responsibilities of residents, including the rules governing resident conduct and the types of infractions that can result in disciplinary action or discharge from the facility;

2. Rights, responsibilities, and expectations of the parent, guardian, or custodian; and

3. Preparation of the staff and residents of the facility for the new resident.

(e) Upon admission each resident of school age shall have been certified or be referred for assessment as handicapped pursuant to PL 94-142.

(f) The temporary treatment plan shall be reviewed by all staff involved in the resident's treatment, approved by the clinical director and psychiatrist, and implemented upon admission.

(2) Assessment.

(a) A complete evaluation and assessment shall be performed for each resident which includes, but is not necessarily limited to, physical, emotional, behavioral, social, recreational, educational, legal, vocational and nutritional needs.

(b) The physical examination of each resident shall be initiated within twenty-four (24) hours after admission and shall include, but not be limited to, evaluations of the following:

1. Motor development and functioning;

2. Sensorimotor functioning;

3. Speech, hearing, and language functioning;

4. Visual functioning; and

5. Immunization status. If a resident's immunization is not complete as defined in the report of the Committee on Infectious Diseases of the American Academy of Pediatrics, the facility shall be responsible for its completion and shall begin to complete any immunizations which are outside of the set periodicity schedule within thirty (30) days of admission or the physical examination whichever is later.

(c) If the resident has had a complete physical examination by a qualified physician within the previous three (3) months which includes the requirements of subsection (b) of this section and if the facility obtains complete copies of the record, that examination may be used to meet the requirement for a physical examination in subsection (b) of this section.

(d) A physician shall be responsible for assessing each resident's physical health, his need for a current examination in spite of one done in the prior three (3) months, and his need for special clinical examinations and tests within twenty-four (24) hours of admission.

(e) Facilities shall have all the necessary diagnostic tools and personnel available or have written agreements with another organization to provide physical health assessments, including electroencephalographic equipment, a qualified technician trained in dealing with children and adolescents, and a properly qualified physician to interpret electroencephalographic tracing of children and adolescents.

(f) An emotional and behavioral assessment of each resident that includes an examination by a psychiatrist shall be completed and entered in the resident's record. The emotional and behavioral assessment shall include the following:

1. A history of previous emotional, behavioral, and substance abuse problems and treatment;

2. The resident's current emotional and behavioral functioning;

3. A direct psychiatric evaluation;

4. When indicated, psychological assessments, including intellectual, projective, and personality testing;

5. When indicated, other functional evaluations of language, self-care, and social-affective and visual-motor functioning; and

6. An evaluation of the developmental age factors of the resident.

(g) The facility shall have an assessment procedure for the early detection of mental health problems that are life threatening, are indicative of severe personality disorganization or deterioration, or may seriously affect the treatment or rehabilitation process.

(h) A social assessment of each resident shall be undertaken and include:

1. Environment and home;

2. Religion;

3. Childhood history;

4. Financial status;

5. The social, peer-group, and environmental

setting from which the resident comes; and

6. The resident's family circumstances, including the constellation of the family group; the current living situation; and social, ethnic, cultural, emotional, and health factors, including drug and alcohol use.

(i) The social assessment shall include a determination of the need for participation of family members or significant others in the resident's treatment.

(j) An activities assessment of each resident shall include information relating to the individual's current skills, talents, aptitudes, and interest.

(k) An assessment shall be performed to evaluate the resident's potential for involvement in community activity, organizations, and events.

(l) For adolescents age sixteen (16) and older, a vocational assessment of the resident shall be done which includes, but is not necessarily limited to the following:

1. Vocational history;

2. Education history, including academic and vocational training; and

3. A preliminary discussion, between the resident and the staff member doing the assessment, concerning the resident's past experiences with and attitude toward work, present motivations or areas of interest, and possibilities for future education, training, and employment.

(m) When appropriate, a legal assessment of the resident shall be undertaken and shall include, but not necessarily be limited to, the following:

1. A legal history; and

2. A preliminary discussion to determine the extent to which the legal situation will influence his progress in treatment and the urgency of the legal situation.

(3) Treatment plans.

(a) Within seventy-two (72) hours following admission, the clinical director or a member of the professional staff designated by him shall develop an initial treatment plan that is based at least on an assessment of the resident's presenting problems, physical health, and emotional and behavioral status. Appropriate therapeutic efforts shall begin before a master treatment plan is finalized.

(b) A master treatment plan shall be developed by a multidisciplinary team conference within ten (10) days of admission for any resident remaining in treatment. It shall be based on the comprehensive assessment of the resident's needs completed pursuant to subsection (2) of this section, include a substantiated diagnosis and the short-term and long-range treatment needs, and address the specific treatment modalities required to meet the resident's needs.

1. The treatment plan shall contain specific and measurable goals for the resident to achieve.

2. The treatment plan shall describe the services, activities, and programs to be provided to the resident, and shall specify staff members assigned to work with the resident and the time or frequency for each treatment procedure.

3. The treatment plan shall specify criteria to be met for termination of treatment.

4. The treatment plan shall include any referrals necessary for services not provided directly by the facility.

5. The resident shall participate to the maximum extent feasible in the development of his treatment plan, and such participation shall be documented in the resident's record.

6. The treatment plan shall specify the ways in which the resident will participate in community activities, organizations, and events.

7. The treatment plan shall address ways in which the environment for the resident is normalized.

8. A specific plan for involving the resident's family or significant others shall be included in the treatment plan. The parent, guardian, or custodian shall be given a copy of the resident's master treatment plan. The master treatment plan shall identify the professional staff member who is responsible for coordinating and facilitating the family's involvement throughout treatment.

9. The treatment plan shall be reviewed and updated through multidisciplinary team conferences as clinically indicated, but in no case shall this review and update be completed later than thirty (30) days following the first ten (10) days of treatment and every sixty (60) days thereafter for the first year of treatment.

10. Following one (1) year of continuous treatment, the review and update may be conducted at three (3) month intervals.

(c) The master treatment plan and each review and update shall be signed by the participants in the multidisciplinary team conference that developed it, and approved by the clinical director.

(4) Progress notes.

(a) Progress notes shall be entered in the resident's records, be used as a basis for reviewing the treatment plan, signed and dated by the individual making the entry and shall include, but not be limited to the following:

1. Documentation of implementation of the treatment plan;

2. Chronological documentation of all treatment provided to the resident and documentation of the resident's clinical course; and

3. Descriptions of each change in each of the resident's conditions.

(b) All entries involving subjective interpretation of the resident's progress must be supplemented with a description of the actual behavior observed.

(c) Efforts shall be made to secure written progress reports for residents receiving services from outside sources and, when available, to include them in the resident record.

(d) The resident's progress and current status in meeting the goals and objectives of his treatment plan shall be regularly recorded in the resident record.

(5) Discharge planning. The facility shall have written policies and procedures for discharge of residents.

(a) Discharge planning must begin at admission and be documented in the resident's record. At least ninety (90) days prior to the planned discharge of a resident from the facility, or within ten (10) days after admission if the anticipated length of stay is under ninety (90) days, the multidisciplinary team shall formulate a discharge and aftercare plan. This plan shall be maintained in the resident's record and reviewed and updated with the master treatment plan.

(b) All discharge recommendations shall be

determined through a conference including the appropriate facility staff, the resident, the resident's parents, guardian, or custodian and if indicated, the representative of the agency to whom the resident may be referred for aftercare service(s). All aftercare plans shall delineate those parties responsible for the provision of aftercare services.

(c) If the aftercare plan involves placement of the resident in another licensed program following discharge, facility staff shall share resident information with representatives of the aftercare program provider if authorized by written consent of the parent, guardian, or custodian.

(d) A facility deciding to release a resident on an unplanned basis shall:

1. Have reached the decision to release at a multidisciplinary team conference chaired by the clinical director that determined, in writing, that services available through the facility cannot meet the needs of the resident;

2. Provide at least ninety-six (96) hours notice to the resident's parent, guardian, or custodian and the agency which will be providing aftercare services. If authorized by written consent of the parent, guardian, or custodian, the facility shall provide to the receiving agency(ies) copies of the resident's records and discharge summary.

3. Consult with the receiving agency in situations involving placement for the purpose of ensuring that such placement reasonably meets the needs of the resident; and

4. Provide a written statement explaining the reasons for discharge to the receiving agency.

(e) Within fourteen (14) days of a resident's discharge from the facility, the facility shall compile and complete a written discharge summary for inclusion in the resident's record. The discharge summary shall include:

1. Name, address, phone number, and relationship of the person to whom the resident was released;

2. Description of circumstances leading to admission of the resident to the facility;

3. Significant problems of the resident;

4. Clinical course of the resident's treatment;

5. Assessment of remaining needs of the resident and alternative services recommended to meet those needs;

6. Special clinical management requirements including psychotropic drugs;

7. Brief descriptive overview of the aftercare plan designed for the resident; and

8. Circumstances leading to the unplanned or emergency discharge of the resident, if applicable.

(6) The facility shall request periodic follow-up reports from each agency providing services to the resident in accordance with the aftercare plan, and shall be responsible for documenting the outcome of the aftercare plan as possible.

Section 12. Services. The facility shall provide the following services in a manner which takes into account and addresses the social life; emotional, cognitive, and physical growth and development; and the educational needs of the resident.

(1) Mental health services.

(a) Mental health assessments and evaluations shall be provided as required in Section 11 of this regulation.

(b) The mental health services available through the residential treatment facility shall include, but are not limited to, the services listed below. These mental health services must be provided directly by the residential treatment facility:

1. Case coordination services to assure the full integration of all services provided to each resident. Case coordination activities include monitoring the resident's daily functioning to assure the continuity of service in accordance with the resident's treatment plan and ensuring that all staff responsible for the care and delivery of services actively participate in the development and implementation of the resident's treatment plan.

2. Planned verbal therapies including formal individual, family, and group therapies. These therapies shall be provided on site. These therapies include psychotherapy and other face-to-face verbal contacts between staff and the resident which are planned to enhance the resident's psychological and social functioning as well as to facilitate the resident's integration into a family unit. Verbal contacts that are incidental to other activities are excluded from this service.

3. Task and skill training to enhance a resident's age appropriate skills necessary to facilitate the resident's ability to care for himself and to function effectively in community settings. Task and skill training activities include homemaking, housekeeping, personal hygiene, budgeting, shopping, and the use of community resources.

(2) Physical health services.

(a) The physical health services available through the residential treatment facility shall include, but are not limited to, the services listed below. Physical health services may be provided directly by the facility or may be provided by written agreement.

1. Assessments and evaluations as required in Section 11 of this regulation;

2. Diagnosis, treatment and consultation for acute or chronic illnesses occurring during the resident's stay at the facility or for problems identified during an evaluation;

3. Preventive health care services to include periodic assessments in accordance with the periodicity schedule established by the American Academy of Pediatrics;

4. A dental examination within six (6) months of admission, periodic assessments in accordance with the periodicity schedule established by the American Dental Association, and treatment as needed;

5. Health and sex education;

6. An ongoing immunization program; and

7. A physical examination within five (5) days of the client's planned date of discharge from the facility.

(b) When physical health services are provided by written agreement with a provider of services other than the facility, the written agreement shall, at a minimum, address:

1. Referral of residents;

2. Qualifications of staff providing services;

3. Exchange of clinical information; and

4. Financial arrangements.

(3) Dietary services.

(a) The facility shall have written policies and procedures approved by the governing body for the provision of dietetic services for staff and residents which may be provided directly by

the facility staff or through written contractual agreement.

(b) Adequate staff, space, equipment, and supplies shall be provided for safe sanitary operation of the dietetic service, the safe and sanitary handling and distribution of food, the care and cleaning of equipment and kitchen area, and the washing of dishes.

(c) The nutritional aspects of resident's care shall be planned, reviewed, and periodically evaluated by a qualified dietician registered by the Commission on Dietetic Registration and employed by the facility as a staff member or consultant.

(d) The food shall be served to residents and staff in a common eating place and:

1. Shall account for the special food needs and tastes of residents;

2. Shall not be withheld as punishment; and

3. Shall provide for special dietary need of residents such as those relating to problems, such as diabetes and allergies.

(e) Residents shall participate in the preparation and serving of food as appropriate.

(f) At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. The facility shall arrange for and make provision for between-meal and unscheduled snacks.

(4) Emergency services.

(a) The facility shall provide for the prompt notification of the resident's parents, guardian or custodian in case of serious illness, injury, surgery, or death.

(b) The facility shall provide or arrange for the training of all direct-care and professional staff in first aid and CPR.

(c) All staff shall be knowledgeable of a written plan and procedure for meeting potential disasters and emergencies such as fires or severe weather. The plan shall be posted. Staff shall be trained in properly reporting a fire, extinguishing a small fire, and in evacuation from the building. Fire drills must be practiced in accordance with state fire regulations.

(d) The facility shall have written procedures to be followed by staff in the event of a psychiatric, medical or dental emergency of a resident that specifies:

1. Notification of designated member of the facility's chain of command;

2. Designation of staff person who will decide to refer resident to outside treatment resources;

3. Notification of resident's parent, guardian or custodian;

4. Transportation to be used;

5. Staff member to accompany resident;

6. Necessary consent and referral forms to accompany resident; and

7. Name, location, and telephone of designated treatment resources.

(e) The facility shall have designated treatment resources who shall have agreed to accept a resident for emergency treatment. At a minimum the resources shall include:

1. Licensed physician and an alternate designee;

2. Licensed dentist and an alternate designee;

3. Licensed hospital; and

4. Licensed hospital with an accredited psychiatric unit.

(5) Pharmacy services. The facility shall have written policies and procedures approved by the governing body for proper management of pharmaceuticals that are consistent with the following requirements:

(a) Medications shall be administered by a registered nurse, physician, or dentist, except in the case of a licensed practical nurse or a certified medication aide under the supervision of a registered nurse;

(b) No medication shall be given without a written order signed by a physician, or dentist when applicable. Telephone orders for medications shall be given only to registered nurses or a pharmacist and signed by the physician or dentist within twenty-four (24) hours from the time the order is given;

(c) Psychotropic medications shall be prescribed only when clinically indicated as one (1) facet of a program of therapy. The facility shall ensure that no stimulant or psychotropic medication is administered solely for the purpose of program management or control, and that no medication is prescribed for the purposes of experimentation and/or research;

(d) All medications shall require "stop orders";

(e) All prescriptions shall be reevaluated by the prescriber prior to its renewal;

(f) There shall be a systematic method for prescribing, ordering, receipting, storing, dispensing, administering, distributing and accounting for all medications;

(g) The facility shall provide maximum security storage of and accountability for all legend medications, syringes, and needles;

(h) Self-administration of medication shall be permitted only when specifically ordered by the responsible physician and supervised by a member of the professional staff. Drugs to be self-administered shall be stored in a secured area and be made available to the resident at the time of administration;

(i) Residents permitted to self-administer drugs shall be counseled regarding the indications for which the drugs are to be used, the primary side effects, and the physical dosage forms which are to be administered;

(j) Drugs brought into the facility by residents may not be administered unless they have been identified and unless written orders to administer these specific drugs are given by the responsible physician. Otherwise these drugs are to be packaged, sealed, and stored, and, if approved by the responsible physician, returned to the resident, parent, guardian, or custodian at the time of discharge.

(6) Education/vocational services.

(a) Educational and vocational services available through the facility shall include, but are not limited to, the minimum requirements of Kentucky Revised Statutes and federal laws and regulations regarding regular education, vocational education, and special education as appropriate to meet the needs of the residents. Educational services may be provided directly by the facility, or may be provided by written agreement with the local school district in which the facility is located or with a nonpublic school program which is specially accredited by the Kentucky Department of Education (KDE) and is approved by the KDE to provide special education services to handicapped students. If the educational services are provided by the facility, the school program must be specially accredited by the KDE and be approved by the KDE to provide special education services to handicapped

students. In any case, education services approved by the Department of Education must be available either on the same site or in close physical proximity to the residential treatment facility.

(b) When the education services are not provided directly by the facility, there shall be a written agreement between the provider of education services and the facility. The provider shall be a state education department-approved program. The written agreement shall, at a minimum, address:

1. Qualifications of staff providing services;

2. Participation of educational and vocational staff in the treatment planning process;

3. Access by staff of the facility to educational and vocational programs and records; and

4. Financial and service arrangements.

(c) The facility shall ensure that residents have opportunities to be educated in the least restrictive environment consistent with the treatment needs of the resident as determined by the multidisciplinary team and reflected in the resident's master treatment plan.

(d) Upon admission each resident of school age shall have been certified or be referred for assessment as handicapped pursuant to PL 94-142.

(e) The facility shall ensure that education services are developed and implemented in conjunction with the master treatment plan and meet the following requirements:

1. The resident's teacher shall be a member of the multidisciplinary team, when possible.

2. Each resident's master treatment plan shall include formal academic goals for remediation and continuing education.

3. Each resident eligible for special education services to the handicapped shall have an individualized education plan (IEP) which shall include treatment activities as developed by the multidisciplinary team. The multidisciplinary team shall develop treatment activities which extend into the classroom as appropriate. The executive director or designee shall receive notice and an invitation to attend all IEP meetings.

4. To avoid unnecessary duplication and make maximum use of resources, the budgets for the education and treatment components for those children identified as handicapped pursuant to PL 94-142 shall be developed with the opportunity for input from both parties, and copies of the budgets shall be provided to both parties.

(f) The facility shall provide or arrange for vocational services for residents, as is age appropriate and is in accordance with the master treatment plan. The services shall be planned, implemented and supervised by a qualified vocational counselor or appropriate therapist who may be a full- or part-time employee of the facility or a consultant.

(g) Residents may be permitted to accumulate earnings in a bank account established with the resident by the facility.

(7) Activity services.

(a) The recreational therapist shall prepare a daily schedule of planned activities for the approval of the clinical director prior to implementation of the schedule.

1. The schedule shall be in half-hour increments for normal waking hours that residents are not in school.

2. The schedule shall include a full range of activities including, but not limited to physical recreation, team sports, art, and music; attendance at recreational and cultural events in the community; and individualized, directed activities like reading and crafts.

3. Nondirected leisure time shall be limited to two (2) one-half (1/2) hour periods on school days and three (3) one-half (1/2) hour periods on nonschool days.

4. The activity schedule shall identify the professional or direct-care staff who will lead and support each activity.

5. Changes made to the schedule as the schedule is implemented shall be indicated on a copy of each daily schedule maintained as a permanent record by the clinical director.

(b) The recreational therapist shall direct, consult with, and train staff responsible for leading the scheduled activities.

(c) The recreational therapist shall evaluate the effectiveness of the activity services.

(d) Appropriate time, space, and equipment shall be provided by the facility for leisure activity and free play.

(e) The facility shall provide the means of observing holidays and personal milestones in keeping with the cultural and religious background of the residents.

(8) Speech, language, and hearing services. The facility shall provide or arrange for speech, language, and hearing services to meet the identified needs of residents. These services shall be provided by the facility or through written agreement with a qualified speech-language and hearing clinician. The written agreement shall, at a minimum, address:

(a) Referral of residents;

(b) Qualifications of staff providing services;

(c) Exchange of clinical information; and

(d) Financial arrangements.

Section 13. Special Treatment Procedures. (1) Special treatment procedures include procedures such as restraint or seclusion and holding which may have abuse potential or be life threatening. Special treatment shall be used only as a means to prevent a resident from injuring himself or others or to prevent serious disruption of the therapeutic environment.

(2) Special treatment procedures at no time shall be used as punishment or as a convenience of staff.

(3) Special treatment procedures may be used only by trained, clinically-privileged staff.

(4) The facility shall have a written plan approved by the governing body for the use of special treatment procedures which at a minimum meet the following requirements:

(a) Any use of special treatment procedures requires clinical justification.

(b) A rationale and the clinical indications for the use of special treatment procedures must be clearly stated in the resident's record for each occurrence. The rationale shall address the inadequacy of less restrictive intervention techniques.

(c) The plan shall specify the length of time for which a specific approval remains effective.

(d) The plan shall specify the length of time the special treatment procedure may be utilized.

(5) Restraint or seclusion may be ordered or carried out only after the physician who is authorizing the use of the procedure has conducted a clinical assessment or has consulted with a member of the clinical staff who has

conducted a clinical assessment of the resident.

(6) Each written order for restraint or seclusion shall be time limited and shall not exceed twenty-four (24) hours. No PRN orders for restraint or seclusion may be written.

(7) Restraint or seclusion may be utilized in an emergency by trained, clinically-privileged staff. The emergency implementation of restraint or seclusion shall not exceed thirty (30) minutes at which time a physician staff member's oral order is required if use of the procedure is to continue. The physician's written order to confirm restraint or seclusion must be entered in the resident's record as soon as possible, but not more than twenty-four (24) hours after the implementation of the procedure.

(8) Use of restraint or seclusion for a period of twenty-four (24) hours shall be approved by a committee made up of the professional staff, the clinical director, and the executive director prior to the expiration of the first twenty-four (24) hour order.

(9) Staff who implement special treatment procedures shall have documented training in the proper use of the procedure used and shall be certified in physical management by a nationally recognized training program in which certification is obtained through skilled-out testing.

(10) A professional or direct-care staff member shall be constantly, physically present with a resident in restraint; and attention shall be given in regard to regular meals, bathing and use of the toilet. This attention shall be documented in the resident's record.

(11) A professional or direct-care staff person shall always be in the seclusion room with a resident twelve (12) years of age or under so long as the staff person is not placed in undue physical danger due to the relative size and strength of the resident who is in seclusion. Attention shall be given in regard to regular meals, bathing and use of the toilet. This attention shall be documented in the resident's record.

(12) Constant visual attention through physical presence, remote video, or window shall be paid to an adolescent who is in seclusion and over twelve (12) years of age or a resident who is under twelve (12) years of age if the staff person would be placed in undue physical danger due to the resident's relative size and strength. Professional or direct-care staff shall check the resident's breathing and talk to the resident every fifteen (15) minutes and shall attend to the resident's regular meals, bathing and use of the toilet. This attention shall be documented in the resident's record.

(13) At no time may a procedure be used in a manner that causes undue physical discomfort, harm or pain to a resident.

(14) All uses of special treatment procedures shall be reviewed on a daily basis by the clinical director and evaluated by him for the possibility of unusual or unwarranted patterns of use.

(15) No facility shall use extraordinary risk procedures including, but not limited to experimental treatment modalities, psychosurgery, aversive conditioning, electroconvulsive therapies, behavior modification procedures that use painful stimuli, unusual medications, and investigational and experimental drugs.

(16) Unusual treatment shall require the informed consent of the resident and parent, guardian, or custodian prior to the provision of unusual treatment as follows:

(a) The proposed unusual treatment shall be reviewed and interpreted by one (1) or more persons legally qualified to prescribe treatment addressing the rationale for use, methods to be used, specified time to be used, who will provide the treatment, and the methods that will be used to evaluate the efficacy of the treatment.

(b) The potential risks, side effects, and benefits of the proposed unusual treatment shall be explained, verbally and in writing, to the resident and the parent, guardian or custodian prior to their granting approval for the unusual treatment. The approval shall be given in writing prior to implementation of the treatment.

Section 14. Housekeeping Services. (1) The facility shall have policies and procedures for and services which maintain a clean, safe, and hygienic environment for residents and facility personnel. Policies and procedures shall include guidelines for at least the following:

(a) The use, cleaning, and care of equipment;

(b) Assessing the proper use of housekeeping and cleaning supplies;

(c) Evaluating the effectiveness of cleaning; and

(d) The role of the facility staff in maintaining a clean environment.

(2) A laundry service shall be provided by the facility or through contractual agreement.

(3) Pest control shall be provided by the facility or through contractual agreement.

Section 15. Infection Control. (1) Because infections acquired in a facility or brought into a facility from the community are potential hazards for all persons having contact with the facility, there shall be an infection control program developed to prevent, identify, and control infections.

(2) Written policies and procedures pertaining to the operation of the infection control program shall be established, reviewed at least annually, and revised as necessary.

(3) A practical system shall be developed for reporting, evaluating, and maintaining records of infections among residents and personnel.

(4) The system shall include assignment of responsibility for the ongoing collection and analysis of data, as well as for the implementation of required follow-up actions.

(5) Corrective actions shall be taken on the basis of records and reports of infections and infection potentials among residents and personnel and shall be documented.

(6) All new employees shall be instructed in the importance of infection control and personal hygiene and in their responsibility in the infection control program.

(7) The facility shall document that in-service education in infection prevention and control is provided to all services and program components.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: November 13, 1990
FILED WITH LRC: November 19, 1990 at 11 a.m.

STATEMENT OF EMERGENCY
902 KAR 20:330E

This emergency regulation implements a new licensure category of psychiatric residential care for children and adolescents. This regulation is necessary for two reasons. Presently, children are either sent out of state, or placed in an acute psychiatric hospital setting. The acute psychiatric setting may become an inappropriate and more restrictive level of care than is needed for severely emotionally disturbed children. Facilities will be able to provide these services immediately following the emergency promulgation of the regulation. The provision of these services by in-state facilities, which are not acute psychiatric facilities, will lessen the financial impact of providing services to this special group of Kentucky children. The emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler before November 15, 1990.

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

CABINET FOR HUMAN RESOURCES
Office of Inspector General

902 KAR 20:330E. Psychiatric residential treatment facilities.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990
STATUTORY AUTHORITY: KRS 216B.042, 216B.105
EFFECTIVE: November 19, 1990
NECESSITY AND FUNCTION: KRS 216B.042 and 216B.105 mandates that the Kentucky Cabinet for Human Resources regulate health facilities and services. This regulation provides for the minimum licensure requirements regarding physical plant requirements for psychiatric residential treatment facilities. This regulation is intended to allow existing facilities, with modifications, to be licensed in this category of health care.

Section 1. Definitions. (1) "Residential treatment facility" means freestanding facility with a maximum of sixteen (16) beds which provides inpatient psychiatric residential treatment to residents age six (6) to twenty-one (21) who are capable of self-preservation during an internal disaster.

(2) "Licensure agency" means the Division for Licensing and Regulation in the Office of the Inspector General, Cabinet for Human Resources.

(3) "Certificate of need" means an authorization by the Commission for Health Economics Control in Kentucky to proceed with any acquisition, initiation, construction or expansion pursuant to KRS Chapter 216B.

(4) "License" means an authorization issued by the commission for the operation of a residential treatment facility.

(5) "Living unit" means the area that is supplied by the facility for daily living and therapeutic interaction of the residents. There shall be a maximum of ten (10) residents per living unit.

(6) "Freestanding" means a completely detached and separate building, street access, telephone service, dining and street address.

Section 2. Preparation and Approval of Plans and Specifications. After receiving certificate of need from the Commission for Health Economics Control in Kentucky, if necessary, the following procedures shall be followed:

(1) Before construction is begun for the erection of new buildings or alterations to existing buildings or any changes in facilities, the licensee or applicant shall submit plans in the detail specified in Section 3 of this regulation to the licensure agency for approval.

(2) All architectural, mechanical and electrical drawings shall bear either the seal of a professional engineer registered in the Commonwealth of Kentucky, or an architect registered in the Commonwealth of Kentucky.

(3) Drawings shall not exceed thirty-six (36) inches by forty-six (46) inches when trimmed.

(4) All such plans and specifications must be approved by the licensure agency prior to commencement of construction of new buildings or alterations of existing buildings.

(5) Plans and specifications in specific detail as required by the Kentucky Building Code shall be submitted together with architectural and/or engineering stamps as required by KRS Chapters 322 and 323, to the Department of Housing Buildings and Construction for determining compliance with the Kentucky Building Code. All such plans and specifications must be approved by the Department of Housing, Buildings and Construction and appropriate local building permits shall be obtained prior to commencement of construction.

(6) Access to the work. Representatives of the appropriate state agencies will have access at all reasonable times to the work wherever it is in preparation or progress, and the contractor shall provide proper facilities for such access and inspection.

Section 3. Compliance with Building Codes, Ordinances and Regulations. (1) This section may be administered independently from other sections of this regulation.

(2) General. Nothing stated herein shall relieve the sponsor from compliance with building codes, ordinances, and regulations which are enforced by city, county, or state jurisdictions.

(3) The following requirements shall apply where applicable and as adopted by the respective agency authority:

(a) Requirements for fire safety pursuant to 815 KAR 10:020.

(b) Requirements for plumbing pursuant to 815 KAR 20:010 through 20:191.

(c) Requirements for elevators pursuant to 815 KAR 4:010 through 4:025.

(d) Requirements for making buildings and facilities accessible to and usable by the physically handicapped, pursuant to KRS 198B.260 and regulations promulgated thereunder.

(4) Prior to occupancy, the facility shall have final approval from appropriate agencies.

(5) All facilities shall be currently approved by the Department of Housing, Buildings and Construction before licensure and relicensure is granted by the licensure agency.

Section 4. Facility Requirements and Special Conditions. (1) Facilities shall be available to the public, staff, and residents who may be physically handicapped with special attention given to ramps, drinking fountain height,

mirrors, etc.

(2) Access to the facility shall be by means of a paved or gravel roadway which shall be available for use by traffic prior to a license being issued to a facility for occupancy.

(3) A copy of the narrative program for each project shall be provided to the licensure agency by the sponsor which describes the functional space requirements, staffing patterns, departmental relationships, and other basic information relating to the fulfillment of the objectives of the facility.

(4) The extent (number and types of rooms) of the diagnostic, clinical, and administrative facilities to be provided shall be determined by the services to be provided and the estimated patient load as described in the narrative program.

Section 5. Living Unit. The following shall be included:

(1) Bedrooms.

(a) Bedrooms shall not be used to sleep more than two (2) children and shall have clearances of at least three (3) feet between each bed, and four (4) feet from the foot of the beds.

(b) Bedrooms shall be equipped with a bed for each resident. Beds shall be not less than thirty-six (36) inches wide nor less than five (5) feet in length and shall be long and wide enough to accommodate the resident's size. A mattress cover, two (2) sheets and a pillow and such bed covering as is required to keep the resident comfortable, shall be provided for each bed. Rubber or impervious sheets shall be placed over the mattress cover when appropriate. Each bed shall be equipped with a support mechanism and a clean mattress.

(c) Beds occupied by resident shall be placed so that no child may experience discomfort because of proximity to radiators, heat outlets, or exposure to drafts.

(d) There shall be separate sleeping quarters for males and females.

(e) Residents shall not be housed in rooms, detached buildings, or other enclosures which have not been previously inspected and approved for residential use by the licensure agency and the Department of Housing, Buildings and Construction.

(2) Bathrooms.

(a) Each living unit shall have a minimum of one (1) wash basin with hot and cold water, one (1) flush toilet, and one (1) bath or shower with hot and cold water for every four (4) residents, or fraction thereof, residing within the living unit. (Separate toilet and bath/shower facilities shall be provided for each sex.)

(b) Each bathroom shall be supplied with toilet paper, towels, soap, and wastebaskets.

(c) Where more than one (1) toilet is provided in the same room, each toilet shall be partitioned and include a door capable of remaining closed which affords full visual privacy.

(d) Bathtubs and showers shall have enclosures or screens for individual privacy. Shower heads must be of institutional safety type.

(e) At least one (1) bathing facility shall have space for a wheelchair resident with an assisting attendant. It may serve both sexes.

(f) Each bathroom shall contain at least one (1) nondistorting mirror secured to the wall at a convenient height.

(g) The bathrooms shall not be constructed to create a thoroughfare bathroom to bedrooms. The bathroom shall only have one (1) door.

(3) Wardrobe or closet for each resident. Minimum clear dimensions: one (1) foot and ten (10) inches deep by one (1) foot and eight (8) inches wide with full length hanging space; provide clothes rod and shelf. Additional areas shall be provided for storage of resident's winter coats, raincoats and other bulky articles of clothing, etc. Those areas shall be key-locked and under staff control.

(4) Desk and chair for each resident. Minimum clear dimensions: for the desk: one (1) foot and six (6) inches deep by three (3) feet wide by two (2) feet high.

(5) Window. Degree of security required shall be as determined by the program. Where glass fragments may create a hazard, safety glazing and/or other appropriate security features shall be incorporated.

(6) If a staff call system is included, provisions shall be made to permit removal of call buttons and/or use of blank plates as appropriate.

(7) No bedroom shall be located more than (60) feet from the duty station, and the door shall be within visual contact with the duty station.

(8) No room shall be used as a resident bedroom where the access is through another resident's bedroom.

(9) Resident's living, dining, and recreation area:

(a) The total area provided for living and recreation shall be not less than forty (40) square feet per resident;

(b) The total area providing for dining shall not be less than fifteen (15) square feet per resident.

(c) The living area shall provide comfortable seating for at least ten (10) persons.

(d) Indoor recreation equipment in good condition and appropriate for the ages of residents on the living unit shall be provided.

(e) Storage shall be provided for recreational equipment and supplies. (Such as wall cabinets or closets.)

(f) The facility shall provide space for outdoor recreation activities for residents. The outdoor area shall be free from litter, glass and other objects which pose undue safety hazards to residents.

(g) Outdoor recreation equipment in good condition and appropriate for the age of the residents shall be provided.

(10) Service areas for each living unit. The size and location of each area will depend on the number of residents served and shall include:

(a) Duty station. Adequate space for charting and other required administrative functions shall be provided.

(b) Staff lounge area. It shall have personal storage space and a toilet for staff use.

(c) Medicine area. Provision shall be made for twenty-four (24) hours distribution of medicine to residents. This may be from a medicine preparation room or unit, a self-contained medicine dispensing unit, or by another approved system. If a medicine preparation room or unit is used it shall be under the treatment staff's visual control and contain a work counter, refrigerator, sink and locked storage for biologicals and drugs. If a medicine dispensing unit is used it may be located at the duty station, in a clean workroom, or in an alcove

under direct control of the treatment or pharmacy staff. The controlled substances must be kept under double lock.

(d) Clean linen storage. It must be in an enclosed room.

(11) Seclusion room. A seclusion room may be provided. The room, if provided, shall be located in a manner affording direct observation of the patient by the nursing staff. This room, if provided, shall be completely padded and be constructed to minimize the resident's hiding, escape, injury or suicide. The seclusion room is intended for short term occupancies by residents who may have become violent or suicidal. Therefore, special fixtures, hardware, etc., shall be used. No electrical switches, receptacles, etc. shall be provided in the rooms. Doors shall swing outward and have provisions for staff observation while maintaining privacy from public and other patients. This room, if provided, shall allow for the constant visual inspection of the entire room.

(12) Each living unit shall be equipped with a working sink, stove and refrigerator, unless a kitchen is directly available within the same building as the living unit.

Section 6. Kitchen Area. If a commercial service is used or meals provided by an adjacent facility, dietary areas and equipment shall be designed to accommodate the requirements for sanitary, efficient and safe storage, processing, and handling, otherwise the following shall be provided:

(1) Food serving facilities to accommodate residents and staff.

(2) Refrigerated storage to accommodate a three (3) day supply minimum.

(3) Dry storage to accommodate a three (3) day supply minimum.

(4) Janitor's closet. Storage for housekeeping supplies and equipment; floor receptor or service sink. A locked area shall be provided for hazardous materials.

Section 7. Administration Area. Sufficient space shall be allotted for administrative operations. The following areas shall be provided:

(1) Medical records area. This area shall include adequate space for record storage, record review and dictating, record sorting and recording.

(2) Visitors toilet room. The staff toilet room may also serve as the visitors toilet room if marked and accessible.

Section 8. Consultation and Visitation Rooms. Professional consultation rooms shall be provided which provide for the privacy and dignity of the patient during interview, examination, treatment, and visitation.

Section 9. Pharmacy or Drug Area. There shall be adequate facilities for the safe storage and handling of pharmaceuticals including double locking of controlled substances and refrigeration for biologicals and drugs which require refrigeration.

Section 10. Storage and Service Areas. The following shall be included:

(1) Sufficient storage space shall be provided.

(2) Engineering service and equipment areas. The following shall be provided where applicable:

(a) Storage room for housekeeping equipment. (Need not be provided if space is available in janitor's closets or elsewhere);

(b) Refuse area, for holding trash prior to disposal, shall be located convenient to service entrance.

Section 11. Details and Finishes. A high degree of safety for the occupants in minimizing the incidence of accidents shall be provided. Hazards such as sharp corners shall be avoided. All details and finishes shall meet the following requirements:

(1) Details.

(a) All doors opening onto corridors shall be swing-type except elevator doors. Alcoves and similar spaces which generally do not require doors are excluded from this requirement.

(b) All doors to resident room toilet rooms shall swing outward or shall be equipped with hardware which will permit access in any emergency.

(c) Thresholds and expansion joint covers, if used, shall be flush with the floor.

(d) Lavatories intended for use by residents shall be installed to permit wheelchairs to slide under.

(e) Mirrors shall be arranged for convenient use by residents in wheelchairs as well as by residents in standing position.

(f) Towel rack or dispensers shall be provided at all lavatories and sinks used for handwashing.

(g) Ceiling heights.

1. Corridors, storage rooms, resident's toilet room, and other minor rooms. Not less than seven (7) feet and six (6) inches.

2. All other rooms. Not less than eight (8) feet.

(2) Finishes.

(a) Floors generally shall be easily cleanable and shall have the wear resistance appropriate for the location involved. Floors in kitchen and related spaces shall be waterproof and grease-proof. In all areas where floors are subject to wetting, they shall have a nonslip finish.

(b) Adjacent dissimilar floor materials shall be flush with each other to provide an unbroken surface.

(c) Walls generally shall be washable and in the immediate area of plumbing fixtures, the finish shall be moisture-proof. Wall bases in dietary areas shall be free of spaces that can harbor insects.

(d) Ceilings generally shall be washable or easily cleanable. This requirement does not apply to mechanical and building equipment rooms, shops and similar spaces.

(e) Rooms containing heat-producing equipment such as laundries and food preparation areas shall be insulated and ventilated to prevent any floor surface from exceeding a temperature of ten (10) degrees Fahrenheit above the ambient room temperature.

Section 12. Construction. Foundations shall rest on natural solid ground if a satisfactory soil is available at reasonable depths. Proper soil bearing values shall be established in accordance with recognized standards. If solid ground is not encountered at practical depths, the structure shall be supported on driven piles or drilled piers designed to support the intended load without detrimental settlement.

Section 13. Mechanical Requirements. (1) Steam and hot water systems. If boilers are provided in residential treatment facilities the design and installation shall comply with 815 KAR 15:010 through 15:080.

(2) Temperature.

(a) A minimum temperature of sixty-eight (68) degrees Fahrenheit shall be provided for in occupied areas in winter conditions.

(b) A maximum temperature of eighty-five (85) degrees Fahrenheit shall be provided for in occupied areas in summer conditions.

(3) Plumbing and other piping systems. All showers and bathtubs shall be equipped with antiscald thermastatic mixing valves which controls hot water at a maximum temperature of 110 degrees Fahrenheit. Fixtures used in the dietary area, the clean work room and medi/prep area shall be trimmed with valves which can be operated without the use of hands. Where blade handles are used for this purpose, they shall be approximately four (4) inches in length. The fixtures shall be installed to provide adequate side clearances for proper use of the blade handles.

(4) Water supply systems.

(a) System shall be designed to supply water to the fixtures and equipment on the upper floors at a minimum pressure of fifteen (15) pounds per square inch during maximum demand periods.

(b) Each water service main, branch main, riser and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.

(c) Hot, cold and chilled water piping and waste piping on which condensation may occur shall be insulated. Insulation of cold and chilled water lines shall include an exterior barrier.

(d) Backflow preventers (vacuum breakers) shall be installed on hose bibs and on all fixtures to which hoses or tubing can be attached such as janitor's sinks and bedpan flushing attachments.

(e) Hot water distribution systems shall be arranged to provide hot water at each fixture at all times.

(f) Piping over food preparation centers, food serving facilities, food storage areas, and other critical areas shall be kept to a minimum and shall not be exposed. Special precautions shall be taken to protect these areas from possible leakage of, or condensation from necessary overhead piping systems.

(5) Hot water heaters and tanks.

(a) The hot water heating equipment shall have sufficient capacity to supply the water at the temperature and amounts indicated below:

Gal/hr/bed	6 1/2
Temperature (Degrees Fahrenheit)	100-110

(b) Storage tank(s) shall be provided and shall be fabricated of corrosion-resistant metal, or have noncorrosive lining.

(6) Plumbing approval. Prior to licensure and relicensure, all specifications shall be approved by the Kentucky Division of Plumbing, Department of Housing, Buildings and Construction.

Section 14. Electrical Requirements. (1) General. Electrical requirements of the Kentucky Building Code shall apply where applicable.

(2) The wiring in each home shall be inspected by a certified electrical inspector and a certificate of approval shall be issued, to the facility, prior to occupancy; however, the wiring in existing buildings shall be approved by a certified electrical inspector only when the building has not been previously so approved for health care occupancy or where the State Fire Marshal finds that a hazardous condition exists.

(3) Switchboard and power panel. All breakers and switches shall be indexed.

(4) Lighting.

(a) All spaces occupied by people, machinery, and equipment within buildings, and the approaches thereto, and parking lots shall have electric lighting.

(b) Residents' bedrooms shall have general lighting. A reading light shall be provided for each resident when appropriate. Residents' reading lights and other fixed lights not switched at the door shall have switch controls convenient for use at the luminary. Night lights shall be provided in each resident's room.

(5) Receptacles (convenience outlets).

(a) Bedroom. Each resident bedroom shall have duplex receptacles as follows: one (1) each side of the head of each bed (for parallel adjacent beds, only one (1) receptacle is required between beds); receptacles for luminaries, television and motorized beds, if used, and one (1) receptacle on another wall. Receptacles shall be of a safety type or protected with five (5) milliampere ground fault interrupters.

(b) Corridors. Duplex receptacles for general use shall be installed approximately fifty (50) feet apart in all corridors and within twenty-five (25) feet of ends of corridors. Receptacles shall be of a safety type or protected with five (5) milliampere ground fault interrupters.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: November 13, 1990
FILED WITH LRC: November 19, 1990 at 11 a.m.

STATEMENT OF EMERGENCY
904 KAR 2:116E

This emergency administrative regulation is necessary for the timely implementation and administration of the Low Income Home Energy Assistance Program in accordance with the federal fiscal year 1991 Low Income Home Energy Assistance Block Grant Application and Plan Narrative. In order to implement the program on October 15, 1990, as specified in the plan narrative, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall 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 Social Insurance
Division of Management and Development

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

RELATES TO: KRS 194.050
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: December 6, 1990
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility as prescribed by Public Law 97-35 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981 as amended) to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. [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 states the eligibility and benefits criteria for [each of two (2) components of] energy assistance[, subsidy and crisis, under the Home Energy Assistance Program (HEAP)].

Section 1. Definitions. [Terms used in HEAP are defined as follows:]

(1) [(8)] An "authorized representative" means [is] the person [applying on behalf of a household] who presents to the cabinet or its representative a written statement signed by the appropriate household member authorizing that person to apply on the household's behalf.

(2) [(6)] "Crisis component" means [is] the component that [administered by local organizations under contract with the cabinet to] provides assistance to households which are experiencing a home heating crisis [assistance].

(3) [(4)] "Economic unit" means [is] one (1) or more persons sharing common living arrangements.

(4) "Emergency" means the household is without heat at the time of application.

(5) [(2)] "Energy" means electricity, gas, and any other fuel that is used to sustain reasonable living conditions.

(6) "Gross income" means all earned and unearned income, including lump sum payments received by the households during the calendar month preceding the month of the application.

(7) "Heating season" means the period from October through April.

(8) [(3)] "Household" means any individual or group of individuals [who are] living [together] in the principal residence as one (1) economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

(9) [(7)] "Life threatening situation" [under the crisis component] means without heat or will be without heat within forty-eight (48) hours and temperatures are at a dangerous level for household members.

(10) [(1)] "Principal residence" means [is] the place:

(a) Where a person is living voluntarily and not on a temporary basis;

(b) [the place] He considers home;

(c) [the place] To which, when absent, he intends to return; and

(d) [the place] Is identifiable from other residences, commercial establishments, or institutions.

(11) [(5)] "Subsidy component" means [is] the component that provides [portion of benefits reserved as] energy assistance for heating.

Section 2. Application. (1) Each household or authorized representative [of the household requesting assistance] shall complete an application and provide information necessary to determine eligibility and benefit amount.

(2) An application shall not be considered completed until all information needed [to determine eligibility and benefit amount] is received.

Section 3. Eligibility Criteria. (1) Income. [A household shall meet the following conditions of eligibility for receipt of a HEAP payment under the subsidy and crisis components:]

[(a) The amount of continuing and noncontinuing earned and unearned gross income including lump sum payments received by the household during the calendar month preceding the month of application shall be considered. Income received on an irregular basis shall be prorated.]

(a) [(b)] Gross income [for the calendar month preceding the month of application] shall be at or below the applicable amount shown on the income scale for the appropriate size household. [Excluded from income are payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant shall spend for that purpose, payments made to others on the household's behalf, loans, reimbursements for expenses, incentive payments (JET and JTPA) normally disregarded in AFDC, federal payments or benefits which shall be excluded according to federal law, and Supplemental Medical Insurance premiums.]

Income Scale

Family Size	Monthly	Yearly
1	$ 575 [548]	$ 6,908 [6,578]
2	771 [735]	9,262 [8,822]
3	968 [922]	11,616 [11,066]
4	1,164 [1,109]	13,970 [13,310]
5	1,360 [1,296]	16,324 [15,554]
6	1,556 [1,483]	18,678 [17,798]

(b) [(c)] For each household member more than six (6), the above income eligibility limitation [for six (6)] shall be increased by $196 [187] monthly or $2,354 [2,244] yearly.

(c) Excluded from income are:

1. Payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant must spend for that purpose;
2. Payments made to others on the household's behalf;
3. Loans;
4. Reimbursements for expenses;
5. Incentive payments (JET and JTPA) normally disregarded in AFDC;
6. Federal payments or benefits which shall be excluded according to federal law; and
7. Supplemental medical insurance premiums.

(2) Liquid assets.

(a) [(d)] The household shall have total liquid assets at the time of application of not more than $5,000.

(b) Excluded assets are:

1. Cars; [,]
2. Household or personal belongings; [,]
3. Principal residence; [,]

4. Cash surrender value of insurance policies; [,]
5. Prepaid burial policies; [,]
6. Real property; [,] and
7. Cash on hand or in a bank account if the cash is income considered under subsection (1)(a) of this section [paragraph (a) of this subsection].

(3) Crisis component.

(a) Applicants shall meet the income and liquid assets criteria; and

[(e) Applicants for the crisis component shall]

(b) Be without heat; [,]

(c) Be without fuel within five (5) days; [,]

(d) Have received a notice of disconnection of service; [, or]

(e) Require a heat system repair to obtain adequate heat; or

(f) For those households whose home heating costs are included as an undesignated portion of the rent, the household must have received a notice of eviction for nonpayment of rent.

[(2) Households are eligible to receive benefits under the subsidy component once and under the crisis component not to exceed the maximum amount of benefits. The maximum amount of benefits from both components shall not exceed $300.]

Section 4. Benefit Levels. [Payment amounts for the subsidy and crisis components are set at a level to serve a maximum number of households while providing a reasonably adequate benefit relative to energy costs. In the subsidy component, the highest level of assistance shall be provided to households with lowest incomes and highest energy costs in relation to income, taking into account family size.]

(1) Subsidy component. Payments to the [eligible] households heating fuel providers [under the subsidy component] shall be made for the full benefit amount. Benefits shall be determined from fuel usage data and from the cost of the six (6) primary heating fuels prior to the implementation of the subsidy component. Households shall receive benefits based on the household's poverty level and the type of heating fuel. Those households with the lowest incomes and highest season fuel costs shall receive the highest benefits. [based on type of energy for heating, monthly household income, and household size as follows:]

(a) For residents of unsubsidized housing, benefits shall be a percentage of the average annual heating season energy costs of the primary heating fuel.

(b) For residents of subsidized housing, benefits shall be a percentage of the applicant's share of the actual total energy costs for his current residence during the heating season. Each household shall have the option of documenting actual costs for the previous heating season or using the average annual heating season energy cost for the primary fuel. Subsidized housing applicant's share of heating season energy costs shall be identified as follows:

1. Total shelter costs will be identified as the fair market value of the residence plus the utility allowance per the public housing administering agency's regulations.

2. Each household's share of the total shelter costs will be identified per the public housing administering agency's procedures.

3. Each household's share of shelter costs will be divided by the total shelter costs of the residence to identify the percentage of shelter costs that is borne by the household.

4. Total energy costs for the household's residence is identified either as the average heating season energy costs for the primary heating fuel or, if the household chooses, the actual costs of all energy for the residence for the previous heating season.

5. The household's share of heating season energy costs shall be the same percentage of total energy costs as the household's share of total shelter costs.

(c) Benefit matrix subsidy component.

Household Income as a % of 100% Federal Poverty Level	Benefit Amount as a % of Heating Season Energy Costs (October through April)
0-14%	19.6%
15-29%	17.1%
39-44%	14.6%
45-59%	12.1%
60-74%	9.6%
75-89%	7.1%
90-110%	4.6%

[Benefit Scales
Subsidy Component

Scale A.
Energy Sources: Electricity

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or More
$ 0 - $400	$123	$135
$401 - $800	$105	$117
Over $800	---	$101]

[Scale B.
Energy Sources: LP Gas (Propane), Fuel Oil, Kerosene, Natural Gas

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or More
$ 0 - $400	$113	$125
$401 - $800	$ 95	$107
Over $800	---	$ 88]

[Scale C.
Energy Sources: Coal, Wood

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or More
$ 0 - $400	$100	$112
$401 - $800	$ 82	$ 94
Over $800	---	$ 75]

[(2) If the cabinet receives a percentage of the federal funds authorized by Congress, benefits to eligible households under the subsidy component may be reduced proportionately.]

(2) Crisis component. [(3)] Benefits to [eligible] households [under the crisis component] shall be the minimum amount necessary to alleviate the crisis. Benefits may be [in the form of] fuel or other energy for heating, heaters, blankets, sleeping bags, emergency

shelter [vouchers to purchase these item], or repair to a heating system to obtain adequate heat. The contracting agency shall determine the type and value of assistance necessary to alleviate the crisis.

(a) In determining the minimum amount of assistance [necessary to alleviate the crisis], the contracting agency shall [may] take into consideration direct subsidies for payment of utility cost received by the household from other programs.

(b) A household may receive assistance more than once, but may not receive more than the maximum allowable for the primary heating fuel which shall be the cost of an average sixty (60) day supply based on energy usage data and the cost of fuel as determined prior to component implementation.

(c) [(b)] The benefits for a household threatened with eviction whose heat is an undesignated portion of the rent shall not exceed [, shall be for] the energy portion, (in gas and electric) of the monthly [rent owed which is defined as an amount up to the] Standard Utility Allowance (SUA) in the Food Stamp Program. Those benefits are as follows:

Household Size	SUA
1 and 2	$105 [145]
3	$109 [151]
4 or more	$120 [166]

These benefit amounts are available per each month that the household is in arrears on the rent with the maximum benefits not to exceed the average sixty (60) day supply for the primary heating fuel.

Section 5. Benefit Delivery Methods. [Benefits shall be provided to eligible households as follows:]

[(1) When feasible, payment under the subsidy I component is authorized by a two (2) party check made payable to the recipient and the provider or landlord if the heating is included as an undesignated portion of rent.]

[(2) When a two (2) party check is not issued under the subsidy I component, the recipient shall sign a statement on the application prior to receipt of funds affirming that benefits received under HEAP shall be used solely for home energy.]

(1) [(3)] Payment under the subsidy [II] component is authorized by a one (1) party check made payable to the vendor or landlord if the heating is included as an undesignated portion of rent.

[(4) Under the subsidy component,] At the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider (for example, when the recipient heats with both a wood stove and electric space heaters). However, the total amount of the payments shall not exceed the maximum for the primary source of [energy for] heating. [The household may decide how to divide payment if more than one (1) provider is used.]

(2) [(5)] For the crisis component, no direct cash payments shall be made to the recipient. [Benefits shall be provided to eligible households by the contracting agency in the amount and value determined by the contracting agency necessary to alleviate the crisis, not to exceed the maximum allowable payment.] Payments [under the crisis component] shall be authorized to the energy provider by one (1) party checks upon delivery of fuel, heaters, blankets, sleeping bags, emergency lodging, restoration or continuation of service, or upon repair of the heating system.

Section 6. Right to a Fair Hearing. Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055[, Hearings and appeals].

Section 7. Time Standards. (1) Under the subsidy component, [the cabinet shall make] an eligibility determination shall be made promptly after receipt of a completed and signed application but not to exceed thirty (30) days.

(2) Under the crisis component, completed applications shall be processed so that the crisis is resolved within forty-eight (48) hours and in life threatening situations within eighteen (18) hours.

(3) Applicants [under the crisis component] shall have five (5) working days from the date of application to provide information necessary to complete the application.

Section 8. Effective Dates. (1) [The following shall be the] Implementation and termination dates for HEAP, depending upon the availability of funds, are:

[(1)](a) Applications for the subsidy component shall be accepted [from households containing at least one (1) member who is elderly (age sixty (60) or older) or receiving benefits due to 100 percent disability] beginning October 15, 1990 [16, 1989] and ending by October 31, 1990 [27, 1989].

[(b) Applications for the subsidy II component shall be accepted from households that were not eligible for subsidy I component beginning January 8, 1990, and ending by January 12, 1990, or until expenditures have resulted in utilization of available funds.]

(b) [(2)] Applications for the crisis component shall be accepted beginning December 3 [January 15], 1990 and ending by March 29, 1991, or until all available funds have been expended. [April 27, 1990, except in emergency situations where the household is without heat at the time of application. Applications for emergencies shall be accepted beginning December 18, 1989.]

[(3)] Applications shall be processed in the order taken until funds are expended. [HEAP subsidy component shall be terminated when actual and projected component expenditures have resulted in utilization of available funds or October 27, 1989.]

(2) [(4)] HEAP may be reactivated after termination under the same terms and conditions as shown in this regulation if additional federal funds are made available.

Section 9. Allocation of Funds. (1) Up to fifteen (15) percent of the total HEAP allocation shall be reserved for weatherization assistance.

(2) An amount of funds sufficient to provide benefits to all eligible households that apply during the subsidy application period shall be reserved for the subsidy component. [Up to $4,990,800 of benefit funds shall be reserved for the crisis component. The funds reserved for the crisis component shall be allocated, by local administering agency, based upon the 1980

Census poverty levels of the counties served by the local administering agency. At any point after January 15, 1990 all unobligated allocations may be reallocated by the contracting agency at the discretion of the Department for Social Insurance in order to assure crisis benefits availability on a statewide basis.]

(3) The balance of benefit funds for HEAP shall be reserved for the crisis component. The funds reserved for the crisis component shall be allocated based upon the 1980 census poverty levels of the counties served by the local administering agency. [Up to $10,400,000 of benefit funds shall be reserved for the subsidy component. Any funds remaining unobligated from the subsidy component may be made available under the crisis component.]

(4) An amount [to be determined by the Department for Social Insurance] shall be reserved from the crisis component under subsection (3) [(2)] of this section to assure component availability until March 29, 1991 [15, 1990] for emergency crisis assistance for households who are without heat.

(5) Up to $25,000 shall be reserved for the Preventive Assistance Program administered by the Department for Social Services to assist families with an energy payment not to exceed $300 for each family if the payment shall prevent the removal of a child from a family or if it shall assist in reuniting a child with the family.

Section 10. Energy Provider Responsibilities. Any provider accepting payment from HEAP for energy or services provided to eligible recipients shall comply with the following:

(1) Reconnection of utilities and delivery of fuel shall be accomplished upon certification for payment;

(2) The household shall be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program. For balances remaining after acceptance of the HEAP payment, the customer shall be offered the opportunity for a deferred payment arrangement or a level payment plan;

(3) HEAP recipients shall not be treated worse than households not receiving benefits;

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided; and

(5) A landlord shall not increase the rent of recipient households due to receipt of this payment.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: November 15, 1990
FILED WITH LRC: December 6, 1990 at 3:30 p.m.

6 9

REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The following two regulations were amended by the promulgating agency and the Interim Joint Committee on State Government, and became effective on December 6, 1990.

DEPARTMENT OF PERSONNEL
(As Amended)

101 KAR 2:035. Compensation plan and pay incentive systems.

RELATES TO: KRS 18A.030, 18A.110, 18A.165
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapter 18A, which govern the pay plan for all employees in the classified service. This regulation is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements and replaces 101 KAR 2:030.

Section 1. Appointments. Initial appointments shall be made at the minimum rate of the pay grade established for the job classification unless the commissioner authorizes appointment of a highly qualified applicant at a rate above the minimum, not to exceed the midpoint of the pay grade. Such exceptions shall be based on the outstanding and unusual nature of the applicant's education and experience over and above the minimum requirements set for the job classification. Employees possessing qualifications similar to the applicant being appointed that are employed in the same job classification, by the same agency, in the same county shall have their salaries adjusted by the appointing authority to the same rate granted in the in-range appointment if that rate is higher than their current salaries.

Section 2. Reentrance to State Service. (1) Appointing authorities, with the approval of the commissioner, may place reemployed, reinstated, or former employee probationally appointed at a salary:

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

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

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

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

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

(3) Former employees reemployed, reinstated or probationally appointed to a salary:

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

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

Section 3. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive a salary increase of not less than five (5) percent upon promotion. In no case shall the employee's salary be below the minimum of the higher grade following promotion. Employees completing a promotional probationary period may receive a five (5) percent promotional increase at the beginning of the month following completion of the probationary period. If the promotion is to a position which constitutes an unusual increase in the level of responsibility, the appointing authority, with the prior written approval of the commissioner, may grant upon promotion a ten (10) percent or fifteen (15) percent salary increase over the employee's previous salary. A promotional increase shall not change the employee's regular increment date.

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

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

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

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

(6) Reversion.

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

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

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

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

(8) Other salary adjustments.

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

(b) Subject to approval by the commissioner, an appointing authority may request a five (5) percent salary adjustment when a special entrance rate is established under Section 7(3) of this regulation.

Section 4. Salary Advancements. (1) Probationary increments. Full-time and part-time employees who complete an initial probationary period with satisfactory performance shall be granted an increment at the beginning of the month following completion of the probationary period, except as specified under Section 2(3) of this regulation. The service may be provisional or probationary.

(2) Annual increment dates shall be established:

(a) Following completion of an initial probationary period, with satisfactory performance, or following completion of twelve (12) months service from the date of appointment, reinstatement, or reemployment, pursuant to Section 2(3) of this regulation.

(b) When an employee returns from leave without pay pursuant to subsection (4) of this section.

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

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

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

(c) Is transferred;

(d) Receives a demotion;

(e) Is approved for detail to special duty;

(f) Receives an educational achievement award;

(g) Returns from military leave;

(h) Is reclassified; or

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

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

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

Section 5. Educational Achievement Award. The participation of an appointing authority in the program for educational achievement awards is contingent upon adequate funding, to be determined by the appointing authority through the budgetary process, for all eligibles within the agency. Upon request of the appointing authority and subject to the approval of the commissioner, a permanent employee, with status may receive one (1) lump sum educational achievement award per fiscal year:

(1) For satisfactorily completing outside of work hours 260 classroom hours (or the equivalent as determined by the commissioner) of job related instruction in approved courses. Approved courses, must have been completed after a merit employee initially gained permanent status in state government. Employees shall not receive credit for courses taken while on educational leave, for hours paid for by the agency through tuition assistance, or for courses which previously counted toward an educational achievement award. The lump sum educational achievement award shall be ten (10) percent of the employee's annual base salary but not more than $2,500. The lump sum payment shall be granted only if the 260 classroom hours (or equivalent) have been completed within the past five (5) years prior to the effective date of the increase; or

(2) For receiving outside of work hours an approved high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test. The approved diploma, certificate, or passing score must have been obtained on or after January 1, 1984 while in state service. Employees receiving an approved high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test shall receive a lump sum educational achievement award of ten (10) percent of their annual base salary but not more than $2,500. A high school level educational achievement award shall not be granted to employees who present new credentials but have previously:

(a) Received a high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test; or

(b) Completed college course work on the undergraduate or graduate level.

(3) To apply for an educational achievement award an employee shall submit the educational achievement request form DPT-10 or its equivalent, demonstrating completion of 260 classroom hours (or the equivalent together with official transcripts or grade reports for the courses completed) to the appointing authority or his designee. In compliance with the standards set forth in this regulation, the appointing authority may recommend the application for approval and may forward the documentation to the Commissioner of the Department of Personnel for final approval. A lump sum educational achievement award shall not be added to the employee's base salary or wages.

Section 6. Salary Schedule Adjustment. When the commissioner authorizes an adjustment of all grades in the pay schedule, employees who are below the new minimum rates shall have their salaries adjusted at least to the minimum rates of their grades. The commissioner may authorize a salary increase for those employees who are at or above the minimum rate based upon the availability of funds. The percentage of such increase shall be determined by the commissioner and shall be uniform for all eligible employees.

Section 7. Class Reevaluation and Grade Adjustment. (1) Class reevaluation is the assignment of a different pay grade to a class based upon a change in relation to other classes or to labor market conditions.

(2) Change in pay grade. Whenever it becomes necessary to assign a class a different pay grade due to changes defined in Section 7(1) of this regulation, the commissioner may make a new or different pay grade applicable to a class of positions. Persons currently employed in positions of that class at the effective date of the change in pay grade shall have their salary placed at least at the minimum salary of the higher grade, and may be eligible for a salary adjustment under Section 3(7) of this regulation. In no event shall an employee's salary be placed at a rate less than he received prior to the change in the pay grade. Employees in a class assigned to a lower pay grade through class reevaluation shall retain their current salary.

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

Section 8. Paid Overtime. Overtime for which pay is authorized shall be in accordance with 101 KAR 2:100, Section 4, and the Fair Labor Standards Act 29 U.S.C. §201, et seq. and have the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet. Overtime payments shall not be added to base salary or wages.

Section 9. Maintenance and Maintenance Allowance. In each case where an employee or the employee and his family are provided with full or part maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, such maintenance shall be treated as part payment. The value of these services shall be deducted from the appropriate salary rate in accordance with a maintenance schedule developed by the commissioner after consultation with the appointing authority and the Secretary of the Finance and Administration Cabinet.

Section 10. Supplemental Shift Premium. Upon request of the appointing authority, the commissioner may authorize the payment of a supplemental shift premium for those job classifications in which employees are directed to work an evening or night shift. Once authorized, this premium shall apply to those employees directed to work an evening or night shift in a job classification for which the shift premium was approved. However, no employee shall receive a supplemental shift premium subsequent to a transfer to a position that is ineligible for a shift differential premium payment.

Section 11. Outstanding Merit Increase. (1) Subject to the approval of the commissioner and contingent upon the availability of sufficient budgeted funds, an appointing authority may within his sole discretion, recommend any permanent, full-time, classified employee with at least twelve (12) months continuous service for an outstanding merit increase equal to five (5) percent of his base pay. An outstanding merit increase shall consist of a lump sum payment which shall not be added to base pay.

(2) An employee may be recommended for an outstanding merit increase if:

(a) His job performance is judged to be outstanding by the appointing authority; or

(b) In the discretion of the appointing authority, the employee's acts or ideas have resulted in significant financial savings or improvement in services to the Commonwealth and its citizens.

(3) An employee shall not be eligible for recommendation for an outstanding merit increase if he has received an outstanding merit increase within the preceding twelve (12) months.

(4) The appointing authority shall submit written justification to the commissioner and the personnel action form shall be approved by the appointing authority and the commissioner to be effective.

Section 12. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

BOARD CERTIFICATE OF REVIEW:

This is to certify that pursuant to KRS 18A.110(5) the regulations listed below were submitted to the Personnel Board by the Commissioner of Personnel on June 28, 1990. The board at its special scheduled meeting on July 24, 1990, reviewed the department's proposals and made certain recommendations which were forwarded to the commissioner for his consideration. The regulations reviewed were as follows: 101 KAR 2:035 & E, 101 KAR 2:045 & E, 101 KAR 2:055 & E, 101 KAR 2:065 & E, 101 KAR 2:075 & E, 101 KAR 2:095 & E, 101 KAR 2:100 (amendment). This 24th day of July, 1990.

BENJAMIN J. HAYS, Vice-Chairman

(Note: Chairman Shake was not present at the 7/24/90 meeting. Vice-Chairman Hays chaired.)

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 3, 1990
FILED WITH LRC: August 3, 1990 at 2 p.m.

DEPARTMENT OF PERSONNEL
(As Amended)

101 KAR 3:045. Unclassified service; classification and compensation incentive systems.

RELATES TO: KRS 18A.155
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.155

NECESSITY AND FUNCTION: KRS 18A.155 requires the Commissioner of Personnel to submit to the Governor proposed administrative regulations for persons in positions enumerated in KRS 18A.115(1)(g), (h), (i), (j), (k), (p), (u) and (v). KRS 18A.155 further provides that these regulations shall be approved by the Governor. Nothing herein shall be construed to preclude the optional use of regulations promulgated under this section on behalf of employees enumerated in paragraphs (a), (b), (d), (e) and (q) of subsection (1) of KRS 18A.155 and on behalf of members of state boards and commissions who work on a full-time, salaried basis. This regulation complies with and implements this statutory provision and replaces 101 KAR 3:040.

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

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

Section 2. Compensation Plan. (1) After consultation with appointing authorities and the Secretary of the Finance and Administration Cabinet, develop a pay plan for all aforementioned employees in the unclassified service, taking into account such factors as:

(a) The relative levels of duties and responsibilities of various classes of positions;

(b) Rates paid for comparable positions elsewhere; and

(c) The state's financial resources.

Such pay plan shall become effective only after it has been approved by the Governor after submission to him by the commissioner through the Secretary of the Department of Finance. Amendments to the pay plan may be made in the same manner. Each employee shall be paid at one (1) of the rates set forth in the pay plan for the position in which he is employed.

(2) With the exception of the provision relating to probationary increments, and outstanding merit increases under 101 KAR 3:045, the principles and provisions of 101 KAR 2:035 shall apply to employees and positions in the unclassified service. An employee in the unclassified service who completes the initial six (6) month period following appointment with satisfactory performance may be granted a statutory increment at the beginning of the month following completion of such period.

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

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

(3) Physicians, employed as such and pursuant to KRS 64.655, are exempted from the provisions of 101 KAR 2:035, Section 1, and may be appointed to any rate within the pay range when justified in writing by the appointing authority and approved by the commissioner.

Section 3. Educational Achievement Award. Upon request of the appointing authority and subject to the approval of the commissioner:

(1) An employee may receive one (1) lump sum educational achievement award per fiscal year for satisfactorily completing outside of work hours, 260 classroom hours (or the equivalent as determined by the commissioner) of job related instruction in approved courses. Approved courses must have been completed after an employee initially served six (6) months in state government. Employees shall not receive credit for hours taken while on educational leave, for hours paid for by the agency through tuition assistance, or for hours which previously counted toward an educational achievement award. The lump sum educational achievement award shall be ten (10) percent of the employee's annual base salary but not more than $2,500. The lump sum payment shall be granted only if the 260 classroom hours (or equivalent) have been completed within the past five (5) years prior to the effective date of the increase; or

(2) An employee may receive one (1) lump sum educational achievement award for earning an approved diploma, high school equivalency certificate, or a passing score on the G.E.D. test. The approved high school diploma, certificate, or passing score shall have been obtained by the state employee on or after January 1, 1984 while in state service. Employees receiving an approved high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test shall receive a lump sum educational achievement award of ten (10) percent of their annual base salary but not more than $2,500. A high school level educational achievement award shall not be granted to employees who present new credentials but have previously:

(a) Received a high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test; or

(b) Completed college course work on the undergraduate or graduate level.

(3) To apply for an educational achievement award an employee shall submit supporting documentation to the appointing authority or his designee a DPT Form 10 or its equivalent, demonstrating completion of 260 classroom hours (or the equivalent) together with official transcripts or grade reports for the courses completed. In compliance with the standards set forth in this section, the appointing authority may recommend the application for approval and

may forward the documentation to the Commissioner of the Department of Personnel for final approval.

Section 4. Outstanding Merit Increase. (1) Subject to the approval of the commissioner and contingent upon the availability of sufficient budgeted funds, an appointing authority may within his sole discretion, recommend any full-time, unclassified employee whose service credit began prior to July 1, 1987 with at least twelve (12) months continuous service for an outstanding merit increase equal to three (3) percent of his base pay. An outstanding merit increase shall consist of a lump sum payment which shall not be added to base pay.

(2) An employee may be recommended for an outstanding merit increase if:

(a) His job performance is judged to be outstanding by the appointing authority; or

(b) In the discretion of the appointing authority, the employee's acts or ideas have resulted in significant financial savings or improvement in services to the Commonwealth and its citizens.

(3) An employee shall not be eligible for recommendation for an outstanding merit increase if he has received an outstanding merit increase within the preceding twelve (12) months.

(4) The appointing authority shall submit written justification to the commissioner and the personnel action form shall be approved by the appointing authority and the commissioner to be effective.

BOARD CERTIFICATE OF REVIEW:

This is to certify that pursuant to KRS 18A.110(5) the regulations listed below were submitted to the Personnel Board by the Commissioner of Personnel on June 28, 1990. The board at its special scheduled meeting on July 24, 1990, reviewed the department's proposals and made certain recommendations which were forwarded to the commissioner for his consideration. The regulations reviewed were as follows: 101 KAR 2:035 & E, 101 KAR 2:045 & E, 101 KAR 2:055 & E, 101 KAR 2:065 & E, 101 KAR 2:075 & E, 101 KAR 2:095 & E, 101 KAR 2:100 (amendment). This 24th day of July, 1990.

BENJAMIN J. HAYS, Vice-Chairman

(Note: Chairman Shake was not present at the 7/24/90 meeting. Vice-Chairman Hays chaired.)

WALLACE G. WILKINSON, Governor
THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: July 3, 1990
FILED WITH LRC: August 3, 1990 at 2 p.m.

COMPILER'S NOTE: The following regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee on December 4-5, 1991.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended)

201 KAR 2:074. Pharmacy services in hospitals.

RELATES TO: KRS Chapter[s 217,] 315

STATUTORY AUTHORITY: KRS [217.015(5), (6), (9), (23), (24), 217.215(1), (2), 217.992,] 315.010, 315.020, 315.030, 315.121, 315.191(1)

NECESSITY AND FUNCTION: The Kentucky Board of Pharmacy is responsible to insure minimum standards of practice in all settings where drugs are handled. The board is also responsible to insure the safety of all drug products provided to the citizens of the Commonwealth.

Section 1. For the purpose of this regulation, the following definitions apply:

(1) "Institutional pharmacy" means that portion of an acute care hospital licensed under 902 KAR 2:016 which is engaged in the manufacture, production, sale and distribution of drugs, medications, devices and other materials used in the diagnosis and treatment of injury, illness, and disease.

(2) "Investigational drug" means any drug which has not been approved for use in the United States, but for which an investigational drug application has been approved by the FDA.

(3) "Unit dose distribution" means a system in which drug therapy profiles are maintained in the pharmacy and doses are scheduled, prepared, and delivered in a ready-to-administer form to the patient care area as they are needed.

Section 2. Pharmacy Administration. (1) General. The pharmacy, organized as a separate department or service, shall be directed by a professionally competent, legally qualified pharmacist. [He shall employ an adequate number of appropriately trained, competent, and qualified personnel.] The director of pharmacy services is responsible for departmental management and the development and implementation of goals and objectives to meet the needs of the institution.

(2) Director of pharmacy.

(a) The director of pharmacy services shall be thoroughly knowledgeable about hospital pharmacy practice and management [, while possessing necessary management skills].

(b) Where the director of pharmacy is not employed full time, the hospital shall establish an ongoing arrangement in writing with an appropriately qualified pharmacist to provide the services described herein. The director of pharmacy shall be responsible to the chief executive officer of the hospital or his designee.

(c) When the hospital pharmacy is decentralized, each decentralized section or separate organizational element shall be under the immediate supervision of a pharmacist responsible to the director.

(3) Pharmacy personnel.

(a) The Department of Pharmacy Services shall maintain [employ] additional pharmacists in cooperation with hospital administration, either full time or part time, as they are required to operate safely and effectively to meet the needs of the patients.

(b) If nonpharmacist personnel are employed, they shall perform all duties under the supervision of a pharmacist and they shall not be assigned, nor shall they perform, duties that are to be performed only by pharmacists.

(4) Responsibilities.

(a) Lines of authority and areas of responsibility within the pharmacy shall be clearly defined. Written job descriptions for all categories of pharmacy personnel shall be prepared and revised as necessary.

(b) There shall be policies and procedures to provide for selection of drugs as well as a

distribution system to serve the needs of the patient. Provision for procurement of drugs in an emergency situation shall be provided for.

(5) Supportive personnel.

(a) Sufficient supportive personnel (technical, clerical, and other) shall be available in order to optimize the participation of pharmacists in activities requiring professional judgment.

(b) The training and supervision of supportive personnel shall be the responsibility of the pharmacist.

(6) Availability.

(a) The services of a pharmacist shall be available at all times. However, where around-the-clock operation of the pharmacy is not feasible, the pharmacist shall be available on an on-call basis and an adequate night drug cabinet shall be established. The pharmacy itself shall not be designated as the night drug cabinet.

(b) Hospitals not having a full-time pharmacist, but in which drugs are prepackaged or relabeled or transferred from one container to another, shall obtain a pharmacy permit and have at least a part-time pharmacist designated to perform those functions or to provide personal supervision of those functions.

Section 3. Physical Facility. (1) The Department of Pharmacy Services shall have adequate space, equipment, and supplies sufficient to provide for safe and efficient drug storage, preparation and distribution, patient education and consultation, drug information services, and proper management of the department.

(2) Legal requirements. The physical facility shall meet state and federal regulations and shall be accessible by key by authorized pharmacy personnel only.

(3)(a) A currently licensed hospital is exempt from the provisions of subsection (2) of this section if it:

1. Is authorized by the Department for Health and Human Services to provide pharmacy services; and

2. Does not currently possess a pharmacy permit.

(b) A currently licensed hospital exempt from the provisions of subsection (2) of this section may permit access by authorized personnel only.

(4) [(3)] Location. Locked storage or locked medication carts shall be provided for use in each nursing unit or service area.

(5) [(4)] Reference materials. The pharmacy shall have current pharmaceutical reference materials in accordance with state regulations. References related to the following subjects shall also be available:

(a) Drug identification;

(b) Toxicology;

(c) Drug interactions;

(d) Parenteral drug compatibility;

(e) Microbiology.

Section 4. Drug Distribution and Control. (1) General. The Department of Pharmacy Services shall be responsible for the procurement, distribution and control of all drugs and parenteral solutions used within the institution. Policies and procedures governing these functions shall be developed by the pharmacist with input from other involved hospital staff (e.g., nurses) and committees (e.g., pharmacy and therapeutics committee and patient care committee).

(2) Dispensing. The pharmacist shall dispense medications only on the order of a licensed practitioner.

(3) Prescriber's order. The pharmacist shall review the medication order within in a reasonable amount of time [twenty-four (24) hours of administration].

(4) Recordkeeping. The pharmacist shall maintain appropriate records of each medication order. The records shall be retained for the time and in the manner prescribed by state and federal law.

(5) Patient medication profile. A medication profile shall be maintained for all inpatients and for those ambulatory patients routinely receiving care at the institution. The pharmacist shall utilize this profile to properly review, schedule, prepare, and distribute medications except in emergency situations.

(6) Labeling and packaging.

(a) All licensees shall comply with U.S.P. Standards and all state and federal laws and regulations regarding labeling and packaging. [The department shall establish policies and procedures regarding specific labeling and packaging requirements for medications. Drug products shall bear adequate identification including, but not limited to, the name or names of the drug, the strength or potency, route(s) of administration where appropriate, expiration date (and time, if appropriate), control or lot number, and other special instructions as may be indicated. Hospitals in which bulk reconstitution of injectables is performed shall maintain control records containing at least this information for a period of one (1) year.]

(b) Labeling and packaging of medications used for outpatients shall meet the requirements of state and federal law.

(7) Dispensing. The pharmacist shall dispense medications by the [in a form as ready to administer as the current status of pharmaceutical technology permits. This includes, but is not limited to, the reconstitution of injectables, solutions, and the use of] unit dose distribution system where feasible. Where the unit dose distribution system is not utilized, adequate safeguards shall be in place to protect patients.

(8) Stop orders. There shall be established written stop order policies or other methods of assuring that drug orders are not continued inappropriately in accordance with the status of the patient.

(9) Administration. Drugs shall be administered only upon order of a licensed practitioner. The department shall participate in the establishment of policies and procedures regarding the administration of medications. Specific procedures shall be developed in cooperation with appropriate hospital personnel regarding, but not limited to, personnel authorized to schedule, prepare and administer medications. [All administered, refused or omitted doses of medication shall be recorded on the patient's medical record according to established procedures.]

(10) Unused medication. The department shall establish policies and procedures for the disposition of patients' unused medications. Medication in unit dose form may be reissued if package integrity has been maintained and the

product is still in date.

(11) Stocks. Floor stocks of drugs shall be kept as small as possible. The pharmacist in charge shall be responsible for authenticating the need for floor stock. A pharmacist shall review all orders distributed through floor stock within a reasonable amount of time. The pharmacist in charge shall be responsible for defining those areas of the hospital requiring floor stock (e.g., emergency room, surgery, critical care, medical/surgical wards) [and limited to drugs for emergency use and routinely used "safe" items such as mouthwash and antiseptic solutions]. All drug storage areas within the hospital shall be routinely inspected by pharmacy personnel at least monthly and documentation maintained to insure that no unusable items are present and that all stock items are properly labeled and stored.

(12) Drug recall. There shall be a system for removing from use any drugs subjected to a recall.

(13) Sample medications. The department shall establish policies and procedures regarding medical representatives and the obtaining, storage, and dispensing of complimentary packages of medications.

(14) Emergency drugs. The department shall establish policies and procedures for supplying emergency drugs. For expediency and efficiency, emergency drugs shall be limited in number to include only those whose prompt use and immediate availability are generally regarded by physicians as essential in the proper treatment of sudden and unforeseen patient emergencies. Emergency stocks shall be routinely inspected by pharmacy personnel on a monthly basis and documentation maintained to determine if contents have become outdated and if the stocks are being maintained at adequate levels.

(15) Investigational drugs. Policies and procedures controlling the use of investigational drugs (if used in the institution) shall be developed and followed. The pharmacy shall be responsible for storing, packaging, labeling, distributing, maintaining inventory records (including lot numbers and expiration date) and providing information about investigational drugs (including proper disposal).

(16) Controlled substances. All permit holders shall comply with state and federal laws regarding controlled substances.

[(a) The director of pharmacy shall establish effective procedures and maintain adequate records regarding the use and accountability of controlled substances, in compliance with state and federal laws and regulations.]

[(b) Complete, accurate, and current records shall be kept of receipt of all controlled substances and, in addition, a Schedule II perpetual inventory shall be maintained.]

[(c) The pharmacy shall maintain records of all controlled substances issued from the pharmacy to other hospital units, which include:]

[1. Date;]

[2. Name of drug;]

[3. Amount of drug issued;]

[4. Name or initials of the pharmacist who issued the drug; and]

[5. Name of the patient and unit to which the drug was issued.]

[(d) Records shall be maintained by any unit of the hospital which utilizes scheduled drugs, indicating:]

[1. Date of administration;]

[2. Time of administration;]

[3. Name of the drug (if not already indicated on the records);]

[4. Dosage of drug which was used including both the amount administered and any amount destroyed;]

[5. Name of the patient to whom the drug was administered;]

[6. Name of the practitioner who authorized the drug; and]

[7. Signature of the licensed individual who administered the drug.]

[(e) Use of multiple dose vials of controlled substances shall be discouraged.]

[(f) Controlled substances, Schedules II and III, which are floor stocked in any hospital patient or nursing service area shall be kept under double lock and be checked by actual count at the change of each shift by two (2) authorized persons licensed to administer drugs.]

[(g) When it is necessary to destroy small amounts of controlled substances following the administration of a dose by a nurse, the destruction shall be witnessed by a second nurse who shall countersign the records of destruction.]

Section 5. Assuring Rational Drug Therapy. (1) Appropriate clinical information about patients shall be available and accessible [acceptable] to the pharmacist for use in his daily practice activities.

(2) The pharmacist shall be a member of the pharmacy and therapeutics committee and any other committees where input concerning the use of drugs is required.

(3) The pharmacist shall provide a means to insure that patients receive adequate information about the drugs they receive. This is particularly important for ambulant and discharge patients. Patient education activities shall be in coordination with the nursing and medical staffs and patient education department, if any.

Section 6. Penalty. Violation of any provision of this regulation constitutes unethical or unprofessional conduct in accordance with KRS 315.121.

RALPH G. DEITEMEYER, President
APPROVED BY AGENCY: March 7, 1990
FILED WITH LRC: March 8, 1990 at noon

GENERAL GOVERNMENT CABINET
Board of Examiners & Registration of Architects
(As Amended)

201 KAR 19:025. Application for examination.

RELATES TO: KRS 323.050, 323.215
STATUTORY AUTHORITY: KRS 323.210
NECESSITY AND FUNCTION: To define [clarify] the procedure for making application for admission to the examinations.

Section 1. Application for Examination and Registration. All applications must be made upon the printed forms issued by the board and in strict accordance with the instructions to applicants submitted therewith. The forms and instructions, incorporated herewith by reference, are available at the board office;

3302 Brookhill Circle, Lexington, Kentucky 40502. Office hours 9 a.m. to 5 p.m. [Otherwise they will not be accepted or considered.]

Section 2. When to Submit Applications. Applications for examination will be received at all times but shall [must] be received at the board's office at least ninety (90) days before the date of the scheduled examinations which the applicant wishes to take. [This allows time for completion of the applicant's record prior to the board's preexamination meeting which is held several weeks before the examination. At that meeting the board will determine whether the applicant is eligible for admission to the examination.]

Section 3. Time and Place for Examinations. The actual dates and locations for the administration of the examination **shall** [will] be determined by the board. Applicants **shall** [will] be notified [well] in advance to allow for preparation.

[Section 4. The provisions of this regulation shall be effective January 1, 1983.]

CURTIS E. FLANNERY, President
APPROVED BY AGENCY: October 11, 1990
FILED WITH LRC: October 15, 1990 at 10 a.m.

GENERAL GOVERNMENT CABINET
Board of Examiners & Registration of Architects
(As Amended)

201 KAR 19:030. Examination; general provisions.

RELATES TO: KRS 323.050, 323.210
STATUTORY AUTHORITY: KRS 323.210
NECESSITY AND FUNCTION: [This regulation] To define[s] the general provisions in taking the examinations.

Section 1. Reporting for Written Examination. All applicants [candidates] taking the [full] examination or any part shall present themselves promptly [on the morning of the first day of the examination] at the time and place designated by the board. Any applicant [candidate] who does not appear at the time and place prescribed **shall** [will] not be permitted to enter the examination[; except that those candidates taking only certain parts of the examination shall present themselves in accordance with the instructions of the board].

Section 2. Materials Required for Written Examinations. Applicants [Candidates] **shall** [will] be notified as to reference material permitted and equipment necessary for the examination.

Section 3. Fairness in Grading. [In order to preserve the anonymity of the candidate until the examining committee has rated the papers and exhibits,] Each applicant [candidate] shall be assigned an identification number. The applicant [directed to draw a number which he will place in an envelope and seal. He] shall use this number to mark all papers and exhibits.

Section 4. Language Provisions. All examinations shall be administered [held] in the English language, without the use of an interpreter and under such auspices and environment as will insure their proper conduct under dignified surroundings.

[Section 5. The provisions of this regulation shall be effective January 1, 1983.]

CURTIS E. FLANNERY, President
APPROVED BY AGENCY: October 11, 1990
FILED WITH LRC: October 15, 1990 at 10 a.m.

GENERAL GOVERNMENT CABINET
Board of Examiners & Registration of Architects
(As Amended)

201 KAR 19:035. Qualifications for examination.

RELATES TO: KRS 323.050, 323.060
STATUTORY AUTHORITY: KRS 323.210
NECESSITY AND FUNCTION: To further define eligibility of applicants for admission to the examinations.

Section 1. Eligibility to Take the State Board Examination. [(1)] Any person who possesses the qualifications prescribed in KRS 323.050, and as further defined in other sections of these regulations, shall be eligible to take the examinations.

[(2) It should be understood, however, that the education and experience required are more than mere vehicles to admission. These requirements and the examination are two (2) distinct exercises on the road to registration. Each supplements and sustains the other, but neither can replace the other as a vital part of professional training.]

Section 2. General Requirements for Examination. Applicants for examination must meet the following requirements:

(1) Hold a first professional degree in architecture from a degree program that has been accredited by the National Architectural Accrediting Board not later than two (2) years after termination of enrollment; or have satisfied the education requirements as specified in the National Council of Architectural Registration Boards (NCARB) "Circular of Information No. 3" 1990 [current] edition, with such additional experience as the board may prescribe and approve. A copy of "circular of Information No. 3" may be obtained from the board office: 3302 Brookhill Circle, Lexington, Kentucky 40502. Office hours 9 a.m. to 5 p.m. An applicant meeting all other requirements but does not hold a professional degree in architecture may be admitted to the examination if the applicant holds a high school diploma or equivalent and has accumulated, as of June 1, 1992, at least five (5) education credits as determined from the "Table of Equivalence [for Education, Training and Experience]" in Section 3 of this regulation.

(2) Be a legal resident of the Commonwealth of Kentucky unless specifically exempted by the board therefrom for a justifiable reason.

[(3) Be at least twenty-five (25) years of age.]

(3) [(4)] Be of good moral character, as verified by employers and registered architects. One (1) or more of the following may be

sufficient to prevent an applicant from being considered to be of "good moral character:"

(a) Conviction of a felony.

(b) Chronic alcoholism, persistent drug abuse, or any such acts of behavior which would, if applicant [he] were licensed, jeopardize or impair his [or her] judgment to meet [his] professional responsibility as an architect to the public welfare and safety.

(c) Submitting a misstatement or misrepresentation of facts in an application or in supplementary information.

(d) Violating any provision of KRS Chapter 323 or board rules and regulations either before or after admission to examination.

(e) Violating the registration law of any other state, territory, or country.

(4) [(5)] The board will review and evaluate the applicant's [candidate's] record of education, employment, experience, personal character, professional affiliations, and civic activities.

(5) [(6)] The applicant may, at the board's discretion, be asked to appear for a personal audience so that the board may have the opportunity to judge his [or her] general qualifications for admission to the examinations. [the practice of architecture, his ethical precepts, his resourcefulness, initiative and purpose in seeking a career in architecture and his general talents therefor.]

(6) [(7)] The applicant [candidate] must demonstrate to the board that his [or her] qualifications and preparation for examination are adequate.

Section 3. Experience Required and Equivalencies Allowed. (1) An applicant who has met the requirements of Section 2 of this regulation [holds an accredited first professional degree or who has earned the equivalent five (5) education credits as of June 1, 1992] shall, in addition thereto, have at least three (3) years of training credits [architectural experience] satisfactory to the board, or have satisfied the Intern Development Program (IDP) training requirements in accordance with the National Council of Architectural Registration Boards (NCARB) "Circular of Information No. 1", 1990-1991 [current] edition, as verified by NCARB evaluation. A copy of "Circular of Information No. 1" may be obtained at the board office: 3302 Brookhill Circle, Lexington, Kentucky 40502. Office hours 9 a.m. to 5 p.m. Beginning June 1, 1986, applicants who have completed required education and who have less than six (6) months acceptable training shall be required to enroll in and satisfy the Intern Development Program Training requirements as verified by NCARB evaluation.

(2) To be eligible for examination an applicant must present authentic evidence, by means of college transcripts and verification [letters] from employers, architects and other that he [or she] has met all the requirements noted in other sections and [that he] has had well diversified and satisfactory training in the many areas of architectural practice.

(3) [In order to give the applicant a better understanding of the time and nature of the required experience, including related types of work which may be applied thereto, the board has adopted] The following "Table of Equivalents" sets forth the ways in which education and training credits can be acquired [for Education, Training and Experience" as a guide]:

TABLE OF EQUIVALENTS [FOR EDUCATION, TRAINING AND EXPERIENCE]

Experience Description	Education Credits			Training Credits	
	First 2 Years	Succeeding Years	Max. Credit Allowed	Credit Allowed	Max. Credit Allowed
3.1 [A-1] First professional degree in architecture, or credits toward the first professional degree, where the degree program has been accredited by the National Architectural Accrediting Board ("NAAB") not later than two (2) years after termination of enrollment	75%	100%	5 years		
3.2 [A-2] First professional degree in architecture, or credits toward that degree, where the degree program has not been accredited by NAAB	75%	75%	4 years		
3.3 [A-3] Bachelor degree, or credits toward that degree, in architectural engineering, architectural technology, or in civil, mechanical, or electrical engineering, in a degree program accredited by the Engineers' Council for Professional Development or the Accreditation Board for Engineering and Technology, or in interior architecture, accredited by the Foundation for Interior Design Education Research	50%	75%	3 years		
3.4 [A-4] Any other bachelor degree			2 years		
3.5 [A-5] Experience in architecture [, directly related to architectural work], as an employee in the offices of registered architects	50%	50%	5 years	100%	no limit
[A-6 Experience practicing as a principal, with a verified record of substantial practice, directly related to architectural work]	50%	50%	5 years	100%	no limit
3.6 [A-7] Experience in architecture as an employee of an organization (other than offices of registered architects) when the experience is [directly related to architectural work and is] under the direct supervision of a registered architect	50%	50%	4 years	100%	2 years

3.7 [A-8] Experience directly related to architecture [as an employee of an organization (other than offices of registered architects) when the experience is directly related to architectural work, and is] under the direct supervision of a professional engineer, landscape architect, interior designer, or planner	0	0	50%	1	year
3.8 [A-9] Experience, other than 3.5, 3.6 or 3.7 [A-5, A-6, A-7 or A-8] experience, directly related to on-site building construction operations or experience involving physical analyses of existing buildings	0	0	50%	6	months
3.9 A post professional [A-10 A Master or Doctoral degree] in architecture [(except where the degree is the first professional degree)]	0		100%	1	year
3.10 [A-11] Teaching or research in an NAAB accredited architectural program	0		100%	1	year
[A-12 Other Education or Training Experience]	0		100%	1	year

(4) For purposes of interpreting the "Table of Equivalents [for Education, Training and Experience]," Education Credits shall be subject to the following conditions:

(a) Applicants with the degree specified in 3.1 [A-1] through 3.4 [A-4] will be allowed the credit shown in the Maximum Credit Allowed column, regardless of the length of the degree program. Applicants without the degree specified in 3.1 [A-1] or 3.2 [A-2] may not accumulate more than three (3) years of education credits in the aggregate from all degree programs.

(b) Thirty-two (32) semester credit hours or forty-eight (48) quarter credit hours are considered to be one (1) year. Fractions of a year of one-half (1/2) or greater will be considered one-half (1/2) year, and smaller fractions will not be counted.

(c) Foreign education credits will be granted only under classifications 3.2 [A-2] and 3.4 [A-4]. Foreign educated applicants are required to meet requirements of NCARB Circular of Information No. 3. [Any cost of translation and evaluation will be borne by the applicant.]

(5) For purposes of interpreting the "Table of Equivalents [for Education, Training and Experience]," Training Credits shall be subject to the following conditions:

(a) For applicants who have completed education under 3.1, no training credits may be earned prior to completion of three (3) years under that classification [accumulating two and one-half (2 1/2) education credits].

(b) Every applicant must earn at least one (1) year of training credit under 3.5 [A-5 or A-6] and must earn it after earning five (5) years of education credits.

(c) To earn credit under 3.9 or 3.10 [A-10 or A-11], an applicant's credit hours must be in subjects evaluated by NCARB as directly related to architecture. Twenty (20) semester credit hours or thirty (30) quarter credit hours of teaching or equivalent time in research will equal one (1) year.

(d) No credit used as an education credit may be used as a training credit.

(6) For purposes of interpreting the "Table of Equivalents" the following general evaluation criteria shall apply:

(a) [(e)] Organizations will be considered to be "offices of registered architects" if:

1. The architectural practice of the organization in which the applicant works is in the charge of a person practicing as a principal and the applicant works under the direct supervision of a registered architect; and

2. The organization is not engaged in construction; and

3. The organization has no affiliate engaged in construction which has a substantial economic impact upon the person or persons in the organization practicing as a principal; and

4. The architectural practice of the organization encompasses the comprehensive process of the practice of architecture including each of the categories composing such practices set forth in the NCARB requirements for the Intern Development Program (IDP).

(b) [(f)] An organization (or an affiliate) is engaging in construction if it customarily engages in either of the following activities:

1. Undertakes to provide labor and/or material for all or any significant portion of a construction project, whether on lump sum, cost plus or other basis of compensation; or

2. Agrees to guarantee to an owner the maximum construction cost for all or any significant portion of a construction project.

(c) [(g)] A person practices as a "principal" by being:

1. A registered architect; and

2. The person in charge of the organization's

architectural practice, either alone or with other registered architects.

[(6) For purposes of interpreting the "Table of Equivalents for Education, Training and Experience," the following general evaluation criteria shall be used:]

(d) [(a)] To earn full education or training credits under 3.5, 3.6, 3.7, and 3.8 [A-5, A-6, A-7, A-8 and A-9] an applicant must work at least thirty-five (35) hours per week for a minimum period of ten (10) consecutive weeks under 3.5 [A-5] or six (6) consecutive months under 3.6, 3.7, or 3.8 [A-6, A-7, A-8 or A-9]. An applicant may earn one-half (1/2) the credit specified under 3.5 [A-5] for work of at least twenty (20) hours per week in periods of six (6) or more consecutive months; no credit will be given for part-time work in any category other than 3.5 [A-5].

(e) [(b)] Other education and training may be substituted for the requirements outlined above, only insofar as the board considers them to be equivalent to the required qualifications.

(f) [(c)] In evaluating credits, the board requires substantiation of the quality and character of the applicant's experience, notwithstanding the fact that the applicant has complied with the technical education and training requirements set forth above.

(7) Training and experience acquired up to one (1) month prior to the month of the examinations if supported by supplementary documentation may be counted as credit.

Section 4. Incorporate herewith by reference: National Council of Architectural Registration Boards (NCARB) Circular of Information No. 1, 1990-1991 Edition and Circular of Information No. 3, 1990 Edition.

CURTIS E. FLANNERY, President
APPROVED BY AGENCY: October 11, 1990
FILED WITH LRC: October 15, 1990 at 10 a.m.

GENERAL GOVERNMENT CABINET
Board of Examiners & Registration of Architects
(As Amended)

201 KAR 19:050. Reexamination; reconsideration.

RELATES TO: KRS 323.090, 323.210
STATUTORY AUTHORITY: KRS 323.210
NECESSITY AND FUNCTION: [This regulation is necessary] To define the period of eligibility for reexamination and reconsideration of applicants denied admission to examination.

Section 1. Three Year Period of Eligibility Defined. (1) If an applicant [candidate] fails to pass all parts of the first examination to which he [or she] is admitted, then the three (3) year period during which he [or she] may retake the examinations failed, by payment for the examination questions at the time prescribed by the board, shall be from the last day of the month in which his [or her] first examination was given.

(2) If an applicant fails to attend the first examination to which he [or she] is admitted, then the three (3) year period during which he [or she] may take the entire examination or parts thereof, by payment for examination questions at the time prescribed by the board, shall be from the last day of the month in which the examination he [or she] failed to attend was given.

(3) Provided, however, that the board may, in its discretion, grant extensions of time if examinations are cancelled or changed during that period or if illness or other reasonable circumstances prevent the applicant [candidate] from attending any regular examination.

(4) At the end of the three (3) year period of eligibility, the applicant [candidate] **shall** [must] submit a new application, containing pertinent supplemental information, in order to continue taking the examinations, but an applicant [a candidate] may retain credit for those sections or subsections of the examination he [or she] has previously passed.

Section 2. Reconsideration of Applicants Who Were Denied Admission to Examination. (1) An applicant whose original application for admission to the examination was denied may request reconsideration by letter to the board with evidence that he [or she] has made up the deficiencies which caused the denial. No formal application or application fees will be required for such a request if made within a period of three (3) years from the date denied.

(2) After three (3) years a new application must be submitted containing relative information on training and experience subsequent to the original application.

[Section 3. The provisions of this regulation shall be effective January 1, 1983.]

CURTIS E. FLANNERY, President
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GENERAL GOVERNMENT CABINET
Board of Examiners & Registration of Architects
(As Amended)

201 KAR 19:085. Fees.

RELATES TO: KRS 323.080, 323.110
STATUTORY AUTHORITY: KRS 323.210
NECESSITY AND FUNCTION: To define the basis of fees and fee payments.

Section 1. Annual Renewal Fee. (1) The annual renewal fee shall be due and paid before the first day of July each year. Anyone failing to pay the annual fee on or before the 30th day of August, who has not voluntarily surrendered his [or her] registration by that date, shall be guilty of violation of the law and his [or her] license is automatically revoked.

(2) Licenses granted on July 1 and thereafter through December 31 shall be first renewed before the first day of July following. Licenses granted January 1 and thereafter through June 30 following shall be first renewed before the first day of July in the year following. This rule shall also apply to licenses restored or reinstated.

(3) During a period of active military duty an architect in the service may, upon written application to the board, be excused from paying the annual fee until such time as his [or her] military service is terminated and he [or she] wishes to resume practice. An identification card or renewal certificate

shall [will] be issued upon notification of his [or her] return from duty and payment of the current annual renewal fee.

(4) An architect whose license has been revoked for failure to pay the annual renewal fee, who wishes to have his [or her] license reinstated, shall make a written request therefor, giving the reason why **he** [they] [he] neither surrendered **his** [their] [his] registration nor paid the fee within the time prescribed by law and thereafter bide by the Board's decisions and follow its instructions in applying for reinstatement.

Section 2. Examination Applications. (1) An application for admission to the Architect Registration Examination (ARE) **shall** [must] be accompanied by the payment of fees set forth by these regulations. [a total fee of fifty (50) dollars. Upon successful completion of the examination, the applicant shall pay a fee of twenty-five (25) dollars to obtain the license certificate.]

(2)(a) Applicants who either fail to pass the entire examination, or who were not admitted to the examination, within the prescribed three (3) year eligibility period **shall** [must] submit another application, updated to the time of submission with supplemental information. These applicants **shall** [will] be required to pay an additional application fee same as for new applicants. [fifty (50) dollars examination fee.]

(b) Applicants receiving credit from the previous full examination sequence **shall** [will] not be required to pay additional examination fees during their three (3) year period of eligibility.

[(3) Applicants who have applied for the previous partial examination (Qualifying Test and/or Design Test with payment of twenty (20) dollars fee) may convert to the ARE by payment of the additional fee of thirty (30) dollars as balance of fee for administration of the examination.]

Section 3. Fee Schedule. (1) Application for admission to, and administration of the Architect Registration Examination - $100 [50]

(2) Reapplication for admission to and administration of the Architect Registration Examination after original application has expired - $100 [50]

[(3) Application for admission to, and administration of the Architect Registration Examination by converting from previous partial examinations (Qualifying Test and/or Design Test) - $30]

(3) [(4) Application] For a license certificate after passing of examination - $25

(4) Application for restoration of a voluntarily surrendered license - $50

(5) Application for a license by reciprocity with another state or country - $75

[(6) Application for restoration of a voluntarily surrendered license - $50]

(6) [(7)] Application for reinstatement of license revoked for failure to pay renewal fee, or suspended by the board; renewal fees from date of revocation plus application as directed plus - $50

(7) [(8)] Annual renewal fee: determined each year by board. Not to exceed - $45 [35]

(8) [(9)] No fee shall be refunded in whole or in part. All payments **shall** [must] be by check made payable to "Kentucky State Treasurer [of Kentucky]." All **shall** [must] be certified except those for the annual renewal fee, and examination questions.

Section 4. Charges for Examination Questions. Applicants [Candidates] **shall** [will] be charged, at actual cost to the board, for the use of each set of examination questions required. Payment **shall** [must] be made when the board is notified by the applicant [candidate] that he intends to appear. Such charges **shall** [will] be made each time the examinations are taken and **shall** [will] not be refunded.

[Section 5. The provisions of this regulation shall be effective January 1, 1983.]

CURTIS E. FLANNERY, President
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EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Education for Exceptional Children
(As Amended)

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

RELATES TO: KRS 156.031, 157.200, 157.224, 157.230, 157.270, 157.280, 157.285 [to 157.290,] 157.360, **20 USC 1400 through 1427, 34 CFR 99.1 through 99.67, 300.10**

STATUTORY AUTHORITY: KRS [156.070,] 157.220[, 157.221, 157.250, 157.360]

NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990; KRS 157.200 defines terms relative to special education programs; KRS 157.224 commits the Commonwealth to comprehensive [to 157.290 set forth the state statutory framework for] special education programs for exceptional children; KRS 157.230 requires local school districts to operate special education programs for resident children; KRS 157.270 authorizes home and hospital instruction; KRS 157.280 relates to programs in other districts and private agencies and in state schools; KRS 157.285 authorizes provision of related services; 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 the Education for All Handicapped Children Act (EAHCA) 20 U.S.C. 1400 **through 1427** [et seq] [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. Funding for these programs shall be provided in accordance with KRS 157.360 and Support Educational Excellence in Kentucky Program.

[(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 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 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) 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, 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.]

[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.]

[(c) 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) 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 the assigned teachers shall request approval for the teacher assignment from the Kentucky Department of Education, Office of Education for Exceptional Children.]

[1. The Kentucky Department of Education shall give consideration for such approval based on information provided by the local school district as follows:]

[a. Request shall be made prior to September 15 or within ten (10) school days of the need for assignment if it occurs after September 15 and shall include the teacher's name, school assignment, social security number and class plan assignment;]

[b. Teacher's current certification(s) and a listing of pupils by category of exceptionality to be served demonstrating that the teacher meets qualifications for assignment to teach the majority of the exceptional pupils enrolled and that only one (1) additional category of exceptional pupils shall be included in the classroom;]

[2. The assignment shall not exceed the length of the school year during which it was initiated.]

(1) [(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 shall [will] be provided through the funding mechanism set forth in KRS 157.360(11)(a) [the Kentucky Education Reform Act] [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.

(2) [(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.

(3) [(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.

(4) [(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 702 KAR 1:005 [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 <u>or</u> [/]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 <u>or</u> [/]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 and [,] 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, reviewing 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 or [/]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, reviewing 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 and [/]parent interviews, work samples, social and [/]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 and [/]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 and [/]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 and [/]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 shall [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); or

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 or [/]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 shall be [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," 704 KAR 3:304. 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[,] (e.g., grandparent or [,] 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 or [/]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 shall [can and will] serve as surrogate parents. Persons selected as surrogate parents shall:

a. Have no other vested interest that would conflict with their primary allegiance to the child they would represent;

b. Be committed to personally and thoroughly acquainting themselves with the child and the child's educational needs;

c. Be familiar with the educational system within the state;

d. Be readily accessible to the children they represent;

e. Be an adult - eighteen (18) or over; and

f. Be a U.S. citizen.

2. Assignment of a surrogate to a particular child shall be made by the local school district according to the following procedures:

a. Any person including local school district personnel, may file a request for a surrogate to represent a child with the child's local school district.

b. The local school district shall acquire the proper documentation to substantiate the need for a surrogate parent. Justification and documentation for surrogate parent assignment shall be:

JUSTIFICATION FOR SURROGATE	DOCUMENTATION NEEDED
No parent (as defined by federal regulation 34 CFR 300.10) can be identified. 34 CFR 300.10 the term "parent" means a parent, a guardian, a person acting as a surrogate parent of a child, or a surrogate parent. This term does not include the state if the child is a ward of the state. Comment: The term "parent's" defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.	A copy of the request for a surrogate parent and a copy of the returned envelope sent by certified mail to the parent(s) or guardian(s) at their last known address, documentation from the Cabinet for Human Resources that no parent exists or a copy of death certificate(s).
Whereabouts of the parent cannot be determined.	A copy of the request for a surrogate parent and a copy of the returned envelope sent by certified mail to parent(s) or guardian(s), at their last known address.
Child is a ward of the state and parental rights have been terminated.	A copy of the court order terminating the rights of the parent(s) or an affidavit from the local Cabinet for Human Resources, Social Services Field Office Supervisor, stating the child's name, birthdate, county of termination and signature and title of the person giving it.

c. The local school district shall assign a surrogate within fifteen (15) school days of the receipt of request for surrogate parent.

d. The assigned surrogate shall represent the child in all matters relating to identification, evaluation and placement, and the provision of a free appropriate public education.

e. Surrogates shall not be assigned to children who have reached the age of majority unless they have been declared by a court of competent jurisdiction as being unable to make informed decisions and otherwise meet the requirements for eligibility for the assignment of a surrogate to represent them in educational matters.

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 regulations, 34 CFR 99.1 through 99.67, [Act] and confidentiality requirements of EAHCA, 20 USC 1400 through 1427 [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 shall [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 shall [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 or [/]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 shall [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 shall [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 regulations, 34 CFR 99.1 through 99.67, [Act] Act and the EAHCA, 20 USC 1400 through 1427 [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 shall [must] be maintained for public inspection.
(15) Public agencies shall [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 shall [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: September 12, 1990
FILED WITH LRC: September 13, 1990 at 4 p.m.

WORKFORCE DEVELOPMENT CABINET
Department for Adult and Technical Education
(As Amended)

780 KAR 2:045. Fees for livework projects.

RELATES TO: KRS 151B.110, 151B.165
STATUTORY AUTHORITY: KRS 151B.165
NECESSITY AND FUNCTION: KRS 151B.110 provides the State Board for Adult and Technical Education with the authority to manage and control the state operated schools and all programs and services within. KRS 151B.165 authorizes the State Board for Adult and Technical Education to fix incidental fees as it deems necessary. This regulation sets forth the fees and related costs for livework projects completed by students in state operated programs.

Section 1. "Livework" is an outside job order which serves as a project to complete a curriculum requirement.

Section 2. [1.] Effective January 15, 1991, a fifteen (15) dollar shop fee shall be charged for each livework project requiring more than one (1) hour labor and accepted by the school in compliance with 780 KAR 2:040.

Section 3. [2.] Persons or organizations for whom livework is accepted shall purchase the necessary materials for the job to be completed. In the event the materials are not provided, the school may purchase the materials and recover the costs of the materials plus twenty (20) percent for handling.

Section 4. [3.] Students shall be exempt from the shop fee by written policy but shall not be exempt from the purchase of materials or reimbursement for such. Further, projects of family members or other individuals shall not be accepted in the names of students in lieu of conditions described in Section 1 of this regulation.

[Section 4. In lieu of Sections 1 through 3 of this regulation, cosmetology charges shall be based per the State Board of Cosmetology requirements. These fees shall be posted in clear view of patrons.]

GEORGE R. SIEMENS, JR., Chairman
APPROVED BY AGENCY: September 28, 1990
FILED WITH LRC: October 8, 1990 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(As Amended)

804 KAR 4:015. Interlocking interest between licensees prohibited.

RELATES TO: KRS 243.030, 243.040
STATUTORY AUTHORITY: KRS 241.060
NECESSITY AND FUNCTION: The control of alcoholic beverages in the Commonwealth of Kentucky, as codified in Chapters 241 - 244 of the Kentucky Revised Statutes, has been established by the Kentucky legislature as a "three tiered" system. The three tiers of this system are designated as producer, wholesale/distributor [wholesalers], and retail[ers]. Each of these three (3) levels operate separately and apart from each other for the purpose of control. In order for this control to be effectively administered by this board, it is necessary to prevent any type of interlocking interest by and between the three (3) separate levels. The purpose of this regulation is to clarify the interlocking interests which will be prohibited by this board.

Section 1. [Definitions.] As used in this regulation unless otherwise specified:
(1) "Manufacturers" include distillers, rectifiers, blenders, vintners, and brewers.
(2) "Wholesalers" include wholesalers of distilled spirits and wine and distributors of malt beverages.

[Section 2. All interlocking interests between manufacturers, wholesalers, and retailers are hereby prohibited.]

Section 2. [3.] No manufacturer of distilled spirits or wine shall have any financial

interest, directly or indirectly, by stock ownership, or through interlocking directors in a corporation, or otherwise, in the establishment, maintenance, or operation in the business of any liquor and wine wholesaler.

Section 3. [4.] No manufacturer or wholesaler shall have any financial interest, directly or indirectly, by stock ownership, or through interlocking directors in a corporation, or otherwise, in the establishment, maintenance, or operation in the business of any retailer. No [; nor shall any] manufacturer or wholesaler shall [or any stockholder thereof] acquire, by ownership, leasehold, mortgage, or otherwise, directly or indirectly, any interest in the premises of a retailer.

Section 4. [5.] The malt beverage administrator or distilled spirits administrator may examine [into] the ownership and management of applicants or existing licensees to determine the presence of any interlocking interest herein prohibited.

Section 5. [6.] This regulation shall not apply to any licenses issued prior to December 1, 1976 [the effective date of this regulation.]

LANNY COMBS, Commissioner
APPROVED BY AGENCY: October 10, 1990
FILED WITH LRC: October 10, 1990 at 9 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(As Amended)

804 KAR 4:250. Special temporary licenses.

RELATES TO: KRS 243.260, 243.290
STATUTORY AUTHORITY: KRS 241.060
NECESSITY AND FUNCTION: KRS 243.260 provides for the issuance of a distilled spirits and wine special temporary license or a special temporary wine license to any regularly organized fair, exposition, racing association or other party, "when in the opinion of the board a necessity therefor exists." KRS 243.290 provides for the issuance of a malt beverage special temporary license for any regularly organized fair, race or race meeting conducted by the association, or for special temporary occasions such as picnics, bazaars and carnivals subject to regulations. This regulation is adopted to insure consistency in the issuance of these special temporary licenses and insure the legal use thereof.

Section 1. All applications for special temporary licenses pursuant to KRS 243.260 or 243.290 shall be on forms provided by the [Department of] Alcoholic Beverage Control Board and shall be filed with the board [department] no later than five (5) working days prior to the date for which license is requested. **The form is hereby incorporated by reference and may be reviewed or obtained from the Department of Alcoholic Beverage Control, 123 Walnut Street, Frankfort, Kentucky, Monday through Friday from 8 a.m. to 4:30 p.m.**

Section 2. An applicant for a special temporary license pursuant to KRS 243.260 and 243.290 shall provide by a sworn affidavit such supplemental information as the Alcoholic Beverage Control Board shall deem necessary for proper review of the application.

Section 3. For purposes of the issuance of special temporary licenses pursuant to KRS 243.260 and 243.290, necessity in the opinion of the board shall limit applicants to: any regularly organized fair, exposition, racing association or nonprofit organization, political campaign function or any for-profit individual, corporation, or organization when used in conjunction with an organized charitable, civic, or community sponsored event.

LANNY COMBS, Commissioner
APPROVED BY AGENCY: October 10, 1990
FILED WITH LRC: October 10, 1990 at 9 a.m.

CABINET FOR HUMAN RESOURCES
Office of the Inspector General
(As Amended)

902 KAR 20:026. Operations and services; skilled nursing facilities.

RELATES TO: KRS 216B.010 to 216B.131, 216B.990
STATUTORY AUTHORITY: KRS 216B.042, 216B.105
NECESSITY AND FUNCTION: KRS 216B.042 and 216B.105 mandate that the Cabinet for Human Resources regulate health facilities and health services. This regulation establishes licensure requirements for the operation of skilled nursing facilities.

Section 1. Definitions. (1) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.

(2) "Board" means the Commission for Health Economics Control in Kentucky.

(3) "Facility" means a skilled nursing facility.

(4) "License" means an authorization issued by the **cabinet** [Board] for the purpose of operating a skilled nursing facility and offering skilled nursing services.

(5) "Occupational therapist" means a person who is registered by the American Occupational Therapy Association or a graduate of a program in occupational therapy approved by the Council on Medical Education of the American Medical Association in collaboration with the American Occupational Therapy Association and who is engaged in or has completed the required supervised clinical experience period prerequisite to registration by the American Occupational Therapy Association.

(6) "Speech pathologist" means a person who:

(a) Meets the education and experience requirements for a Certificate of Clinical Competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association; or

(b) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.

(7) "Qualified dietician" or "nutritionist" means:

(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic

Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) A person who has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.

(8) "Qualified medical record practitioner" means a person who has graduated from a program for medical record administrators or technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as a Registered Records Administrator or an Accredited Record Technician by the American Medical Record Association.

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

(10) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(11) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

Section 2. Scope of Operations and Services. Skilled nursing facilities are establishments with permanent facilities including inpatient beds. Services provided include medical services, and continuous nursing services to provide treatment for patients. Patients in a skilled nursing facility are patients who require inpatient care but are not in an acute phase of illness, and who currently require primarily convalescent or rehabilitative services and have a variety of medical conditions.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.

(2) Administrator. All facilities shall have an administrator who is responsible for the operation of the facility and who shall delegate such responsibility in his absence.

(3) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Personnel policies, practices and procedures that support sound patient care.

(b) Notification of changes in patient status and service cost. There shall be written policies and procedures relating to notification of responsible person(s) in the event of significant changes in patient status, patient charges, billings, and other related administrative matters.

(c) Patient care policies. The facility shall have written policies to govern the skilled nursing care and related medical and other services provided, which shall be developed with the advice of professional personnel, including one (1) or more physicians and one (1) or more registered nurses and other health personnel (e.g., social workers, dieticians, pharmacists, speech pathologists and audiologists, physical and occupational therapists and mental health personnel). Pharmacy policies and procedures shall be developed with the advice of a subgroup of physicians and pharmacists who serve as a pharmacy and therapeutics committee. A physician or a registered nurse shall be responsible for assuring compliance with and annual review of these policies. In addition to written policies for services, the facility shall have written policies to include:

1. Admission, transfer, and discharge policies including categories of patients accepted and not accepted by the facility.
2. Medication stop orders;
3. Medical records;
4. Transfer agreement;
5. Utilization review; and
6. Use of restraints.

(d) Adult and child protection. The facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the Cabinet for Human Resources pursuant to KRS Chapters 209 and 620 [KRS 199.335].

(e) Missing patient procedures. The facility shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(4) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(5) Admission.

(a) Patients shall be admitted only upon the referral of a physician. Additionally, the facility shall admit only persons who require medical and continuous skilled nursing care and who currently require primarily convalescent or rehabilitative services for a variety of medical conditions. The facility shall not admit persons whose care needs exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. The facility shall obtain a medical evaluation within forty-eight (48) hours of admission, unless an evaluation was performed within five (5) days prior to admission. The medical evaluation shall include current medical findings, rehabilitation potential, a summary of the course of treatment followed in the hospital or intermediate care facility (a current hospital discharge summary containing the above information shall be acceptable).

(c) If the physician's orders for the immediate care of a patient are unobtainable at the time of admission, the facility shall contact the physician with responsibility for emergency care to obtain temporary orders.

(d) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the facility to include: fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(6) Discharge planning. The facility shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(7) Transfer procedures and agreements.

(a) The facility shall have written transfer

procedures and agreements for the transfer of patients to other health care facilities which can provide a level of inpatient care not provided by the facility. Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients, shall establish responsibility for notifying the other institution promptly of the impending transfer of a patient, and shall arrange for appropriate and safe transportation.

(b) When the patient's condition exceeds the scope of services of the facility, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to an appropriate level of care.

(c) The agreement shall provide for the transfer of personal effects, particularly money and valuables, and for the transfer of information related to these items.

(d) When a transfer is to another level of care within the facility, the complete patient record or a current summary thereof shall be transferred with the patient.

(e) If the patient is transferred to another health care facility or home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least the following: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(f) Except in an emergency, the patient, his next of kin, or responsible person(s) if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

(8) Tuberculosis testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, tuberculosis testing in long term care facilities.

(9) Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required by law, health records, evaluation of performance, records of in-service training and ongoing education, along with employee's name, address and social security number.

(c) Health requirements. No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(d) Staffing classification requirements.

1. The facility shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients, and the amount and kind of personal care, nursing care, supervision, and program needed to meet the needs of the patients, as determined by medical orders and by services required by this regulation.

2. If the staff/patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination.

3. The facility shall have a director of nursing service who is a registered nurse and who works full time during the day, and who devotes full time to the nursing service of the facility. If the director of nursing has administrative responsibility for the facility, there shall be an assistant director of nursing, who shall be a registered nurse, so that there shall be the equivalent of a full-time director of nursing service. The director of nursing shall be trained or experienced in areas of nursing service, administration, rehabilitation nursing, psychiatric or geriatric nursing. The director of the nursing service shall be responsible for:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel;

b. Recommending to the administrator the number and level of nursing personnel to be employed, participating in their recruitment and selection, and recommending termination of employment when necessary;

c. Assigning and supervising all levels of nursing personnel;

d. Participating in planning and budgeting for nursing care;

e. Participating in the development and implementation of patient care policies and bringing patient care problems requiring changes in policy to the attention of the professional policy advisory group;

f. Coordinating nursing services with other patient care services;

g. Planning and conducting orientation programs for new nursing personnel and continuing in-service education for all nursing personnel;

h. Participating in the selection of prospective patients in terms of nursing services they need and nursing competencies available;

i. Assuring that a nursing care plan shall be established for each patient and that his plan shall be reviewed and modified as necessary;

j. Assuring that registered nurses, licensed practical nurses, nurses' aides and orderlies are assigned duties consistent with their training and experience.

4. Supervising nurse. Nursing care shall be provided by or under the supervision of a full-time registered nurse. The supervising nurse shall be a licensed registered nurse who may be the director of nursing or the assistant director of nursing and shall be trained or experienced in the areas of nursing administration and supervision, rehabilitative nursing, psychiatric or geriatric nursing. The supervising nurse shall make daily rounds to all nursing units performing such functions as visiting each patient, and reviewing medical records, medication cards, patient care plans, and staff assignments, and whenever possible accompanying physicians when visiting patients.

5. Charge nurse. There shall be at least one (1) registered nurse or licensed practical nurse on duty at all times and who is responsible for the nursing care of patients during her tour of duty. When a licensed practical nurse is on duty, a registered nurse shall be on call.

6. Pharmacist. The facility shall employ a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

7. Therapists.

a. If rehabilitative services beyond rehabilitative nursing care are offered, whether directly or through cooperative arrangements with agencies that offer therapeutic services, these services shall be provided or supervised by qualified therapists to include licensed physical therapists, speech pathologists and occupational therapists.

b. When supervision is less than full time, it shall be provided on a planned basis and shall be frequent enough, in relation to the staff therapist's training and experience, to assure sufficient review of individual treatment plans and progress.

c. In a facility with an organized rehabilitation service using a multidisciplinary team approach to meet all the needs of the patient, and where all therapists' services are administered under the direct supervision of a physician qualified in physical medicine who will determine goals and limits of the therapists' work, and prescribes modalities and frequency of therapy, persons with qualifications other than those described in subsection (8)(d)7a of this section may be assigned duties appropriate to their training and experience.

8. Dietary. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and who shall be on duty a minimum of thirty-five (35) hours each week.

9. The administrator shall designate a person for each of the following areas who will be responsible for:

a. Medical records. The person responsible for the records shall maintain, complete and preserve all medical records. If the person is not a qualified medical record practitioner he shall be trained by and receive regular consultation from a qualified medical record practitioner.

b. Social services. There shall be a full-time or part-time social worker employed by the facility, or a person who has training and experience in related fields to find community resources, to be responsible for the social services. If the facility does not have a qualified social worker on its staff, consultation shall be provided by a qualified social worker. The person responsible for this area of service shall have information promptly available on health and welfare resources in the community.

c. Patient activities. This person shall have training or experience in directing group activities.

(e) In-service educational programs.

1. There shall be an in-service education program in effect for all nursing personnel at regular intervals in addition to a thorough job orientation for new personnel. Opportunities shall be provided for nursing personnel to attend training courses in rehabilitative nursing and other educational programs related to the care of long-term patients. Skill training for nonprofessional nursing personnel shall begin during the orientation period, to include demonstration, practice and supervision of simple nursing procedures applicable in the individual facility. It shall also include simple rehabilitative nursing procedures to be followed in emergencies. All patient care personnel shall be instructed and supervised in the care of emotionally disturbed and confused patients, and shall be assisted to understand the social aspects of patient care.

2. Social services training of staff. There shall be provisions for orientation and in-service training of staff directed toward understanding emotional problems and social needs of sick and infirm aged persons and recognition of social problems of patients and the means of taking appropriate action in relation to them. Either a qualified social worker on the staff, or one (1) from outside the facility, shall participate in training programs, case conferences, and arrangements for staff orientation to community services and patient needs.

(10) Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and social security number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, or an intermediate care facility if done within five (5) days prior to admission.)

3. The physician's orders for medication, diet, and therapeutic services. These shall be dated and signed by the physician.

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication or prescription number, dosage and name of prescribing physician.

7. Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, visits by physician and phone calls to the physician, medically prescribed diets and restorative nursing measures.

8. Nursing supervisor's written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services.

10. Changes in patient's response to the activity and therapeutic recreation program.

11. A discharge summary completed, signed and

dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) Physician services.

(a) The health care of each patient shall be under supervision of a physician who, based on an evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of medical care which covers indicated medications, treatments, rehabilitative services, diet, special procedures recommended for the health and safety of the patient, activities, plans for continuing care and discharge.

(b) Patients shall be evaluated by a physician at least once every thirty (30) days for the first ninety (90) days following admission. Subsequent to the 90th day following admission, the patients shall be evaluated by a physician every sixty (60) days. There shall be evidence in the patient's medical record of the physician's visits to the patient at appropriate intervals.

(c) There shall be evidence in the patient's medical record that the patient's attending physician has made arrangement for the medical care of the patient in the physician's absence.

(d) Availability of physicians for emergency care. The facility shall have arrangements with one (1) or more physicians who will be available to furnish necessary medical care in case of an emergency if the physician responsible for the care of the patient is not immediately available. A schedule listing the names and telephone numbers of these physicians and the specific days each shall be on call shall be posted in each nursing station. There shall be established procedures to be followed in an emergency, which cover immediate care of the patient, persons to be notified, and reports to be prepared.

(2) Nursing services.

(a) Twenty-four (24) hour nursing service. There shall be twenty-four (24) hour nursing service with a sufficient number of nursing personnel on duty at all times to meet the total needs of patients. Nursing personnel shall include registered nurses, licensed practical nurses, aides and orderlies. The amount of nursing time available for patient care shall be exclusive of nonnursing duties. Sufficient nursing time shall be available to assure that each patient:

1. Shall receive treatments, medication, and diets as prescribed;

2. Shall receive proper care to prevent decubiti and shall be kept comfortable, clean and well-groomed;

3. Shall be protected from accident and injury by the adoption of indicated safety measures;

1. Shall be treated with kindness and respect.

(b) Rehabilitative nursing care. There shall be an active program of rehabilitative nursing care directed toward assisting each patient to achieve and maintain his highest level of self-care and independence.

1. Rehabilitative nursing care initiated in the hospital shall be continued immediately upon admission to the facility.

2. Nursing personnel shall be taught rehabilitative nursing measures and shall practice them in their daily care of patients. These measures shall include:

a. Maintaining good body alignment and proper positioning of bedfast patients;

b. Encouraging and assisting bedfast patients to change positions at least every two (2) hours, day and night to stimulate circulation and prevent decubiti and deformities;

c. Making every effort to keep patients active and out of bed for reasonable periods of time, except when contraindicated by physician's orders, and encouraging patients to achieve independence in activities of daily living by teaching self care, transfer and ambulation activities;

d. Assisting patients to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if necessary;

e. Assisting patients to carry out prescribed physical therapy exercises between visits of the physical therapist.

(c) Dietary supervision. Nursing personnel shall assure that patients are served diets as prescribed. Patients needing help in eating shall be assisted promptly upon receipt of meals. Food and fluid intake of patients shall be observed and deviations from normal shall be reported to the charge nurse. Persistent unresolved problems shall be reported to the physician.

(d) Nursing care plan. There shall be written nursing care plans for each patient based on the nature of illness, treatment prescribed, long and short term goals and other pertinent information.

1. The nursing care plan shall be a personalized, daily plan for individual patients. It shall indicate what nursing care is needed, how it can best be accomplished for each patient, what are the patient's preferences, what methods and approaches are most successful, and what modifications are necessary to insure best results.

2. Nursing care plans shall be available for use by all nursing personnel.

3. Nursing care plans shall be reviewed and revised as needed.

4. Relevant nursing information from the nursing care plan shall be included with other medical information when patients are transferred.

(3) Specialized rehabilitative services.

(a) Rehabilitative services shall be provided upon written order of the physician which indicates anticipated goals and prescribed specific modalities to be used and frequency of physical, speech and occupational therapy services.

(b) Therapy services shall include:

1. Physical therapy which includes:

a. Assisting the physician in his evaluation of patients by applying muscle, nerve, joint, and functional ability tests;

b. Treating patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical means such as exercise, massage, heat, water, light, and electricity.

2. Speech therapy which include:

a. Services in speech pathology or audiology;

b. Cooperation in the evaluation of patients with speech, hearing, or language disorders;

c. Determination and recommendation of

appropriate speech and hearing services.

3. Occupational therapy services which includes:

a. Assisting the physician in his evaluation of the patient's level of function by applying diagnostic and prognostic tests;

b. Guiding the patient in his use of therapeutic creative and self-care activities for improving function.

(c) Therapists shall collaborate with the facility's medical and nursing staff in developing the patient's total plan of care.

(d) Ambulation and therapeutic equipment. Commonly used ambulation and therapeutic equipment necessary for services offered shall be available for use in the facility such as parallel bars, hand rails, wheelchairs, walkers, walkerettes, crutches and canes. The therapists shall advise the administrator concerning the purchase, rental, storage and maintenance of equipment and supplies.

(4) Personal care services. Personal care services shall include: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, and washing, grooming and cutting of hair.

(5) Pharmaceutical services.

(a) Procedures for administration of pharmaceutical services. The facility shall provide appropriate methods and procedures for obtaining, dispensing and administering of drugs and biologicals, which have been developed with the advice of a staff pharmacist, or a consultant pharmacist, in cooperation with the facility's pharmacy and therapeutics committee.

(b) If the facility has a pharmacy department, a licensed pharmacist shall be employed to administer the pharmacy department.

(c) If the facility does not have a pharmacy department, it shall have provisions for promptly and conveniently obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) If the facility does not have a pharmacy department, but does maintain a supply of drugs:

1. The consultant pharmacist shall be responsible for the control of all bulk drugs and maintain records of their receipt and disposition.

2. The consultant pharmacist shall dispense drugs from the drug supply, properly label them and make them available to appropriate licensed nursing personnel.

3. Provisions shall be made for emergency withdrawal of medications from the drug supply.

(e) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(f) Medication services.

1. Conformance with physician's orders. All medications administered to patients shall be ordered in writing by the patient's physician. Telephone orders shall be given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician within forty-eight (48) hours. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy or stop orders. The registered nurse or the pharmacist shall review each patient's medication profile at least monthly. The prescribing physician shall review each patient's medications at the time of the medical evaluation pursuant to subsection (1)(b) of this section. The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications are to be released to patients on discharge only on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed medical or nursing personnel in accordance with the Medical Practice Act (KRS 311.530 to 311.620) and Nurse Practice Act of (KRS Chapter 314), or by personnel who have completed a state approved training program from a state approved training provider. The administration of oral and topical medicines by certified medicine technicians shall be under the supervision of licensed medical or nursing personnel. Intramuscular injections shall be administered by a licensed nurse or a physician. If intravenous injections are necessary they shall be administered by a licensed physician, [or] a registered nurse or a properly trained licensed nurse. Each dose administered shall be recorded in the medical record.

a. The nursing station shall have readily available items necessary for the proper administration of medications.

b. In administering medications, medication cards or other state approved systems shall be used and checked against the physician's orders.

c. Medications prescribed for one (1) patient shall not be administered to any other patient.

d. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician or in a predischarge program under the supervision of a licensed nurse.

e. Medication errors and drug reactions shall be immediately reported to the patient's physician and an entry thereof made in the patient's medical record as well as on an incident report.

f. Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references).

3. Labeling and storing medications.

a. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of

medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

b. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be returned to the issuing pharmacist or pharmacy for relabeling or disposal. Containers having no labels shall be destroyed in accordance with state and federal laws.

c. Cabinets shall be well lighted and of sufficient size to permit storage without crowding.

d. Medications no longer in use shall be disposed of or destroyed in accordance with federal and state laws and regulations.

e. Medications having an expiration date shall be removed from usage and properly disposed of after such date.

f. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient, the date, time, kind, dosage, balance, remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed schedule II controlled substances count daily, and schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 CFR 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources.

4. Use of restraints or protective devices. If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care. No form of restraints or protective devices shall be used except under written orders of the attending physician.

a. Protective devices. Protective devices may be used to protect the patient from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility. In no case shall a locking device be used.

b. Physical restraint. Restraints that require lock and key shall not be used. In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours. Restraints shall be applied only by personnel trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the patient's medical record as they are completed. Such reports shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. Restraints shall be comfortable and easily removed in case of an emergency.

c. Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.

5. Infection control and communicable diseases.

a. There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines including:

(i) Policies which address the prevention of disease transmission to and from patients, visitors and employees, including:

i. Universal blood and body fluid precautions;

ii. Precautions for infections which can be transmitted by the airborne route; and

iii. Work restrictions for employees with infectious diseases.

(ii) Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

b. The facility shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections for all personnel responsible for direct patient care.

c. Sharp wastes.

(i) Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

(ii) Needles shall not be recapped by hand, purposely bent or broken, or otherwise manipulated by hand.

(iii) The containers of sharp wastes shall either be incinerated on or off site, or be 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.

d. Disposable waste.

(i) All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

(ii) The facility shall establish specific written policies regarding handling and disposal of all wastes.

(iii) The following wastes shall be disposed of by incineration, autoclaved before disposal, or carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

(iv) Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9.

e. Patients infected with the following diseases shall not be admitted to the facility: anthrax, campylobacteriosis, cholera, diphtheria, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rubella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus.

f. A facility may admit a (noninfectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

g. Patients with active tuberculosis may be

admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet.

h. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(6) Diagnostic services. The facility shall have provisions for obtaining required clinical laboratory, x-ray and other diagnostic services. Laboratory services may be obtained from a laboratory which is part of a licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any regulations promulgated thereunder. Radiology services shall be obtained from a service licensed or registered pursuant to KRS 211.842 to 211.852 and any regulations promulgated thereunder. If the facility provides its own diagnostic services, the service shall meet the applicable laws and regulations. All diagnostic services shall be provided only on the request of a physician. The physician shall be notified promptly of the test results. Arrangements shall be made for the transportation of patients, if necessary, to and from the source of service. Simple tests, such as those customarily done by nursing personnel for diabetic patients may be done in the facility. All reports shall be included in the medical record.

(7) Dental services. The facility shall assist patients to obtain regular and emergency dental care. Provision for dental care: patients shall be assisted to obtain regular and emergency dental care. An advisory dentist shall provide consultation, participate in in-service education, recommend policies concerning oral hygiene, and shall be available in case of emergency. The facility, when necessary, shall arrange for the patient to be transported to the dentist's office. Nursing personnel shall assist the patient to carry out the dentist's recommendations.

(8) Social services.

(a) Provision for medically related social needs. The medically related social needs of the patient shall be identified, and services provided to meet them, in admission of the patient, during his treatment and care in the facility, and in planning for his discharge.

1. As a part of the process of evaluating a patient's need for services in a facility and whether the facility can offer appropriate care, emotional and social factors shall be considered in relation to medical and nursing requirements.

2. As soon as possible after admission, there shall be an evaluation, based on medical, nursing and social factors, of the probable duration of the patient's need for care and a plan shall be formulated and recorded for providing such care.

3. Where there are indications that financial help will be needed, arrangements shall be made promptly for referral to an appropriate agency.

4. Social and emotional factors related to the patient's illness, to his response to treatment and to his adjustment to care in the facility shall be recognized and appropriate action shall be taken when necessary to obtain casework services to assist in resolving problems in these areas.

5. Knowledge of the patient's home situation, financial resources, community resources available to assist him, and pertinent information related to his medical and nursing requirements shall be used in making decisions regarding his discharge from the facility.

(b) Confidentiality of social data. Pertinent social data, and information about personal and family problems related to the patient's illness and care shall be made available only to the attending physician, appropriate members of the nursing staff, and other key personnel who are directly involved in the patient's care, or to recognized health or welfare agencies. There shall be appropriate policies and procedures for assuring the confidentiality of such information.

1. The staff member responsible for social services shall participate in clinical staff conferences and confer with the attending physician at intervals during the patient's stay in the facility, and there shall be evidence in the record of such conferences.

2. The staff member and nurses responsible for the patient's care shall confer frequently and there shall be evidence of effective working relationships between them.

3. Records of pertinent social information and of action taken to meet social needs shall be maintained for each patient. Signed social service summaries shall be entered promptly in the patient's medical record for the benefit of all staff involved in the care of the patient.

(9) Patient activities. Activities suited to the needs and interests of patients shall be provided as an important adjunct to the active treatment program and to encourage restoration to self-care and resumption of normal activities. Provision shall be made for purposeful activities which are suited to the needs and interests of patients.

(a) The activity leader shall use, to the fullest possible extent, community, social and recreational opportunities.

(b) Patients shall be encouraged but not forced to participate in such activities. Suitable activities are provided for patients unable to leave their rooms.

(c) Patients who are able and who wish to do so shall be assisted to attend religious services.

(d) Patients' request to see their clergymen shall be honored and space shall be provided for privacy during visits.

(e) Visiting hours shall be flexible and posted to permit and encourage visiting friends and relatives.

(f) The facility shall make available a variety of supplies and equipment adequate to satisfy the individual interests of patients. Examples of such supplies and equipment are: books and magazines, daily newspapers, games, stationery, radio and television and the like.

(10) Residential services.

(a) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the patients including modified diets or dietary restrictions as prescribed by the attending physician. When a facility contracts for food service with an outside food management company, the company shall provide a qualified dietician on a full-time, part-time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting patient care. The company shall comply with all

of the appropriate requirements for dietary services in this regulation.

1. Therapeutic diets. If the designated person responsible for food service is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours, on duty and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and all menus shall be kept on file for thirty (30) days.

c. The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories, and participation in rounds and conference.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well-balanced palatable meals. Records of food purchased for preparation shall be on file for thirty (30) days.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all patients. Adjustments shall be made when medically indicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. A file of tested recipes, adjusted to appropriate yield shall be maintained. Food shall be cut, chopped or ground to meet individual needs. If a patient refuses foods served, nutritional substitutions shall be offered.

e. All opened containers or left over food items shall be covered and dated when refrigerated.

5. Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

a. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted within a reasonable length of time.

b. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

6. Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 (Kentucky's Food Service Establishment Act and Food Service Code).

(b) Housekeeping and maintenance services.

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

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or bedding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be placed in washable or disposable containers, transported in a sanitary manner and stored in separate, well-ventilated areas in a manner to prevent contamination and odors. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Hand-washing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

5. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

6. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

7. Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. Patients' personal clothing shall be laundered as often as is necessary. Laundering of patients' personal clothing shall be the responsibility of the facility unless the patient or the patient's family accepts this responsibility. Patient's personal clothing laundered by or through the facility shall be marked to identify the patient-owner and returned to the correct patient.

9. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

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

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

c. Garbage and trash shall be stored in areas

separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

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

(c) Room accommodations.

1. Each patient shall be provided a standard size bed or the equivalent at least thirty-six (36) inches wide, equipped with substantial springs, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the patients comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients shall be placed so that no patient may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Patients shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for patients.

5. Patients may have personal items and furniture when it is physically feasible.

6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room.

7. Each living room or lounge area and recreation area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

8. Dining room furnishings shall be adequate in number, well constructed and of satisfactory design for the patients.

9. Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: November 2, 1990
FILED WITH LRC: November 6, 1990 at 9 a.m.

REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

JUSTICE CABINET
Office of the Secretary
(Amended After Hearing)

500 KAR 8:010. Certification of operators.

RELATES TO: KRS 15A.070, 186.565
STATUTORY AUTHORITY: KRS 15A.160
NECESSITY AND FUNCTION: KRS 186.565 provides that the state shall supply each county with one (1) breath analysis and simulating unit. KRS 15A.070 authorizes the Secretary of Justice to establish, supervise, and coordinate training programs for law enforcement personnel. This regulation establishes the certification of breath analysis operators.

Section 1. (1) To become certified to operate a breath alcohol analysis instrument, the person must successfully complete the training program of the Department of Criminal Justice Training.
(2) Successful completion shall mean receiving a passing score on a standardized written examination as provided by the department and the satisfactory completion of a standardized practical proficiency examination administered by a certified instructor.
(3) The examinations shall be included in a minimum of forty (40) hours of instruction which shall also include the demonstration of physiological effects of alcohol in the human body, general instrumentation theory, and operation of approved instruments which measure alcohol concentration.

Section 2. (1) Operator certification shall be valid for a period of two (2) years from the date of issuance.
(2) Certification shall be terminated if it is not renewed with a two (2) year period or the operator ceases to be employed by a criminal justice agency.
(3) An operator whose certification has been revoked pursuant to this section shall be eligible for recertification pursuant to Section 4 of this regulation for six (6) months following revocation.

Section 3. The employer of a certified operator shall notify the Department of Criminal Justice Training in writing within two (2) weeks of the change in the event of change of employment to a different criminal justice agency or termination of employment with a criminal justice agency.

Section 4. To obtain recertification, a certified operator shall review standards and procedures for a minimum of four (4) hours of recertification instruction.

Section 5. (1) The following are grounds for revocation of certification to operate a breath analysis instrument:
(a) Misuse of the instrument by the operator in violation of law;
(b) Refusal or failure to perform procedures in an acceptable manner;
(c) Failure to testify at an administrative revocation hearing held pursuant to KRS 186.570 without just cause; and
(d) Dismissal of an operator from his employment with a criminal justice agency.
(2) Revocation will be held only following a hearing conducted by the Commissioner of the Department of Criminal Justice Training, or his designee, following written notice to the certified operator of the basis for revocation.

Section 6. No person who has received training from the Department of Criminal Justice Training, the Department of State Police, or the Lexington-Fayette Urban County Government Division of Police in breath analysis instrument operation before January 1, 1991, need comply with Section 1 of this regulation. Each person who has not received this training more recently than January 1, 1989, must comply with Section 4 of this regulation.

W. MICHAEL TROOP, Secretary
APPROVED BY AGENCY: December 4, 1990
FILED WITH LRC: December 5, 1990 at 11 a.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Amended After Hearing)

603 KAR 5:112. Annual permits for moving utility poles or pipes.

RELATES TO: KRS 189.270
STATUTORY AUTHORITY: KRS 189.270
NECESSITY AND FUNCTION: KRS 189.270 authorizes the Department of Highways to issue annual permits for the movement of utility poles or pipes exceeding legal dimensions. This regulation establishes the permit application procedures within the Transportation Cabinet and establishes movement 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), Independent Day, Labor Day, Thanksgiving Day and Christmas Day.

Section 2. Permit Application. (1) Application for an annual permit to move overdimensional utility poles or pipes on Kentucky highways shall only be made to the Department of Vehicle Regulation, Division of Motor Carriers, Frankfort, Kentucky.
(2) An application for an annual permit to transport overdimensional utility poles or pipes shall include the following information:
(a) Name of the motor carrier applying for the permit;
(b) KYU identification number of the motor carrier;
(c) The full address of the motor carrier; and
(d) Description of the towing vehicle for which the annual permit is being applied specifically including its length, number of

axles, style, year, make, registration license number, vehicle identification number, and company unit number.

Section 3. Permit Required. (1) No utility pole or pipe and straight truck style vehicle with a combined length greater than forty-five (45) feet shall be operated upon any state-maintained Kentucky highway until a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers.

(2) No utility pole or pipe and combination style vehicle with a combined length greater than fifty-five (55) feet shall be operated upon any state-maintained Kentucky highway not listed in 603 KAR 5:070, Section 2(2) until a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers.

(3) No vehicle and trailer combination and utility pole or pipe which exceeds the length limitations set forth in 603 KAR 5:070, Section 2(1) shall be operated upon any Kentucky highway listed in 603 KAR 5:070, Section 2(2) until a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers.

(4) The procedures which shall be followed for the issuing of a single trip permit are set forth in 601 KAR 5:075.

Section 4. Annual Permits. (1) The movement of a vehicle transporting utility poles or pipe under the provisions of an annual permit shall only be on highways or in the geographical area specified on the annual permit.

(2) If the permit holder intends to transport overdimensional utility poles or pipes under the provisions of the annual permit but outside the area or highways specified on the annual permit, he shall contact the Division of Motor Carriers and receive approval for that move or series of moves prior to the move.

(3) If the utility pole or pipe in excess of forty-five (45) feet overhangs the vehicle required to be permitted on both the front and rear by more than ten (10) feet each, the permit holder shall contact the Operations Branch of the Highway District Office having jurisdiction over the county in which the moves are scheduled to occur and receive permission for that move or series of moves prior to the move. The Highway District Office may require that the permit holder demonstrate his proposed method and route of operation prior to issuing or denying permission for the move.

Section 5. Safety Items. (1) On all highways of four (4) or more lanes, one (1) rear street escort vehicle shall be required for the movement of a vehicle and trailer combination which when combined with its load exceeds 110 feet in length.

(2) On highways of less than four (4) lanes, one (1) escort shall be required in the rear of each vehicle and trailer combination which when combined with its load exceeds seventy-five (75) feet in length. This requirement shall not be applicable if the pole or pipe being transported is fifty-five (55) feet or less in length.

(3) On highways of less than four (4) lanes, one (1) rear and one (1) lead escort shall be required for each vehicle and trailer combination which when combined with its load exceeds eighty-five (85) feet in length.

(4) If the pole or pipe being transported exceeds fifty-five (55) feet in length, a front escort vehicle shall accompany the vehicle required to be permitted when transporting utility poles or pipe if the front overhang exceeds ten (10) feet. If the pole or pipe being transported exceeds fifty-five (55) feet in length, a rear escort vehicle shall accompany the vehicle required to be permitted when transporting utility poles or pipe if the rear overhang exceeds ten (10) feet.

(5) An escort vehicle, either front or rear, may be required by the Transportation Cabinet when the cabinet determines that highway conditions dictate the need.

(6) An amber strobe or flashing light shall be placed on the power unit of the towing vehicle and shall be in use any time the power unit is in operation.

(7) An amber strobe or flashing light shall be placed on the extreme ends of the pole or pipe when the front or rear overhang exceeds four (4) feet. The light shall be in use any time the vehicle is on or beside a highway. No front overhang shall be allowed on a combination vehicle.

(8) All towing vehicles and loads shall be marked and lighted and operated in accordance with those requirements set forth in 601 KAR 1:005.

(9) The towing unit shall maintain radio communication with its escort vehicles at all times.

Section 6. 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 by the payment of ten (10) dollars.

Section 7. 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 8. Permit Validity. Permits are valid only during daylight hours as defined in Section 1 of this regulation, from Monday through Saturday noon, except for those periods before, during and after national holidays. If the national holiday occurs on Tuesday or Wednesday, travel shall not be allowed from noon of the day preceding the national holiday until daylight of the day following the national holiday. If the national holiday occurs on Sunday or Monday the restricted period shall extend from noon of the preceding Friday to daylight of the following Tuesday. If the national holiday occurs on a Thursday, Friday or Saturday, the restricted period shall extend from noon of the preceding day to daylight of the following Monday.

Section 9. Liability. Any damage to the highway, signs, guardrail or other public or private property caused by the transportation of utility poles or pipes shall be the responsibility of the permit holder. The permit holder shall either repair all damage incurred or pay for the repair. [The permit holder shall be liable for and pay the cost of any damage to persons or public or private property incurred

as a result of the movement of the overdimensional load.]

JEROME L. LENTZ, Acting Commissioner
GILBERT NEWMAN, State Highway Engineer
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: December 6, 1990
FILED WITH LRC: December 6, 1990 at 3:30 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Office of State Fire Marshal
(Amended After Hearing)

815 KAR 30:060. Certification of underground petroleum storage tank contractors [installers].

RELATES TO: KRS 224.814, 224.820
STATUTORY AUTHORITY: KRS 224.820(5), 227.300
NECESSITY AND FUNCTION: KRS 224.820(5) requires the State Fire Marshal to promulgate regulations requiring any person or organization who installs, repairs, closes or removes an underground petroleum storage tank for an owner or operator to demonstrate financial capability, including maintenance of pollution liability insurance and technical competency and proficiency. This regulation is necessary to set the minimum requirements for determining technical competency and proficiency of companies who are responsible for the installation of these systems by qualifying individuals and to determine financial capability through proof of insurance.

Section 1. Definitions. Definitions in this section shall apply to this regulation.

(1) "Certified contractor [installer]" means any individual or organization certified by the State Fire Marshal as qualified to engage in the business of installing, repairing, removing, closing, and supervising of other employees in [install, repair, remove, close or to supervise] the installation, performance of repairs on site for closure or removal of UPST systems. A person or organization may be qualified pursuant to this regulation to engage in the business of removal and closure, only, but the certification shall be limited to closure and removal, only.

(2) "Close or closure" means permanently taking an underground storage tank out of service without removing it from the ground.

(3) "Repair" means the restoration of a tank or an underground storage tank or any of its components [a UPST system component] that has caused a release of a product from the system [UPST system, the upgrading of a tank or a UPST system component,] or the modification of the [a] tank or a [UPST] system component. "Repair" does not include routine maintenance or cathodic protection applied to existing installations.

(4) "Remove or removal" means permanently taking an underground storage tank [a UPST system] or any of its components out of service by removing it from the ground.

(5) "Supervise" means being physically on site and having the authority and responsibility for the direction of [to direct] other employees [persons] engaged in carrying out the installation of, making repairs on site to, closure, or removal of UPST systems as well as having the authority to exercise independent judgment regarding the recommendation of activities to other employees acting under his direction [persons].

(6) "Underground storage tank" means as defined by KRS 224.810.

(7) [(6)] "UPST system" means an underground storage tank defined by KRS 224.810 and used solely for the storage of petroleum and petroleum products [, only].

Section 2. Effective April 1, 1991. (1) No permit for the installation of any UPST system shall be issued by the State Fire Marshal unless the applicant [person applying] for the permit is a certified contractor [installer or assures the department, in writing, that the installation shall be made under the supervision of a certified installer], and the applicant assures the State Fire Marshal's Office, in writing, that the installation shall comply with all applicable requirements of the [Department for] Natural Resources and Environmental Protection Cabinet promulgated in 401 KAR Chapter 42.

(2) No individual or company shall install, remove, repair or close any UPST system unless the installation, removal, repair or closure is made [supervised] by a certified contractor [installer] and unless the installation, removal, repair or closure of the system complies with applicable regulations of the Natural Resources and Environmental Protection Cabinet, set forth in 401 KAR Chapter 42.

(3) A [Any] company may be the certified contractor and may engage in the activities regulated by this regulation if it has in its employ at least one (1) person who has passed the examination and demonstrated the experience to obtain qualification for the company as a certified contractor [certified installer] and that person [a certified installer] supervises the activities described by Section 3 of this regulation [herein].

Section 3. Supervision Requirements. (1) A certified contractor [installer] shall be present on site for each of the following activities:

(a) Preparation of the excavation immediately prior to receiving backfill or any component of the UPST system;

(b) Setting of the UPST system, including placement of any anchoring devices, backfilling to the level of the UPST system and strapping, if any;

(c) Final inspection of an [Any time during the] installation after [in which] components of the piping have been [are] connected, field coated and cathodically protected;

(d) Final [All] pressure testing of any component of the tank or piping components of the UPST system;

(e) Completion of the backfilling and filling of the excavation.

(2) Repairs to a UPST system shall require a certified contractor to be [installer] present on site for each of the following activities:

(a) The actual excavation of existing UPST systems;

(b) The actual performance of repairs to the UPST system;

(c) Any time during the repair project in

which components of the piping are connected;
(d) Any time during the repair project in which the UPST or its associated piping is pressure tested;
(e) The replacement of piping valves, fill pipes, vents, leak detection devices, or spill and overfill protection devices;
(f) The addition of [cathodic protection systems,] leak detection devices or spill or overfill devices.
(3) Preparation for closing a UPST system shall require a certified contractor to be [installer] present on site for each of the following activities:
(a) The cleaning and purging of a UPST system;
(b) The filling of a UPST system with an inert solid material;
(c) All testing associated with the cleaning and purging processes;
(d) Any time during the closing in which components of the UPST system are disconnected or capped.
(4) Removal of a UPST system shall require a certified contractor to [installer] be present on site during each of the following activities:
(a) The cleaning and purging of the UPST system;
(b) The actual excavation and removal of the UPST system or any of its components;
(c) All testing associated with the cleaning and purging processes;
(d) Any time during the removal in which components of the UPST system are disconnected or capped.

Section 4. Certificate Availability. Each certified contractor [installer] shall have a copy of the [his] current certificate issued by the State Fire Marshal at the location where he is supervising work. Upon request of a fire official or agent [a representative] of the Natural Resources and Environmental Protection Cabinet, a certified contractor [installer] shall make the current certificate available for inspection.

Section 5. Application for Certification Requirements. Each applicant [Any individual or company who wishes to apply] for certified contractor [installer] shall meet all of the following application requirements:
(1) The applicant shall submit an application to the State Fire Marshal, on the form furnished by the State Fire Marshal and attached as Appendix A, accompanied by a nonrefundable fee of $150; and
(2) The applicant shall be an individual, and shall be at least eighteen (18) years of age; and
(3) The individual [applicant] shall verify to [supply] the State Fire Marshal [with three (3) business references, or otherwise verify] the individual's [applicant's] experience in the installation of, performance of repairs on site, closure and removal of UPST systems, as required by Section 6 of this regulation; and
(4) The individual [applicant] shall complete the examination requirements of Section 7 of this regulation; and
(5) The individual [applicant] shall provide proof of financial capability by submitting certificates of [pollution liability insurance and] general liability insurance in the minimum amount of $500,000 and pollution liability insurance in the minimum amount of $25,000 per occurrence for taking corrective action as described by KRS 224.817; and
(6) If the individual [applicant] wishes the certificate to be issued with a company name, the company name shall be indicated on the application form and the company shall provide the insurance certificates required by subsection (5) of this section and otherwise be subject to this regulation.
(7) EPA health and safety training.
(a) The application shall affirm, in writing, compliance with OSHA 29 CFR 120 including forty (40) hours of safety training and eight (8) hours annual refresher course for working at hazardous waste sites.
(b) The application shall affirm, in writing, compliance with requirements for enrollment in medical baseline and monitoring program in accordance with appropriate categories listed in Appendices I and II of EPA Field Health and Safety Manual (1987).

Section 6. Experience Requirements. (1) The person making application [An applicant] shall demonstrate that within five (5) [two (2)] years immediately prior to making application, the person's participation [he has participated] in the installation of, performance of repairs on site to, closure of, or removal of a minimum of twelve (12) underground storage tanks [UPST systems]. Of the participations, a minimum of six (6) shall have involved the installation of UPST systems; or
(2) Technical training of the type provided and documented by the manufacturer of the underground storage tanks and approved by the State Fire Marshal shall reduce the experience requirements of subsection (1) of this section by one-half (1/2). [An applicant shall demonstrate that he is a registered professional engineer and has, within two (2) years immediately prior to making application, participated in the installation of, performance of repairs on site to, closure or removal of six (6) UPST systems.]
(3) A BS degree in engineering with a concentration in the area of underground containment systems or a Kentucky license to practice engineering shall reduce the experience requirements of subsection (1) by two-thirds (2/3).
(4) An applicant requesting contractor certification pursuant to this regulation for the limited function of removal and closure shall demonstrate experience in removal and closure of six (6) underground storage tanks.

Section 7. Examination Requirements. Each [An] applicant for certified contractor [installer] shall take and pass a written examination administered by the State Fire Marshal in compliance with this section.
(1) The applicant shall submit payment of a twenty-five (25) dollar nonrefundable fee at least ten (10) days prior to the date of examination.
(2) The examination for full certification shall be a written multiple choice examination covering all aspects of the installation, repair, closure, and removal of underground petroleum storage tank systems. The examination shall test the applicant's knowledge of codes,

standards, laws and regulations and of current technological and industry recommended practices with respect to the proper installation, repair, closure, and removal of UPST systems.

(3) An applicant who requests to be a certified contractor for the limited purpose of removing and permanently closing UPST systems shall be tested on knowledge of closure and removal only.

(4) [(3)] An applicant may request permission to take the examination orally, upon good cause shown.

(5) [(4)] To satisfactorily pass the written examination, the applicant shall obtain a minimum score of seventy-five (75) percent on the examination.

(6) [(5)] Any applicant who fails the examination may request reexamination upon payment of a nonrefundable twenty-five (25) dollar fee. An application shall remain pending for that purpose for a period of one (1) year after the date the application was submitted. If the applicant has not requested reexamination within the one (1) year period, the applicant shall file a new application for certification with the State Fire Marshal.

(7) [(6)] Examinations shall be given monthly in the State Fire Marshal's Office located at 1047 U.S. 127 South, Frankfort, Kentucky.

(8) [(7)] All examinations shall be graded and the applicants notified on the day of the examination. Examination papers shall not be returned to the applicant, but may be reviewed by the applicant on the day of the examination.

(9) [(8)] When the application is filed, the State Fire Marshal shall furnish the applicant with a set of instructions and sample examination questions. Instruction sheets shall refer the applicant to appropriate laws, regulations and industry publications.

Section 8. Certification and Renewal Procedures. (1) Effective April 1, 1991, the State Fire Marshal shall issue a certificate to each individual or company as set forth in Sections 5 through 7[(4)] of this regulation. The certificate shall be renewed annually for a fee of fifty (50) dollars.

(2) The application or renewal for a certified contractor [installer] shall be denied by the State Fire Marshal if any of the following occur:

(a) The applicant failed to provide the information required by the application form prescribed by the State Fire Marshal and attached as Appendix A; or

(b) The applicant failed to provide the insurance certificates or the fee required for application and examination; or

(c) The applicant failed to comply with the experience and education requirements of this regulation; or

(d) The applicant did not successfully pass the examination required by this regulation; or

(e) The applicant made a misrepresentation or submitted false statements with the application.

Section 9. Revocation or Suspension of Certification. A certificate issued pursuant to this regulation may be suspended or revoked by the State Fire Marshal for any of the following reasons:

(1) The certified contractor [installer] recklessly or intentionally violated any provision of this regulation relating to installation, repair, closure or removal; or

(2) The certified contractor [installer] recklessly or intentionally caused or permitted a person under the contractor's [his] supervision to install, perform a repair on site to, close, or remove a UPST system in violation of the Kentucky Standards of Safety (815 KAR 10:040); or

(3) The certified contractor [installer] obtained the [his] certification through fraud or misrepresentation.

(4) The individual who took the examination, provided the experience requirements and requested the certificate to be issued with a company's name and proof of insurance, is no longer employed by the company in whose name the certificate was issued.

APPENDIX A

APPLICATION FOR CERTIFICATION
AS AN UNDERGROUND PETROLEUM TANK INSTALLER

Application Fee: $150
Examination: $25 __Yes __No
(Remit by check or money order only. Payable to: Kentucky State Treasurer)

FOR OFFICE USE ONLY
Rec'd (Date)_____
Money Rec'd_____
Application #_____
Certification #_____

PLEASE PRINT OR TYPE AND SIGN

1. Full Name_____
2. Permanent Residence: Street and Number, City, State_____
   _____
3. Business Address:_____
4. Phone: Residence ( )_____ Business ( )_____
5. Birthdate:_____
6. Send Mail to: _____Business _____Residence
7. Place of Birth:_____
8. Social Security Number:_____
9. List any schools or training seminars concerning tank installations which you have attended:

Title	Presented By	Date(s)

10. With whom did you most recently apprentice as a tank installer?
    Business name:_____
    Address:_____
    City, State, Zip:_____
    Person who supervised you:_____
    Period of apprenticeship:
    From:_____MO/YR To:_____MO/YR
11. # of years experience as a tank installer:___
12. Approximate # of tank installations you have:

	Supervised?	Participated in?
Bare/asphalt coated steel	_____	_____
Fiberglass	_____	_____
Fiberglass coated steel	_____	_____
Cathodically protected steel (STI-P3)	_____	_____
Dual containment (excavation liner)	_____	_____

Dual containment (double wall tank)	_____	_____
TOTALS	_____	_____

13. Approximate # of piping installations you have:

	Supervised?	Participated in?
Black iron/ galvanized	_____	_____
Copper	_____	_____
Fiberglass	_____	_____
Cathodically protected steel	_____	_____
Dual wall	_____	_____
TOTALS	_____	_____

14. List the names and addresses of at least 3 people (e.g., employer, supervisors), familiar with your work as a tank installer to whom you have sent reference forms.

Name	Address	Telephone #

I, _____, hereby certify that the information contained on this application and attached Experience Data Sheets is true and correct to the best of my knowledge.

Signature of Applicant:_____
Date:_____

State of_____
County of_____

Subscribed and sworn to before me this _____ day of _____, 19____.

_____
Notary Public
My Commission expires_____

J. WILLIAM MARTIN, State Fire Marshal
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: December 5, 1990
FILED WITH LRC: December 6, 1990 at 10 a.m.

PROPOSED AMENDMENTS RECEIVED BY FILING DEADLINE

REVENUE CABINET
Department of Administrative Services
(Proposed Amendment)

103 KAR 18:100. Exemption certificates.

RELATES TO: KRS 141.325
STATUTORY AUTHORITY: KRS Chapter 13A, 131.130, 141.325, 152.282
NECESSITY AND FUNCTION: KRS 141.325(7) authorizes the cabinet to prescribe by regulation the form and content of employee withholding exemption certificates. This regulation cites various situations and circumstances and provides instructions for employees in each particular case.

Section 1. Exemption Certificate. Upon employment, an employee shall [must] file a withholding exemption certificate (Revenue Form K-4), showing the number of exemptions, with his employer, which shall remain in effect until changed (See Section 6 of this regulation). The tax shall [must] be withheld as if no exemptions were claimed if the employee does not file an exemption certificate.

Section 2. Change in Exemption. An amended certificate shall [should] be filed by an employee to show changes in exemptions. The employer may make the amended certificate effective with the next payment of wages or the effective date may be postponed until the following January 1 or July 1 whichever occurs first but at least thirty (30) days after the date the certificate is filed.

Section 3. Amended Certificate Shall [Must] be Filed. An employee shall [must] file an amended certificate, reducing the number of exemptions, within ten (10) days:
(1) When spouse claimed is divorced or legally separated or claims own exemption(s), or
(2) When an employee determines that a dependent claimed will not qualify.

Section 4. Amended Certificate May be Filed. An employee may file an amended certificate increasing the number of exemptions any time:
(1) The employee's spouse does not claim own exemption(s),
(2) A child is born or adopted,
(3) The employee begins to support a relative or other person qualifying as an exemption and expects to claim that person as an exemption for the current year,
(4) The employee becomes blind, or the spouse becomes blind and does not claim own exemption, or
(5) The employee or spouse reaches the age of sixty-five (65) and does not claim own exemption.

Section 5. Additional Withholding Exemptions. (1) An employee may file an amended certificate increasing the number of exemptions if the employee anticipates substantial itemized deductions which would result in a tax liability much less than tax withheld. The number of additional exemptions is determined by: subtracting $650 from estimated itemized deductions; and, dividing the remainder by $600.
(2) An employee may file an amended certificate and claim an additional withholding exemption if the employee will be a member of the Kentucky National Guard on December 31 of the taxable year.

Section 6. Special Exemption Certificate. [Upon employment,] An employee may file (Revenue Form K-4E) with his employer and exempt wages [the income] from withholding provided:
[(1) The employee incurred no tax liability for the preceding year;]
(1) [(2)] No liability is anticipated for the current year; and
(2) [(3)] The anticipated annual adjusted gross income will not exceed $5,000 [an adjusted gross income of $1,650] for a single person or $5,000 [2,650] combined adjusted gross income for married persons.

Section 7. Multiple Employers. An employee with multiple employers may claim the special exemption with each employer provided no liability [occurred for the preceding year and none] is anticipated for the current year.

Section 8. Expiration. The special exemption certificate will expire on the last day of the fourth month following the close of the taxable year; or within ten (10) days if the employee reasonably anticipates that a tax liability will occur. If this exemption certificate is discontinued or expires, a new employee withholding exemption certificate (Form K-4) may [must] be filed with the employer (See Section 1 of this regulation).

Section 9. Offset of Portion of Job Assessment Fee. Employers who assess and withhold from employees the job development assessment fee provided in KRS 152.282(1) may offset a portion of such fee against the Kentucky income tax required to be withheld from the employee under KRS 141.310. The amount of the offset shall be two-thirds (2/3) of the amount of the assessment fee withheld from the employee. If the Kentucky income tax to be withheld from the employee under KRS 141.310 is greater than two-thirds (2/3) of the job assessment fee, the excess shall be withheld and paid to the cabinet in accordance with KRS Chapter 141.

C. EMMETT CALVERT, Secretary
APPROVED BY AGENCY: December 10, 1990
FILED WITH LRC: December 13, 1990 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on January 22, 1991 at 10 a.m. at Room 406, Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 17, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public

hearing or written comments on the proposed administrative regulation to the contact person: Scott Akers, Revenue Cabinet, Division of Tax Policy and Research, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers
(1) Type and number of entities affected: Any employee having an annual adjusted gross income of $5,000 or less. Approximately 100,000 employees could be affected by this regulation. Fewer than 1,000 employees will be affected by Section 9.
(a) Direct and indirect costs or savings to those affected:
1. First year: Exemption from Kentucky income tax for qualifying taxpayers. There will be no cost or savings to the employee from the offset provided by Section 9. There will also be no cost or savings in Kentucky income tax withholding liability to the employer from the offset.
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Additional paperwork is required of both employee and employer when amended withholding exemption certificates are filed.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Printing costs of revised Revenue Form K-4E and instructions are estimated at $1,500.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No additional requirements are anticipated.
(3) Assessment of anticipated effect on state and local revenues: House Bill 940 provides a low income credit which exempts from Kentucky income tax any taxpayer with an adjusted gross income of $5,000 or less. (Prior law exempted income of $1,650 or less.) Many of the 100,000 taxpayers exempted by House Bill 940 are employees who may wish to file amended K-4E forms for a complete withholding exemption. While withholding is reduced, there is no reduction in state revenue since the tax otherwise withheld would be refunded because of the 100% low income tax credit for taxpayers with income of $5,000 or less. There is no effect on local revenue. The job assessment fee offset prevents overwithholding and has no income tax revenue effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to the amendment regarding the low income credit is repeal since House Bill 940 increased the K-4E eligibility amount. This alternative was rejected since the regulation is needed for taxpayer guidance. The alternative to adding Section 9 was not to add Section 9 but that alternative was rejected to avoid an incomplete regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.
(a) Necessity of proposed regulation if in conflict: No conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes

REVENUE CABINET
Department of Administrative Services
(Proposed Amendment)

103 KAR 30:020. Prescription medicines, prosthetic devices and physical aids.

RELATES TO: KRS 139.050, 139.110, 139.130, 139.472
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: This regulation defines and clarifies the sales and use tax exemption provided in KRS 139.472 for prescription medicine, prosthetic devices and physical aids.

Section 1. As provided in KRS 139.472, [effective January 1, 1971,] the sales and use tax does not apply to sales of prescription medicines, prosthetic devices and physical aids.

Section 2. Prescription medicine shall mean [and include] any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease or infirmity and which is commonly recognized as a substance or preparation intended for such use which is prescribed for the treatment of a human being by a person authorized to prescribe the medicines and dispensed on prescription by a registered pharmacist in accordance with law.

Section 3. Sales of prescription medicine pursuant to a physician's or dentist's telephone (oral) prescription are exempt from sales tax provided the prescription is transcribed and signed by the pharmacist and is filed in the same manner an an original written prescription.

Section 4. Medical oxygen when purchased by the patient for private use is exempt from sales and use tax. The exemption applies whether the oxygen is conveyed to the patient by high pressure cylinders, cryogenic tanks or oxygen concentrators. Amounts charged to home oxygen patients for tubes, masks and similar items required for delivery of oxygen are also exempt whether included in the charge for the oxygen or separately stated. Any separately stated charge, to be exempt from tax, must be in conjunction with the providing of oxygen for a charge to a patient for private use. Sales of tubes, masks and similar items not in conjunction with the providing of oxygen are taxable unless exempt under other provisions of the sales and use tax law. Repair and replacement parts for oxygen cylinders, tanks or concentrators may be purchased by oxygen suppliers for resale exclusive of the tax in accordance with the provisions of 103 KAR 28:051 (leases and rentals).

Section 5. Prosthetic devices and physical aids shall mean:
(1) Artificial devices prescribed by a

licensed physician, or individually designed, constructed or altered solely for the use of a particular crippled person so as to become a brace, support, supplement, correction, or substitute for the bodily structure including the extremities of the individual;

(2) Artificial limbs, artificial eyes, hearing aids prescribed by a licensed physician, or individually designed, constructed or altered solely for the use of a particular disabled person;

(3) Crutches, wheelchairs, walkers, hospital beds, and wheelchair lifting devices for the use of invalids and crippled persons;

(4) Insulin, and diabetic supplies, such as hypodermic syringes and needles, and sugar (urine and blood) testing materials purchased for use by diabetics; and

(5) Colostomy supplies.

Section 6. Sales of standardized or stock devices, braces or supports including such items as anklets, arch supports, athletic supporters, elbow caps, elastic goods, eye shields, knee caps, stockings, and wristlets are exempt from sales and use tax when prescribed by a licensed physician for the use of a particular crippled person. Sales of trusses, abdominal supports, uterine supports, maternity supports, kidney supports and postoperative supports are also exempt when prescribed by a licensed physician or specially made up for the use of a particular crippled person. Sales of standardized hearing aids prescribed by a physician for the use of a particular disabled person are exempt from the tax. Corrective eyeglasses are subject to tax.

Section 7. Sales of crutches, wheelchairs, walkers, hospital beds, [and] wheelchair lifting devices and related repair and replacement parts to persons who rent them to others are nontaxable sales for resale in accordance with the provisions of 103 KAR 28:051 (leases and rentals). [exempt. The rental receipts would not be subject to sales or use tax. Repair and replacement parts for prosthetic devices and physical aids are taxable.]

Section 8. To claim an exemption for sales of prosthetic devices and physical aids, sellers of these items, with the exception of crutches, wheelchairs, walkers, hospital beds and wheelchair lifting devices, must retain evidence to show that the devices were specifically designed for the use of a particular crippled or disabled person and not merely removed from inventory for sale.

C. EMMETT CALVERT, Secretary

APPROVED BY AGENCY: December 10, 1990

FILED WITH LRC: December 13, 1990 at 3 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held on January 28, 1991 at 10 a.m. at Room 406 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 23, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Raymond L. Kring, Revenue Cabinet, Division of Tax Policy and Research, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Raymond L. Kring

(1) Type and number of entities affected: The entities affected would approximate 500 retailers who provide medical equipment and supplies for use in the home as well as home patients who require oxygen. The amendment to the existing regulation at Section 4 assures that the sale of medical oxygen to a patient for private use will be exempt regardless of the means of conveyance to the home patient. The 1986 exemption language did not clearly include oxygen concentrators which are devices which produce or extract oxygen from the air for the patient in the home. Use of this device makes refilling unnecessary since no tanks or cylinders are required and this method is the primary means today of providing oxygen to the home patient. Also, amended is Section 7 of the regulation to conform with 103 KAR 28:051 (leases and rentals).

(a) Direct and indirect costs or savings to those affected: There would be no costs to those affected since the amended regulation clarifies the type of circumstances regarding oxygen that qualify for the exemption for a tax savings.

1. First year: There would be no costs to those affected since the amended regulation clarifies the type of circumstances regarding oxygen that qualify for the exemption for a tax savings.

2. Continuing costs or savings: There would be no costs to those affected since the amended regulation clarifies the type of circumstances regarding oxygen that qualify for the exemption for a tax savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There would be no change in these requirements.

(2) Effects on the promulgating administrative body: The administration of the oxygen exemption will be enhanced by providing the believed intent of the legislation.

(a) Direct and indirect costs or savings: Audit and administrative time expended by the cabinet in enforcement procedures will be eliminated pertaining to this issue.

1. First year: Audit and administrative time expended by the cabinet in enforcement procedures will be eliminated pertaining to this issue.

2. Continuing costs or savings: Audit and administrative time expended by the cabinet in enforcement procedures will be eliminated pertaining to this issue.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be no change in current reporting and paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: The revenue loss will be minimal.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The proposed amended regulation is required to clarify the application of the oxygen exemption to the benefit of home oxygen users and to conform with 103 KAR 28:051 (leases and rentals).
(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: No conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. The amendment applies to medical oxygen when acquired by a patient for private use. No distinction is made by the statute as to applying any other criterion.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Proposed Amendment)

201 KAR 2:116. Drug products with bioinequivalence problems.

RELATES TO: KRS 217.819
STATUTORY AUTHORITY: KRS 217.814(5), (6), (7), (8), 217.819(1)
NECESSITY AND FUNCTION: KRS 217.819 directs the Kentucky Board of Pharmacy to prepare a nonequivalent drug product formulary of drugs which should not be interchanged by pharmacists. This regulation lists drug products with active ingredients or dosage forms with potential bioequivalence problems, drugs characteristically possessing a narrow therapeutic index, or categories of agents for which there is either documented evidence of inequivalent therapeutic effect or a potential for it based on differences in bioavailability.

Section 1. The following have been determined by the board to be noninterchangeable: drugs, drug products, or dosage formulations considered by the United States Food and Drug Administration not to be therapeutically equivalent to other pharmaceutically equivalent products as published in the "Approved Drug Products with Therapeutic Equivalence Evaluations."

Section 2. [1.] The following have been determined by the board to be noninterchangeable unless the United States Food and Drug Administration considers them therapeutically equivalent to other pharmaceutically equivalent products with no potential bioequivalency problems and are listed as such in "Approved Drug Products with Therapeutic Equivalence Evaluations":
(1) Digitalis glycosides; [:]
[(a) Digoxin; and]
[(b) Digitoxin.]
(2) Antiepileptic drugs; [:]
[(a) Phenytoin;]
[(b) Primidone; and]
[(c) Carbamazephine.]
(3) Antiarrhythmic agents; [:]
[(a) Quinidine; and]
[(b) Procainamide.]
(4) Conjugated estrogens; [:]
[(a) Conjugated; and]
(5) [(b)] Esterified estrogens; [.]
(6) [(5)] Warfarin anticoagulants; [.]
(7) [(6)] Theophylline products; and [.]
(8) [(7)] Thyroid preparations. [:]
[(a) Thyroglobulin, whole grain thyroid;]
[(b) Levothyroxine; and]
[(c) Leothyronine.]

Section 3. "Approved Drug Products with Therapeutic Equivalence Evaluations," 10th Edition, 1990, with Cumulative Supplement January-September 1990, U.S. Food and Drug Administration is incorporated by reference.

RALPH G. DEITEMEYER, President
APPROVED BY AGENCY: November 30, 1990
FILED WITH LRC: December 6, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 1991 at 10 a.m. (EST) at the Office of the Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort. Individuals interested in attending this hearing shall notify this agency in writing by January 20, 1991, 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: Richard L. Ross, Executive Director, Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Richard L. Ross, Executive Director
(1) Type and number of entities affected: All patients currently taking these categories of drugs.
(a) Direct and indirect costs or savings to those affected: Direct cost to patients who would not be switched to generic versions of the innovator drug.
1. First year: Physicians generally have not allowed for substitution of the categories of drugs.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Factors causing the narrow therapeutic index concern limited substitution by physicians.
(b) Reporting and paperwork requirements: Would not require the physician to identify "Do Not Substitute" on these prescriptions.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: No additional monitoring by PDI required. (PDI - Pharmacy and Drug Inspector).
1. First year: No costs or savings for monitoring compliance.
2. Continuing costs or savings: No costs or savings for monitoring compliance.

3. Additional factors increasing or decreasing costs: Pharmacists would not be required to include identification of substituted drug on the prescription copy.

(b) Reporting and paperwork requirements: Same as (1)(a)(3).

(3) Assessment of anticipated effect on state and local revenues: Physicians generally do not allow for these drugs to be substituted and should have little impact on additional revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative method of allowing substitution is not in the best interest of patients here in Kentucky.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no 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: No conflict.

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Substitution would not be allowed on any drug product with bioinequivalence problems. However, the physician or patient may obtain other forms of drug products by having the physician write a prescription for a specific drug product or if drug product is listed in the "Approved Drug Products with Therapeutic Equivalence Evaluations" with an "A" rating.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Proposed Amendment)

201 KAR 11:095. Closing statements; rental management agreements.

RELATES TO: KRS Chapter 324[.160]

STATUTORY AUTHORITY: KRS Chapter 13A, 304.281(5), 324.282

NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. A real estate broker shall cause to be furnished a debit and credit type closing statement to a buyer and seller upon closing a real estate transaction.

[Section 2. All rental management agreements shall be in writing in order to avoid controversies.]

GEORGE G. SIRK, JR., Chairman

APPROVED BY AGENCY: December 11, 1990

FILED WITH LRC: December 12, 1990 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1991 at 10 a.m. at the Kentucky Real Estate Commission Office, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: John L. Ackman, Jr., Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Daniels

(1) Type and number of entities affected: There are 15,461 actively licensed real estate brokers and sales associates who will be governed by this regulation, as of November 30, 1990.

(a) Direct and indirect costs or savings to those affected: There should be direct savings to those affected. This amendment recognizes the general practice among licensees of obtaining a closing statement from the lender or attorney involved in real estate closings. It eliminates the possible duplication of this effort contained in the old regulation which required the licensee to furnish the closing statement.

1. First year: The same savings effect noted in (1)(a) above should be continuing in nature.

2. Continuing costs or savings: The same savings effect noted in (1)(a)1 above should be continuing in nature.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The same savings effect noted in (1)(a)1 above are the only known effects. There will be no effect on competition.

(b) Reporting and paperwork requirements: The paperwork requirement will be decreased among most licensees because they will not be required to furnish their own independent closing statement in those transactions where a lender or attorney prepares one for the closing. There is no reporting requirement.

(2) Effects on the promulgating administrative body: The only effects will be in educating licensees about this regulation.

(a) Direct and indirect costs or savings: There will be no costs or savings because the education concerning this regulation will be done through the agency's existing newsletter and educational seminars.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.

(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: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Tiering is not applicable to this regulation.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Proposed Amendment)

201 KAR 11:105. Owner's consent and authorization.

RELATES TO: KRS Chapter 324[.160]
STATUTORY AUTHORITY: KRS Chapter 13A, 304.281(5), 324.282
NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. A real estate broker shall never offer real estate [a property] for sale or lease without the consent [authorization] of the owner or owners, and [but] when publicly promoting or advertising the real estate, the broker must have a written listing agreement signed by the owner or owners [a property, it shall be listed in writing].

Section 2. No sign shall ever be placed on any property by a real estate broker without the consent of the owner.

GEORGE G. SIRK, JR., Chairman
APPROVED BY AGENCY: December 11, 1990
FILED WITH LRC: December 12, 1990 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1991 at 10 a.m. at the Kentucky Real Estate Commission Office, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: John L. Ackman, Jr., Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Daniels
(1) Type and number of entities affected: There are 15,461 actively licensed real estate brokers and sales associates who will be governed by this regulation, as of November 30, 1990.
(a) Direct and indirect costs or savings to those affected: None. This regulation sets operating standards. This amendment is to clarify language.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None. There will be no effect on competition.
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: The only effects will be in educating licensees about this regulation.
(a) Direct and indirect costs or savings: There will be no costs or savings because the education concerning this regulation will be done through the agency's existing newsletter and educational seminars.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: The same savings effect noted in (1)(a)1 above are the only known effects. There will be no effect on competition.
(b) Reporting and paperwork requirements: The paperwork requirement will be decreased among most licensees because they will not be required to furnish their own independent closing statement in those transactions where a lender or attorney prepares one for the closing. There is no reporting requirement.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.
(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: No conflict exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering is not applicable to this regulation.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Proposed Amendment)

201 KAR 11:110. Exclusive authority retained by original broker.

RELATES TO: KRS Chapter 324[.160]
STATUTORY AUTHORITY: KRS Chapter 13A, 304.281(5), 324.282
NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. No real estate broker shall assist or induce any party to a contract or sale or lease to breach said [break such] contract or sale or lease for the purpose of substituting in lieu thereof a new contract or sale or lease with another [principal]. As used in this regulation, the word "contract" shall include an offer to purchase or other similar document signed by one who agrees to purchase real estate listed for sale with a broker when said offer to purchase or other similar document provides for a sale price at or above the price of the listing agreement and there are contained therein no contingencies, and which provides for a closing date within thirty (30) days, and which provides the price will be paid in cash, and which is made and delivered to the listing agent during the term of the listing agreement or any written extensions thereof, and which is

made by one under no apparent disability, whether financial, mental, or otherwise.

GEORGE G. SIRK, JR., Chairman
APPROVED BY AGENCY: December 11, 1990
FILED WITH LRC: December 12, 1990 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1991 at 10 a.m. at the Kentucky Real Estate Commission Office, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: John L. Ackman, Jr., Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Daniels
(1) Type and number of entities affected: There are 15,461 actively licensed real estate brokers and sales associates who will be governed by this regulation, as of November 30, 1990.
(a) Direct and indirect costs or savings to those affected: None. This regulation sets operating standards. This amendment is to clarify language.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None. There will be no effect on competition.
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: The only effects will be in educating licensees about this regulation.
(a) Direct and indirect costs or savings: There will be no costs or savings because the education concerning this regulation will be done through the agency's existing newsletter and educational seminars.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: The same savings effect noted in (1)(a)1 above are the only known effects. There will be no effect on competition.
(b) Reporting and paperwork requirements: The paperwork requirement will be decreased among most licensees because they will not be required to furnish their own independent closing statement in those transactions where a lender or attorney prepares one for the closing. There is no reporting requirement.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.
(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: No conflict exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.
(6) Any additional information or comments: This regulation seeks to prohibit from interfering with an existing contract for sale of real estate.
TIERING: Was tiering applied? No. Tiering is not applicable to this regulation.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Proposed Amendment)

201 KAR 11:115. Auction obligations.

RELATES TO: KRS Chapter 324[.160]
STATUTORY AUTHORITY: KRS Chapter 13A, 304.281(5), 324.282
NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. Any real estate licensee [broker] who advertises or sells real property at [absolute] auction must comply with KRS 330.220 [is obligated to the public to sell said property to the highest bona fide bidder on the day of the auction].

GEORGE G. SIRK, JR., Chairman
APPROVED BY AGENCY: December 11, 1990
FILED WITH LRC: December 12, 1990 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1991 at 10 a.m. at the Kentucky Real Estate Commission Office, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: John L. Ackman, Jr., Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Daniels
(1) Type and number of entities affected: There are 15,461 actively licensed real estate brokers and sales associates who will be governed by this regulation, as of November 30, 1990.

(a) Direct and indirect costs or savings to those affected: None. This regulation sets operating standards. This amendment is to clarify language.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None. There will be no effect on competition.
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: The only effects will be in educating licensees about this regulation.
(a) Direct and indirect costs or savings: There will be no costs or savings because the education concerning this regulation will be done through the agency's existing newsletter and educational seminars.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: The same savings effect noted in (1)(a) 1 agove are the only known effects. There will be no effect on competition.
(b) Reporting and paperwork requirements: The paperwork requirement will be decreased among most licensees because they will not be required to furnish their own independent closing statement in those transactions where a lender or attorney prepares one for the closing. There is no reporting requirement.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.
(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: No conflict exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.
(6) Any additional information or comments: This regulation comports with the recently enacted statute which sets standards for auctioneers.
TIERING: Was tiering applied? No. Tiering is not applicable to this regulation.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Proposed Amendment)

201 KAR 11:170. Private school approval.

RELATES TO: KRS 324.010(1)(f) [(g)]
STATUTORY AUTHORITY: KRS Chapter 13A, 304.281(5), 324.282
NECESSITY AND FUNCTION: To set policies and procedures for private school approval.

Section 1. To obtain a certificate of approval, a real estate school must apply to the commission on forms provided by the commission and supply all information requested concerning curriculum, instructors, and other educational materials and policies.

Section 2. The curriculum for an approval real estate school shall:
(1) Include a minimum of three (3) academic [forty-eight (48) clock] hours [of classroom instruction] per course;
(2) Be conducted for a maximum of no more than seven (7) hours during a twenty-four (24) hour period; and
(3) Consist of course(s) containing, but not limited to, topics and materials prescribed by the Real Estate Commission.

Section 3. An approved real estate school shall not:
(1) Advertise in conjunction with the business of a broker or a brokerage firm; or
(2) Be allowed to discuss, induce, or promote affiliation with any broker or brokerage firm.

Section 4. (1) An approved real estate school shall maintain accurate and permanent records on all students enrolled in course(s). Permanent records shall include each student's record of course(s) completed or attempted, academic [clock] hours awarded, and final grade(s).
(2) Temporary records shall be maintained for three (3) years. These records shall include student attendance records and test scores.
(3) A sample "official transcript," as specified in KRS 324.046(3) shall be submitted with the approved school application.
(4) An approved real estate school shall provide to the commission current course schedules and instructor resumes at least seven (7) days after the course begins.

Section 5. An approved real estate school shall permit inspections and monitoring by the commission or its designee to evaluate any aspect of the administration or operation of the school.

Section 6. An approved school shall notify the commission within ten (10) days of any material change from the information originally furnished on the application form or attachments thereto. An approved school shall renew its certification with the Real Estate Commission annually on forms provided by the commission. The annual renewal date shall be November 1 [based on the initial certification date]. It shall be the school's responsibility to renew on or before the annual renewal date.

Section 7. Private school approval may be withdrawn if the commission determines that:
(1) Information contained on the application or renewal is inaccurate, misleading, or changed.
(2) The establishment or conduct of the school is not in compliance with these regulations or the instruction is so deficient as to impair the value of the course. Where a school has been given notice of a deficiency under this section, the commission shall give the school an opportunity to correct the deficiency within thirty (30) days.

Section 8. Any effort made directly or indirectly by any school, official or employee thereof or anyone on their behalf to reconstruct the real estate licensing examination or portion thereof shall result in immediate revocation of school approval.

Section 9. The commission shall follow the hearing procedures outlined in KRS 324.170 through 324.200 whenever action is taken to revoke a school's certificate of approval.

GEORGE G. SIRK, JR., Chairman
APPROVED BY AGENCY: December 11, 1990
FILED WITH LRC: December 12, 1990 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1991 at 10 a.m. at the Kentucky Real Estate Commission Office, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: John L. Ackman, Jr., Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Daniels
(1) Type and number of entities affected: There are 11 approved real estate schools which will be affected.
(a) Direct and indirect costs or savings to those affected: None. This regulation sets operating standards. This amendment is to clarify language.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None. There will be no effect on competition.
(b) Reporting and paperwork requirements: This amendment changes the dates for reporting course schedules and instructor resumes from 14 to 7 days after the course begins; it also makes the renewal date uniform on November 1.
(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:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.
(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: No conflict exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.
(6) Any additional information or comments: This amendment changes reporting dates and uses uniform language defining hours of instruction.
TIERING: Was tiering applied? No. Tiering is not applicable to this regulation.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission
(Proposed Amendment)

201 KAR 11:210. Licensing, education and testing requirements.

RELATES TO: KRS Chapter 324[.010, 324.020, 324.040, 324.045, 324.046]
STATUTORY AUTHORITY: KRS Chapter 13A[.100(3)], 304.281(5), 324.282
NECESSITY AND FUNCTION: To set forth procedures and standards for education requirements, testing, and license applications.

Section 1. An applicant for licensure cannot engage in any real estate activities until the license has been issued and received by the principal broker.

Section 2. An applicant for licensure accepts responsibility to meet all statutory and regulatory licensing requirements. Applicants having questions regarding applicability of education courses, pending complaints, past criminal convictions, or any other requirement should contact the commission in writing prior to the examination.

Section 3. An applicant for licensure must have successfully completed all education requirements prior to taking the required written examination.

Section 4. An applicant for licensure must provide proof of high school graduation or successful passage of the General Educational Development test. In lieu of the above, candidates may submit an official transcript which indicates completion of a degree program at a post secondary institution, or a transcript which indicates successful completion of twenty-eight (28) academic semester hours or equivalent from a post secondary institution.

Section 5. An official transcript is a document imprinted with the institution's seal, signed by the registrar, and sent directly from the institution to the commission.

Section 6. An applicant who has attended an approved or accredited real estate school as defined by KRS 324.010, must provide an official transcript indicating successful completion of course, date of completion, [clock or] academic [semester] hours awarded, and other information which would indicate compliance with statutory or regulatory requirements.

Section 7. Sixteen (16) clock hours from an approved school will be equal to one (1) academic semester hour from an accredited college or university.

Section 8. A real estate course shall be one which is designated specifically as a real estate course by an approved or accredited real estate school which offers the course. The academic content for the course must specifically focus on real estate. The course must be for academic credit and not a continuing education unit, examination preparation or review, experiential education, or competency testing. Candidates may not submit completion of

the same course or essentially same course twice for licensure credit.

Section 9. An applicant who successfully passes the entire real estate examination must apply for a license within sixty (60) days after the examination. Failure to do so necessitates the candidate's reexamination.

[Section 10. Candidates for licensure must successfully pass the entire examination within a two (2) year period prior to licensure.]

GEORGE G. SIRK, JR., Chairman
APPROVED BY AGENCY: December 11, 1990
FILED WITH LRC: December 12, 1990 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1991 at 10 a.m. at the Kentucky Real Estate Commission Office, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: John L. Ackman, Jr., Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Daniels
(1) Type and number of entities affected: There are 20 accredited and 11 approved schools.
(a) Direct and indirect costs or savings to those affected: None. This regulation sets operating standards. This amendment is to clarify language.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None. There will be no effect on competition.
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: The only effects will be in educating licensees about this regulation.
(a) Direct and indirect costs or savings: There will be no costs or savings because the education concerning this regulation will be done through the agency's existing newsletter and educational seminars.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: The same savings effect noted in (1)(a) 1 agove are the only known effects. There will be no effect on competition.
(b) Reporting and paperwork requirements: The paperwork requirement will be decreased among most licensees because they will not be required to furnish their own independent closing statement in those transactions where a lender or attorney prepares one for the closing. There is no reporting requirement.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.
(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: No conflict exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.
(6) Any additional information or comments: This amendment uses uniform language defining hours of instruction and deletes obsolete language.
TIERING: Was tiering applied? No. Tiering is not applicable to this regulation.

JUSTICE CABINET
Office of The Secretary
(Proposed Amendment)

500 KAR 9:010. Definitions.

RELATES TO: KRS 218A.410, et seq., Kentucky Acts 1990 Chapter 445
STATUTORY AUTHORITY: KRS 218A.435(8), 218A.440(4)
NECESSITY AND FUNCTION: This regulation provides the definitions of certain terms used in 500 KAR Chapter 9 which pertain to asset forfeiture as required by KRS Chapter 218A to be promulgated by the Justice Cabinet.

Section 1. As employed in these regulations, unless the context requires otherwise, the following words and phrases have the following meanings:
(1) "Secretary" means the Secretary of the Justice Cabinet.
(2) "Cabinet" means the Justice Cabinet.
(3) "Program coordinator" means the person within the office of the secretary who has been designated to coordinate the cabinet's duties with regard to asset forfeiture.
(4) "Controlled Substances Act" means the statutes concerning controlled substances found in Title XVIII, Chapter 218A of the Kentucky Revised Statutes, and any amendments or successors thereto.
(5) "Trust fund" means the asset forfeiture trust fund created by KRS 218A.435.
(6) "Direct law enforcement purpose" means any activity of a law enforcement agency as defined in the Controlled Substances Act which materially facilitates enforcement of the laws of the Commonwealth of Kentucky.
(7) "Law enforcement agency" shall include any governmental body or agency which employs one (1) or more law enforcement officers as that term is defined in KRS 15.310(3) and shall expressly include, but not be limited to, airport authorities, university and college public safety departments, and any agency of the state which has as its primary mission the detection, prevention and investigation of crime throughout the state.

W. MICHAEL TROOP, Secretary
APPROVED BY AGENCY: December 3, 1990
FILED WITH LRC: December 5, 1990 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, January 22, 1991, at the Justice Cabinet, Bush Building, Second Floor, 403 Wapping Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by Thursday, January 17, 1991, five days prior to 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: Christopher W. Johnson, Justice Cabinet, Bush Building, Second Floor, 403 Wapping Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Chris Johnson
(1) Type and number of entities affected: All state and local law enforcement agencies, approximately 500 of them.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: May increase revenues by providing broad definition of "law enforcement agency".
(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? No. The statutes apply equally to all law enforcement agencies.

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___ (If yes, complete questions 2-4)
2. State what unit, part or division of local government this administrative regulation will affect. Any local law enforcement agency.
3. State the aspect or service of local government to which this administrative regulation relates. Law enforcement.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation: Unknown. This regulation by defining law enforcement agency may make a local entity eligible for receipt of grant funds pursuant to KRS 218A.435(7)(d).

JUSTICE CABINET
Office of the Secretary
(Proposed Amendment)

500 KAR 9:040. Grants.

RELATES TO: KRS 218A.435
STATUTORY AUTHORITY: KRS 218A.435(8)
NECESSITY AND FUNCTION: KRS 218A.435(7)(d) provides that a portion of the asset forfeiture trust fund shall be allocated to the cabinet for the purpose of disbursement to law enforcement agencies as grants. This regulation establishes the application mechanism.

Section 1. Law enforcement agencies may apply for receipt of a grant from the trust fund on forms provided by the Division of Grants Management of the Justice Cabinet.

Section 2. When applying a law enforcement agency shall certify that one (1) or more currently employed officers has received the approved training required in KRS 218A.435(10). In addition, the applying agency must have on file with the program coordinator an approved policy as required in KRS 218A.435(9) and 500 KAR 9:020.

Section 3. Grant monies are to be used by the agency for programs relative to crime prevention, drug abuse prevention, general law enforcement purposes or other similar purposes relating to drug enforcement. Preference shall be given to those applications seeking funding for programs in the following areas: [consistent with the annual "Statewide Drug and Violent Crime Strategy" as developed and published by the Division of grants Management of the Justice Cabinet.]
(1) Demand reduction education programs in which law enforcement officers participate;
(2) Multijurisdictional task force programs that integrate federal, state and local drug law enforcement agencies and prosecutors for the purpose of enhancing interagency coordination and intelligence and facilitating multijurisdictional investigations;
(3) Programs designed to target the domestic sources of controlled and illegal substances, such as precursor chemicals, diverted pharmaceuticals, clandestine laboratories and cannabis cultivations;
(4) Providing community and neighborhood

programs that assist citizens in preventing and controlling crime, including special programs that address the problems of crimes committed against the elderly and special programs for rural jurisdictions;

(5) Disrupting illicit commerce in stolen goods and property;

(6)(a) Improving the operational effectiveness of law enforcement through the use of crime analysis techniques, street sales enforcement, schoolyard violator programs, gang-related and low-income housing drug control programs;

(b) Developing and implementing antiterrorism plans for international airports and other important facilities;

(7) Career criminal prosecution programs, including the development of model drug control legislation;

(8) Financial investigative programs that target the identification of money laundering operations and assets obtained through illegal drug trafficking including the development of proposed model legislation, financial investigative training and financial information sharing systems;

(9) Improving the operational effectiveness of the court process, such as court delay reduction programs and enhancement programs;

(10) Programs designed to provide additional public correctional resources and improve the corrections systems, including treatment in prisons and jails, intensive supervision programs and long-range corrections and sentencing strategies;

(11) Providing prison industry projects designed to place inmates in a realistic working and training environment which will enable them to acquire marketable skills and to make financial payments for restitution to their victims, for support of their own families and for support of themselves in the institution;

(12) Providing programs which identify and meet the treatment needs of adult and juvenile drug-dependent and alcohol-dependent offenders;

(13) Developing and implementing programs which provide assistance to jurors and witnesses and assistance (other than compensation) to victims of crime;

(14)(a) Developing programs to improve drug control technology, such as pretrial drug testing programs, programs which provide for the identification, assessment, referral to treatment, case management and monitoring of drug-dependent offenders and enhancement of state and local forensic laboratories;

(b) Criminal justice information systems to assist law enforcement, prosecution, courts and corrections organizations (including automated fingerprint identification systems);

(15) Innovative programs which demonstrate new and different approaches to enforcement, prosecution and adjudication of drug offenses and other serious crimes;

(16) Addressing the problems of drug trafficking and the illegal manufacture of controlled substances in public housing;

(17) Improving the criminal and juvenile justice system's response to domestic and family violence, including spouse abuse, child abuse and abuse of the elderly;

(18) Drug control evaluation programs which state and local units of government may utilize to evaluate programs and projects directed at state drug control activities;

(19) Providing alternatives to prevent detention, jail and prison for persons who pose no danger to the community; and

(20) Programs of which the primary goal of is to strengthen urban enforcement and prosecution efforts targeted at street drug sales.

Section 4. The standard application for grant funds from the Asset Forfeiture Trust Fund as published by the Justice Cabinet, Office of the Secretary, Division of Grants Management, effective November 1, 1990, is hereby incorporated by reference. The incorporated material can be inspected and copied at the Office of the Secretary of Justice, Bush Building, Second Floor, 403 Wapping Street, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., local time prevailing, Monday through Friday, holidays excepted.

W. MICHAEL TROOP, Secretary
APPROVED BY AGENCY: December 3, 1990
FILED WITH LRC: December 5, 1990 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, January 22, 1991, at the Justice Cabinet, Bush Building, Second Floor, 403 Wapping Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by Thursday, January 17, 1991, five days prior to 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: Christopher W. Johnson, Justice Cabinet, Bush Building, Second Floor, 403 Wapping Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Chris Johnson

(1) Type and number of entities affected: All state and local law enforcement agencies, approximately 500 of them.

(a) Direct and indirect costs or savings to those affected:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Application process.

(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: Reviewing applications and monitoring and auditing any awarded grants.

(3) Assessment of anticipated effect on state and local revenues: Unknown, but positive, effect on revenues; effect depends on amount of

forfeitures.

(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: There are no monies anticipated in the fund for awarding of grants the first fiscal year.

TIERING: Was tiering applied? No. The statutes apply equally to all law enforcement agencies.

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___ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. Any local law enforcement agency.

3. State the aspect or service of local government to which this administrative regulation relates. Law enforcement.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Unknown. This regulation sets forth the program areas eligible for receipt of grants pursuant to KRS 218A.435(7)(d).

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 policies and procedures are incorporated by reference in order to comply with the accreditation standards of [by] the American Correctional Association. 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 December 14 [October 15], 1990 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 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

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
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 (Deleted 12/14/90)]
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 (Deleted 12/14/90)]
9.18 Informants
9.19 Found Lost or Abandoned Property
10.2 Special Management Inmates
10.3 Safekeepers
10.4 Special Needs Inmates
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
14.3 Marriage of Inmates
14.4 Legal Services Program [(Amended 10/15/90)]
14.6 Inmate Grievance Procedures [(Amended 10/15/90)]
15.1 Hair and Grooming Standards
15.2 Offenses and Penalties
15.3 Meritorious Good Time
15.5 Restoration of Forfeited Good Time
15.6 Adjustment Procedures and Programs
16.1 General Inmate Visiting Procedure
16.2 Inmate Correspondence
16.3 Telephone Calls
16.4 Inmate Packages
17.1 Inmate Personal Property
17.2 Assessment Center Operations
17.3 Controlled Intake of Inmates
18.4 Classification of the Inmate
18.5 Custody/Security Guidelines (Amended 12/14/90)
18.6 Classification Document
18.7 Transfers
18.8 Guidelines for Transfers Between Institutions

18.9 Out-of-state Transfers
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
20.6 Vocational Study Release
22.1 Privilege Trips
25.1 Gratuities
25.2 Public Official Notification of Release of an Inmate
25.3 Prerelease Program
25.4 Inmate Furloughs
25.6 Community Center Program (Amended 12/14/90)
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
27-08-01 Use of Force
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
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 (Amended 12/14/90)
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)
28-01-02 Probation and Parole Investigation Reports (Administrative Responsibilities)
28-01-03 Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
28-01-04 Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
28-01-05 Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
28-01-06 Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
28-01-07 Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
28-01-08 Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
28-01-09 Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
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: December 14, 1990
FILED WITH LRC: December 14, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 22, 1991 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: 2,937 employees of the Corrections Cabinet, 7,654 inmates, 12,240 parolees 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 policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. 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 December 14 [October 15], 1990, 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 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

KSR 01-00-09	Public Information and News Media Relations (Amended 12/14/90)
KSR 01-00-10	Entry Authorization for All Cameras and Tape Recorders Brought into the Institution (Amended 12/14/90)
KSR 01-00-14	Extraordinary Occurrence Report [(Amended 10/15/90)]
KSR 01-00-15	Cooperation and Coordination with Oldham County Court [(Amended 10/15/90)]
KSR 01-00-19	Personal Service Contract Personnel
KSR 01-00-20	Consent Decree Notification to Inmates
KSR 02-00-01	Inmate Canteen
KSR 02-00-03	Screening Disbursements from Inmate Personal Accounts
KSR 02-00-11	Inmate Personal Accounts
KSR 02-00-12	Institutional Funds and Issuance of Checks
KSR 04-00-02	Staff Training and Development
KSR 05-00-01	Officers' Daily Housing Security and Safety Log
KSR 05-00-02	Research Activities (Amended 12/14/90)
KSR 05-00-03	Management Information Systems [(Amended 10/15/90)]
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 07-00-07	Discharge Monitoring Report (DMR)
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 08-00-10	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
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 (Amended 12/14/90)
KSR 09-00-30	Parole Board
KSR 09-00-31	Forced Cell Move in Medium or Maximum Area [(Added 10/15/90)]
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 10-02-01 Corrections Cabinet Division of Mental Health, Unit E, Staffing Pattern, Staff Allocation, Position Descriptions, Staff Selection, Training and Evaluation. Time and Attendance and Unit Personnel Records [(Added 10/15/90)]
KSR 10-02-02 Unit E Designated Staff Visits [(Added 10/15/90)]
KSR 11-00-01 Meal Planning for the General Population
KSR 11-00-02 Special Diets
KSR 11-00-03 Food Service Inspections
KSR 11-00-04 Dining Room Dress Code for Inmates
KSR 11-00-06 Health Standards/Regulations for Food Service Employees
KSR 11-00-07 Early Chow Line Passes for Medically Designated Inmates
KSR 12-00-01 Inmate Summer Dress Regulations
KSR 12-00-02 Sanitation and General Living Conditions
KSR 12-00-03 State Items Issued to Inmates
KSR 12-00-07 Regulations for Inmate Barbershop [(Amended 10/15/90)]
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 [(Amended 10/15/90)]
KSR 13-00-05 Medical Records
KSR 13-00-08 Institutional Laboratory Procedures (Amended 12/14/90)
KSR 13-00-09 Institutional Pharmacy Procedures (Amended 12/14/90)
KSR 13-00-10 Requirements for Medical Personnel [(Amended 10/15/90)]
KSR 13-00-11 Health Evaluation
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 13-00-17 Special Care
KSR 13-02-01 Mental Health Services
KSR 13-02-02 Mentally Retarded Inmates
KSR 13-02-03 Suicide Prevention and Intervention Program
KSR 13-02-04 Division of Mental Health's Residential Services
KSR 14-00-01 Inmate Rights
KSR 14-00-04 Inmate Grievance Procedure
KSR 15-00-02 Regulations Prohibiting Inmate 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 15-00-10 Program Services for Special Housing Placement
KSR 15-01-01 Operational Procedures and Rules and Regulations for Unit A, B & C: Functions of Assigned Personnel
KSR 15-01-02 Operational Procedures and Rules and Regulations for Unit A, B, & C: Staff Operational Procedures (Amended 12/14/90)
KSR 15-01-03 Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Rules and Regulations (Amended 12/14/90)
KSR 15-01-04 Institutional Medical and Fire Safety Service: Unit Application
KSR 15-01-05 Institutional Inmate Services
KSR 15-01-06 Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Honor Housing Criteria and Regulations[, Honor Status and General Population] (Amended 12/14/90)
KSR 16-00-01 Visiting Regulations
KSR 16-00-02 Inmate Correspondence and Mailroom Operations [(Amended 10/15/90)]
KSR 16-00-03 Inmate Access to Telephones (Amended 12/14/90)
KSR 17-00-03 Notifying Inmates' Families of Admission and Procedures for Mail and Visiting
KSR 17-00-05 Dormitory 10 Operations
KSR 17-00-06 Identification Department Admission and Discharge Procedures
KSR 17-00-07 Inmate Personal Property (Amended 12/14/90)
KSR 17-00-08 Repair of Inmate Owned Appliances by Outside Dealers
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 18-00-07 Kentucky State Reformatory Placement Committee (Added 12/14/90)
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: December 14, 1990
FILED WITH LRC: December 14, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this

regulation has been scheduled for January 22, 1991 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: 582 employees of the Kentucky State Reformatory, 1376 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 6:090. Frankfort Career Development 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 policies and procedures are incorporated by reference in order to comply with the accreditation standards of [by] the American Correctional Association. 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 December 14 [July 13], 1990 and hereinafter should be referred to as Frankfort Career Development 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 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

FCDC 01-04-01	Confidentiality of Information Roles and Services of Consultant, Contract Personnel, Governmental Services Supervisors and Volunteers
FCDC 01-05-01	Duties and Responsibilities of FCDC Duty Officer
FCDC 02-09-01	Inmate Account Draw and Savings Deposit Transactions Between Inmates
FCDC 02-10-01	Fiscal Management and Control
FCDC 02-11-01	Fiscal Management: Accounting Procedures
FCDC 02-12-01	Fiscal Management: Checking Accounts
FCDC 02-13-01	Purchasing and Receiving
FCDC 06-02-01	Inmate Records
FCDC 08-01-01	Fire Safety Practices
FCDC 09-01-02	Institutional Entry/Exit Surveillance and Perimeter Security Procedures
FCDC 09-03-01	Control and Accountability of Flammable Toxic, Caustic and Other Hazardous Materials
FCDC 09-06-08	Searches and Contraband Control
FCDC 11-01-01	Special Diets
FCDC 11-02-01	Menu Preparation
FCDC 11-03-01	Food Services
FCDC 12-03-01	Laundry, Clothing, Hygiene and Grooming Services
FCDC 12-04-01	Sanitation Practices and Inspections
FCDC 13-01-01	Use of Pharmaceutical Products
FCDC 13-01-02	Medical Emergencies
FCDC 13-01-03	Informed Consent
FCDC 13-02-01	Inmate Medical Screenings and Health Evaluations
FCDC 13-03-01	Psychiatric and Psychological Services
FCDC 13-03-02	Parental Administration of Medications and Use of Psychotropic Drugs
FCDC 13-04-01	Intrasystem Transfers of Medical/Psychiatric Problems
FCDC 13-05-01	Family Notification: Serious Illness, Injury or Major Surgery
FCDC 13-06-01	Chronic and Convalescent Care
FCDC 13-08-01	Sick Call/Physician's Bimonthly Clinic
FCDC 13-09-01	Management of Serious and Infectious Diseases
FCDC 13-10-01	Treatment Protocol Regarding First-Aid Procedures, Routine Health Care
FCDC 13-11-01	Health Education: Provision of Special Health Care Needs
FCDC 13-12-01	Elective Services
FCDC 13-13-01	Physicians Referrals
FCDC 13-14-01	Health Records
FCDC 13-15-01	Routine and Emergency Dental Appointments
FCDC 13-16-01	Routine and Emergency Eye Examinations
FCDC 13-17-01	Inmate Death

FCDC 14-01-01	Prohibiting Inmate Authority Over Other Inmates
FCDC 14-02-01	Inmate Grievance System
FCDC 14-03-01	Inmates Are Not Subject to Discrimination Based on Race, Religion, National Origin, Sex, Handicap or Political Beliefs and Are Protected Against Corporal Punishment
FCDC 14-04-01	Legal Services Program
FCDC 15-01-01	Good Time - Credits
FCDC 15-03-01	Conduct of Adjustment Committee Hearings (Chairperson)
FCDC 15-04-01	Prehearing Detention and Protective Custody Requests
FCDC 16-01-01	Inmate Visiting [(Amended 7/13/90)]
FCDC 16-02-01	Mail Policy [(Amended 7/13/90)]
FCDC 16-03-01	Inmate Access to Telephones
FCDC 17-01-01	Inmate Property Control [(Amended 7/13/90)]
FCDC 17-02-01	Inmate Reception, Orientation, and Discharge
FCDC 18-01-01	Inmate Classification
FCDC 18-02-01	Reclassification Document
FCDC 18-03-01	Instructions for Six Month Review
FCDC 19-01-01	Security and Operation of the Governmental Services Program
FCDC 19-02-01	Inmate Work Program
FCDC 20-01-01	Academic and Vocational Education
FCDC 22-01-01	Privilege Trips
FCDC 22-01-02	Activity Trips
FCDC 22-02-01	Recreation and Inmate Activities
FCDC 23-01-01	Religious Activities (Amended 12/14/90)
FCDC 24-01-01	Social Service Program
FCDC 24-02-01	Substance Abuse Programs
FCDC 25-01-01	Escorted Leaves
FCDC 25-02-01	Temporary Release/Community Center Program
FCDC 25-03-01	Release Preparation Program

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: December 14, 1990
FILED WITH LRC: December 14, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 22, 1991 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: 44 employees of the Frankfort Career Development Center, 108 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 Correctional Complex [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. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. 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 December 14 [May 15], 1990 and hereinafter should be referred to as Western Kentucky Correctional Complex [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 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

WKCC 01-09-01	Duty Officers, External and Internal Inspections, and Staff Tours
WKCC 02-01-01	Inmate Funds [(Amended 5/15/90)]
WKCC 02-01-02	Inmate Canteen (Added 12/14/90)
WKCC 02-00-03	Invoice/Voucher Processing
WKCC 02-00-04	Monetary Receipts During Nonbusiness Hours [(Added 5/15/90)]
WKCC 02-00-06	Purchasing Procedures
WKCC 02-01-01	Inmate Funds
WKCC 02-02-01	Agency Funds and Accounting Procedures
WKCC 02-08-01	Property Receipt and Inventory Procedures
WKCC 04-01-01	Travel Reimbursement for Official Business in Attendance at Professional Meetings
WKCC 04-02-01	Employee Training and Development [(Amended 5/15/90)]

WKCC 04-04-01	Educational Assistance Program
WKCC 05-01-01	Research, Consultants, and Student Interns
WKCC 06-00-01	Offender Records and Information Access
WKCC 06-00-02	Court Orders, Orders of Appearance, Warrants, Detainers, Etc.
WKCC 09-00-01	Drug Abuse Testing
WKCC 10-02-01	Special Management Inmates
WKCC 11-00-02	Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements
WKCC 11-00-03	Food Service Inspections, Sanitation, Purchasing, Storage, and Corrections Cabinet Farm Products
WKCC 11-02-01	Food Service General Guidelines
WKCC 11-00-04	[11-02-02] Food Service Security (Amended 12/14/90)
WKCC 11-03-01	Food Service Meals, Menus, Nutrition and Special Diets
WKCC 12-01-01	Inmate Clothing
WKCC 13-00-01	Special Health Programs
WKCC 13-01-01	Use of Pharmaceutical Products
WKCC 13-02-01	Health Care Services
WKCC 14-00-01	Inmate Rights and Responsibilities
WKCC 14-04-01	Legal Services Program
WKCC 14-06-01	Inmate Grievance Procedure (Amended 12/14/90)
WKCC 15-01-01	Hair and Grooming Standards (Amended 12/14/90)
WKCC 15-02-01	Inmate Offenses and Penalties
WKCC 15-03-01	Meritorious Good Time
WKCC 15-05-01	Restoration of Forfeited Good Time
WKCC 15-06-01	Adjustment Procedures and Programs
WKCC 16-01-01	Visiting Policy and Procedures
WKCC 16-02-01	Inmate Correspondence
WKCC 16-03-01	Inmate Access to Telephones
WKCC 16-04-01	Inmate Packages [(Amended 5/15/90)]
WKCC 17-01-01	Inmate Personal Property [(Amended 5/15/90)]
WKCC 17-02-01	Inmate Reception and Orientation
WKCC 18-01-01	Structure, Guidelines, and Functions of the Classification Committee
WKCC 19-03-01	Inmate Wage Program
WKCC 19-04-01	Work/Program Assignments
WKCC 20-04-01	Academic Education Program(s)
WKCC 20-03-01	Vocational Education Program(s)
WKCC 22-00-01	Inmate Recreation and Leisure Time Activities
WKCC 22-00-02	Inmate Clubs & Organizations
WKCC 23-00-01	Religious Services (Amended 12/14/90) [(Amended 5/15/90)]
WKCC 25-01-01	Gratuities
WKCC 25-02-01	Inmate Release Process
WKCC 25-03-01	Prerelease Programs
WKCC 26-01-01	Volunteer Services Program

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: December 14, 1990
FILED WITH LRC: December 14, 1990 at 9 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 22, 1991 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: 150 employees of the Western Kentucky Farm Center, 389 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.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration and Finance
(Proposed Amendment)

702 KAR 1:005. Textbook program plan.

RELATES TO: KRS 156.031, 156.400 to 156.476, 157.100 to 157.190
STATUTORY AUTHORITY: KRS 156.410, 156.437, 156.447, 156.474, 156.476, 157.100, 157.110, 157.120, 157.130, 157.140, 157.150, 157.160
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990; KRS 156.400 to 156.476 sets up the Kentucky Textbook Commission and the statutory policies and procedures for the adoption, purchase, use and distribution of textbooks to be utilized in the schools of the Commonwealth; and [.] KRS 157.100 to 157.190 require that the Department of Education purchase textbooks for certain grades and set up management procedures for the textbook program. This regulation establishes the standards and procedures which are necessary to carry out such statutory requirements dealing with textbooks.

Section 1. The subjects included in the "Program of Studies for Kentucky Schools" shall be arranged into six (6) groups as follows: Group I - Social Studies K-12; Group II - Language Arts K-12 and Reading 9-12; Group III - Science K-12; Group IV - Music K-12 and Vocational Education 1-12; Group V - Mathematics K-12 and Computer Education 6-12; Group VI - Reading K-8, Literature, Art, Foreign Language, and Health K-12; Driver Education 10-12 [Group I - Social Studies K-12; Group II - Language Arts K-12 (except Reading K-8 and Literature K-12); Group III - Science K-12; Group IV - Mathematics K-12; Group V - Reading K-8, Music K-12, Industrial Arts 7-12, Business Education 7-12, (except Introduction to Computers 9-11, Data Processing I 11-12, Data Processing II 12, Word Processing I 11-12, and Word Processing II 12), Vocational Education 7-12, (except Air Conditioning 10-12, Auto Body Repair 10-12, Auto Mechanics 10-12, Electricity 10-12, Electronics 10-12, Machine Shop 10-12, and Radio/TV Repair 10-12), and Trades and Industry 11-12; and Group VI - Literature K-12, Art Education K-12, Foreign Language 3-12, Driver Education 9-12, and Health and Physical Education K-12].

Section 2. (1) The Department of Education [Division of Textbook Services] shall requisition and publishers submitting bids shall ship adequate textbook samples to the Department of Education [Division of Textbook Services] and individual State Textbook Commission members, reviewers, and curriculum committees during the selection and adoption process. All available textbook samples, program descriptions, list of gratis items for districts adopting or purchasing books, and other pertinent bid information shall be provided by [before] the bid opening. Samples and information not available at bid opening shall be shipped to the Department of Education [Division of Textbook Services], commission members, reviewers and curriculum committees as soon as possible and not later than the date of the commission hearing held under Section 3 of this regulation.

(2) When the selection process has been completed and the individual commission members, reviewers and curriculum committees have no further need for samples in their possession, such shall be disposed of in the following manner:

(a) Reclaimed by publishers;

(b) Transferred to local school districts, institutions of higher education, or other appropriate agencies; or

(c) Sold by the State Board for Elementary and Secondary [of] Education. All sales and transfers shall be properly receipted and filed with [in] the Department of Education [Division of Textbook Services]. Official adoption samples, however, shall [must] be disposed of in accordance with KRS 156.470.

Section 3. (1) Each adoption year before the September listing, the State Textbook Commission shall conduct a hearing for the purpose of interviewing publisher agents and representatives and providing an opportunity for agents and representatives to make presentations on textbooks submitted for listing.

(2) The commission shall hear any person or organization that may have complaints or concerns about a textbook being considered for listing at the publisher hearing or the September listing.

(3) Parties desiring to be heard shall file with the Secretary of the State Textbook Commission a request two (2) weeks prior to either meeting to assure a place on the agenda. The request need not be in any prescribed form but shall [must] clearly state:

(a) Name and address of the person or organization requesting the hearing;

(b) Title, author and copyright date of the textbook in question;

(c) Sections of the textbook being questioned and nature of concern;

(d) Anticipated problems that would be created if the textbook is placed in use; and

(e) Suggested alternatives.

(4) A reasonable amount of time shall be assigned to the agenda for the hearing and one (1) spokesperson shall represent a group or organization.

(5) The commission's position and[/or] action shall be forwarded to the concerned parties after the September listing has been concluded.

Section 4. (1) The Kentucky State Textbook Commission has the right to inquire into and ascertain if any publisher has violated this regulation or the Kentucky Revised Statutes; or if the publisher has used undue influence or unethical tactics to secure bids or to assure local adoption. Undue influence or unethical tactics shall include, but not necessarily be limited to, unsolicited contact by agents and representatives of individual publishers with members of the State Textbook Commission and the buying for or giving to State Textbook Commission members and local district selection committee members meals, gifts, trips, or entertainment to assure the listing, adoption, and purchase of their textbooks. If there is sufficient evidence that publishers are guilty of any of the aforementioned, they shall be called before the State Textbook Commission to determine if violations did occur and what course of action shall [should] be taken.

(2) Publishers proposing to give local districts free-of-charge items, including but not limited to kits, duplicating masters, workbooks, and extra textbooks, if said districts [would] adopt and purchase their textbooks, shall file a list of gratis items as an official part of their bid.

(3) In addition to textbook sampling required under KRS 156.440, publishers may sample gratis items to local districts for use in the adoption process. Gratis sampling shall be minimal and not be done in a manner to assure the adoption and purchase of a publisher's textbooks.

(4) The State Textbook Commission shall have the right to refuse to execute or to cancel a publisher contract upon discovery that said publisher has violated any part of this regulation or does not have the ability to perform all the terms and conditions of the contract.

(5) All bidders for textbook contracts shall file with the Department of Education [Division of Textbook Services] the name of a Kentucky person, firm, or corporation upon whom process may be served. The name of the process agent, together with such other information concerning said agent, shall be made available to the proper authorities for the purpose of serving process.

Section 5. Publishers and local school districts may agree to pilot new textbook programs for one (1) school year on a selective and controlled basis to determine the effectiveness of a particular textbook program. Piloting shall not be conducted during the adoption year (July-April) for a subject being considered for adoption by the local districts. The chief state school officer [Superintendent of Public Instruction] shall approve all piloting programs. The local school district superintendent shall file the request for approval with the chief state school officer [Superintendent of Public Instruction]. The request need not be in any prescribed form but shall clearly state:

(1) The publisher that will conduct the pilot;

(2) The purpose of the pilot;

(3) The subject and grade levels in which the pilot shall [will] be conducted;

(4) The schools where the pilot shall [will] be conducted;

(5) The name of the school district staff member supervising the pilot;

(6) Beginning and ending date of pilot;

(7) Brief summary of evaluation procedures.

Section 6. Any school administrator or teacher who [that] receives directly or indirectly any gift, reward, or promise of a reward for his influence in reviewing and selecting textbooks shall be subject to the penalties of KRS 156.480.

Section 7. (1) The "Manufacturing Standards and Specifications for Textbooks," developed and approved by the National Association of State Textbook Administrators, in consultation with the Association of American Publishers and the Book Manufacturers' Institute, as revised February, 1982, shall apply to all textbooks submitted for adoption in Kentucky. Said edition is incorporated by reference and is on file in and can be inspected, copied, and obtained from the Division of Textbook Services, Department of Education, 15th Floor, Capital Plaza Tower, Frankfort, 8 a.m. - 4:30 p.m., Monday-Friday.

(2) Publishers who have filed an old copyright with the official bid on or before July 15 may substitute the revised edition at the commission hearing. Publishers may submit a galley proof, incomplete book, or statement of intent with the official bid; however, the book shall be complete and on file with the State Textbook Commission on or before the date of the commission hearing. Ancillary materials, including workbooks and teacher editions, shall be completed on or before the July 1 contract date.

Section 8. Defective binding, workmanship or material shall be reported as soon as detected. Publishers shall be held responsible for all defective textbooks. Textbooks that show manufacturing defects in the first or second year of use shall be replaced by the publisher on a one-for-one basis. After the first two (2) years of use, replacement agreement shall [must] be negotiated betwen the local district and [reached with] the publishers. School districts shall start the replacement process as soon as it has been determined that textbooks are defective.

Section 9. (1) Request to substitute revised editions of textbooks under contract shall be considered at the regular meetings of the State Textbook Commission to be held on or before May 1 and on or before September 20.

(2) Substitutions shall not be permitted for textbooks to be used the last year of a contract.

(3) The publisher shall agree to supply either the listed or the substituted textbook in accordance with local school district's request.

(4) The revised edition shall be at the same price at which the book is bid and sold elsewhere in the United States at the date of the substitution approval and the content shall be compatible for use with the old edition.

(5) The physical materials and workmanship of the revised edition shall be of equal or better quality than the older edition.

(6) Ancillary materials for a substituted textbook or program shall be available at the time the publisher submits substitution request.

(7) Publishers shall provide thirty (30) days prior to date of the commission meeting a sample of the substituted textbook and a list of the changes with page numbers [summary description] of the revised edition that compares it with the textbook [and/]or program presently on the State Multiple List.

Section 10. (1) Multivolume textbook programs for a single subject or a series for more than one (1) grade level are [is defined as] two (2) or more books initially planned, written, designed, bound, sequential and identifiable as one (1) program.

(2) A district may implement curriculum programs in grades kindergarten through twelve (12) through the purchase of adopted textbooks from one (1), two (2), or three (3) textbook programs for grades kindergarten through eight (8) and up to ten (10) programs for grades nine (9) through twelve (12).

(3) A reading program from one (1) publisher shall consist of a basic reading program of readiness, preprimers, primers, and readers for grades kindergarten through six (6) or kindergarten through eight (8).

Section 11. (1) The wholesale and exchange prices in Kentucky shall not exceed the lowest wholesale and exchange prices at which textbooks are to be bid and sold elsewhere in the United States for the same adoption period. If reductions in prices are made elsewhere in the United States on the same textbooks being sold in Kentucky, publishers shall lower the price in Kentucky.

(2) The retail price to be used in Kentucky shall not be more than twenty (20) percent in excess of the publisher wholesale price.

(3) The publisher contract shall state that upon settlement, the lowest exchange price, except on consumable textbooks, is the price to be paid for textbooks by the state to publishers who during the term of the contract give in exchange an old textbook of corresponding kind and grade, and may be of a different series to that provided for in the contract.

Section 12. (1) Local school districts are hereby authorized, for elementary school use, to use up to thirty-five (35) [(30)] percent of the elementary school textbook funds for the optional purchase of supplementary textbooks, print and nonprint media materials and audio-visual equipment other than those selected by the State Textbook Commission. Optional

textbook funds may be used to purchase basal textbooks or instructional materials to be used in lieu of a basal textbook for the following:

(a) Courses and programs appearing in the "Program of Studies for Kentucky Schools, Grades K-12" for which textbooks are not listed on the State Multiple List;

(b) Courses and programs appearing in the "Program of Studies for Kentucky Schools, Grades K-12" that have organizational patterns and teaching methodology that require a variety of instructional materials;

(c) Kindergarten programs;

(d) Special education classes; and

(e) Courses and programs requiring State Board for Elementary and Secondary [of] Education annual approval. Basal programs for the aforementioned courses and basal textbooks for all other subjects in the State Board for Elementary and Secondary [of] Education approved "Program of Studies for Kentucky Schools, Grades K-12" shall be purchased before optional textbook funds are used to purchase supplementary materials.

(2) The following materials shall be [are] eligible to be purchased with optional textbook funds:

(a) Preprinted organized materials including reference books, pamphlets, magazines, weekly readers, workbooks, worktexts, textbooks not on the State Multiple List, kits, master units, programmed instructional materials, computer courseware and similar qualifying materials.

(b) Preprocessed organized audio-visual materials including films, film loops, tapes, slides, filmstrips, recordings, graphic materials, transparencies, globes, maps, charts, art objects, and similar qualifying materials.

(c) Preprinted or preprocessed programs including kits and materials being used in lieu of textbooks for particular curriculum areas.

(d) Minor audio-visual equipment needed to utilize the audio-visual materials being purchased with optional funds.

(3) The following materials shall [are] not be eligible to be purchased with optional funds:

(a) Rebinding, equipment other than minor audio-visual, furniture, personnel services, teachers' guides and manuals, testing programs, library books, supplies and materials consumed in initial use and raw and/or blank materials.

(b) Major audio-visual installations such as public address systems, sound laboratories for language, computers, and televisions (including receiving sets and related equipment).

(4) School districts with special instructional material needs may exceed the designated optional portion of their textbook funds by making written application to the Department of Education [Division of Textbook Services]. Annual approval shall [must] be obtained before funds are obligated if there is a need to exceed the designated thirty-five (35) [(30)] percent option. The application signed by the district superintendent shall include a detailed description stating name of the program or course, rationale for the program, and percent of funds requested.

(5) After acquisition of eligible supplementary textbooks, materials, and equipment and payment of invoices, a request for reimbursement shall be submitted to the Department of Education [Division of Textbook Services] on Form FT-21 before March 1. All claims submitted for the purchase of instructional materials for enrichment programs and programs not listed in the "Program of Studies for Kentucky Schools, Grades K-12" shall [must] include a copy of the State Board for Elementary and Secondary [of] Education approval of the program and instructional materials to be used.

(6) Regulations relating to the purchase of media materials, audio-visual equipment and all other instructional materials and supplies by local school districts shall contain the following requirements:

(a) Items to be purchased should be identified as consumable or nonconsumable;

(b) Each local school district shall establish a per pupil allocation of funds to purchase equipment, materials and supplies, and of this allocation a portion shall be for consumable items and the remainder for nonconsumable items;

(c) Local school districts may use all or a portion of student fees as part of the per pupil allocation of funds to purchase instructional equipment, materials and supplies;

(d) Each local school district shall survey teachers to determine their needs for instructional equipment, materials, and supplies. The local district board of education shall take into consideration the survey of teacher needs in the purchase of instructional equipment, materials, and supplies; and

(e) A financial report on allocations to and expenditures for instructional equipment, materials and supplies shall be prepared annually by the school district and shall be a public record.

Section 13. (1) The school districts shall make textbook adoptions for all the subjects in the six (6) adoption groups. The number of adopted textbooks, however, shall not exceed three (3) textbooks and[/or] programs per subject in any one (1) grade in grades kindergarten through eight (8). High schools, grades nine (9) through twelve (12) automatically adopt all listed textbooks [and ten (10) textbooks and/or programs per subject in any one (1) grade in grades nine (9) through twelve (12)].

(2) School districts shall indicate their tentative first, second and third choices in grades kindergarten through twelve (12). A summary of the choices shall be provided to the publisher for inventory purposes and shall in no way restrict purchases to any particular choice.

(3) Districts may purchase any or all adopted textbooks [and/]or programs in any number and combination based on identified pupil needs rather than grade level assignment.

Section 14. (1) Pupils in grades kindergarten through twelve (12) with impaired vision shall be considered eligible for the use of textbooks and materials in clear type of eighteen (18) to twenty-four (24) points upon certification by an eye specialist as follows:

(a) Pupils who cannot read more than 20/70 on a Standard Snellan Chart with the better eye after correction.

(b) Pupils with progressive eye difficulties, including those with progressive myopia, even though glasses may bring the vision nearly to normal, and pupils who suffer from noncommunicable diseases of the eye or diseases of the body that seriously affect the vision.

(2) Certification of pupils' visual impairment

shall be made by [on forms supplied to] local school districts to the [by the Bureau of Education for Exceptional Children,] Department of Education.

(3) Request for large print textbooks and material shall be directed to the Department of Education [Division of Materials and Curriculum].

(4) The local board of education shall assume responsibility for the care of textbooks and return them to the Kentucky Instructional Material Resource Center [Resource Bank Distribution Center] when no longer needed.

(5) Large print textbooks and materials purchased by the Department of Education shall [Division of Textbook Services are] not charged to the textbook account of the local school district.

Section 15. (1) The Department of Education [Division of Textbook Services] shall prepare textbook budgets annually and allocate funds to local school districts, based upon the Kentucky General Assembly biennial appropriation, for the purpose of purchasing full basal textbook programs during the first year of each adoption [and/]or funding. After basal textbook needs have been met, surplus funds may be used to purchase supplementary materials.

(2) When allocating funds for the purchase of textbooks, the Department of Education [Division of Textbook Services] shall use the pupil membership at the close of the first month of the current school year.

(3) A statement of elementary school funds allocated to each school district shall be mailed to the superintendent after March 1. The statement shall reflect the balances from the previous year, allotment for the ensuing year, sales and fines for the past year, and growth adjustments providing funds to purchase books for new pupils.

(4) School districts shall utilize their textbook allocation by March 1 of the year for which the funds were allocated.

Section 16. (1) Local school districts shall establish and maintain a textbook rental program for grades nine (9) through twelve (12) by renting to pupils all currently adopted, state-provided textbooks [purchased prior to July 1, 1984,] and purchasing and renting textbooks from each scheduled incoming adoption group [beginning in 1984 with Adoption Group IV (mathematics)]. This shall [does] not prohibit local districts from using local funds to provide a free textbook program.

(2) Local school districts not providing a free textbook program for grades nine (9) through twelve (12) shall establish annually a textbook rental fee based on the cost of the adoption group scheduled for purchase and the cost of replenishments. The maximum rental fee shall be based on four (4) dollars per two (2) semester course that requires the use of basal textbooks. Local school districts, at their option, may charge a deposit fee not to exceed two (2) dollars per two (2) semester course to be refunded if textbooks are returned in satisfactory condition. Textbook rental fees for pupils enrolled for less than a full school year shall be prorated based on the number of days of membership.

(3) The school district shall requisition textbooks from the State Multiple List for the grades nine (9) through twelve (12) rental program from the Department of Education [Division of Textbook Services]. The Department of Education [Division of Textbook Services] shall process the requisitions to the different publishers. The textbooks are to be shipped to the local school districts. Publishers shall invoice the local school districts.

(4) Local school districts shall establish and maintain one (1) centralized textbook rental program account subject to audit. All textbook rental monies shall be receipted to pupils and rental monies, requisitions, and payments to publishers shall be processed through the centralized account.

(5) School districts shall purchase a complete basal textbook program for grades nine (9) through twelve (12) the first year of each scheduled adoption for each subject in the adoption group for which basal textbooks are appropriate.

(6) The Department of Education [Division of Textbook Services] shall provide local districts with requisition forms, an annual inventory report, and the information necessary for districts to maintain an efficient textbook rental program for grades nine (9) through twelve (12).

(7) All textbook statutes and regulations governing the textbook program for elementary and secondary schools not invalidated by the textbook rental program statutes and regulations shall be applicable to the textbook rental program for grades nine (9) through twelve (12).

Section 17. (1) The Department of Education [Division of Textbook Services] shall provide Annual Report and requisition forms to all school districts. These forms shall be prepared in duplicate. The original copy shall be sent to the Department of Education [Division of Textbook Services] and the second copy retained by the district. The Annual Report (FT-8) and requisition (FT-9) may be filed after March 1 and shall be filed by June 30.

(2) The Department of Education [Division of Textbook Services], upon receipt and approval of a requisition for textbooks from any school district, shall issue a local purchase order. A copy of the local purchase order shall be sent to the publisher, two (2) copies sent to the local district and two (2) copies retained by the Department of Education [Division of Textbook Services].

(3) All adopted textbooks purchased with state textbook funds shall be purchased through the office of the Department of Education [Division of Textbook Services].

(4) Publishers shall ship direct to local school districts by prepaid freight or United Parcel Service and issue invoices in triplicate to the Department of Education [Division of Textbook Services].

(5) Upon receipt of textbooks, the school district shall check items of shipment against the local purchase order (receiving report) and if all textbooks were received in satisfactory condition, certify this fact by mailing one (1) copy of the local purchase order (receiving report), dated and signed to the Department of Education [Division of Textbook Services]. The Department of Education [Division of Textbook Services] may then order payment.

(6) All textbooks shall be labeled as property of the Commonwealth of Kentucky. For economy in administration, the uniform label is affixed by

the publishers in accordance with the "Manufacturing Standards and Specifications for Textbooks." School districts shall record the purchase date and the issue date on the uniform label.

(7) Textbook uniform labels shall not be completed until an examination of the shipment shows that it agrees in detail with the purchase order. A textbook with label completed is classified as a used textbook.

(8) A complete record shall be kept by the school district for all state-provided textbooks for grades kindergarten through eight (8) and all textbooks purchased with pupil rental fees for grades nine (9) through twelve (12) delivered to teachers or principals of the different schools. Form FT-5 or a comparable form shall be used. Form FT-5 shall [will] be furnished upon request in quantities equal to number of teachers or principals.

(9) When textbooks are issued, a requisition card shall be filled out in duplicate for each pupil. Form FT-6 or a comparable form shall be used. Form FT-6 shall [will] be furnished upon request in quantities equal to pupil membership.

Section 18. The Department of Education [Division of Textbook Services] shall encourage and facilitate the transfer of surplus textbooks that may be in local school districts' textbook depositories. The Department of Education [Division of Textbook Services] shall, at appropriate times during a school year, solicit from the districts a list of surplus textbooks and mail to all districts a master list of available textbooks. Districts that need textbooks on the master list shall [will] request the Department of Education [Division of Textbook Services] to initiate a transfer. The district having possession of the surplus textbooks requested by a district shall ship the books and notify the Department of Education [Division of Textbook Services] the number of books shipped and cost of transportation. Upon receipt of the books, the receiving district shall [will] notify the Department of Education [Division of Textbook Services]. The Department of Education [Division of Textbook Services] shall interaccount funds by transferring the cost of the textbooks and transportation cost from the receiving district to the shipping district's textbook account. The cost to the receiving district of all transferred textbooks shall be fifty (50) percent of the wholesale price plus transportation.

Section 19. Pupils or parents shall compensate school districts for textbooks lost, damaged, or destroyed while in their possession and the compensation shall be as follows: 100 percent of retail cost for one (1) and two (2) year old textbooks; seventy-five (75) percent of retail cost for three (3) and four (4) year old textbooks; and twenty-five (25) percent of retail cost for five (5) and six (6) year old textbooks.

Section 20. (1) Textbooks to be rebound shall not qualify for publisher replacement under Section 8 hereof. Textbooks with five (5) or more years of use shall be rebound only in extreme cases of shortages and emergencies.

(2) Textbooks in need of rebinding shall be reported on Form FT-16 to the Department of Education [Division of Textbook Services] with the Annual Report. After approval, the request is forwarded to the bindery under contract with the Commonwealth of Kentucky. The bindery shall pick up books or instruct the districts to ship the books collect. Rebound books shall be returned to the school district by the bindery with shipping charges prepaid. The bindery shall mail the invoice to the Department of Education [Division of Textbook Services] for payment. Such payments shall not be charged to the textbook account of local school districts.

Section 21. (1) District superintendents shall make an accurate count of all state-provided textbooks for grades kindergarten through eight (8) and all textbooks purchased with pupil rental fees for grades nine (9) through twelve (12) under adoption that are suitable for classroom instruction and report same on the Annual Report (FT-8).

(2) The Department of Education [Division of Textbook Services] shall file an annual exchange report with publishers identifying the titles and number of textbooks purchased to replace textbooks no longer suitable for classroom instruction. A claim requesting credit memorandums in the amount of the difference between the wholesale and exchange price for each textbook purchased shall be filed with publishers. The credit memorandums shall be used in payment of invoices for textbooks purchased from said publishers during the next purchase year. Publishers shall relinquish their claim for exchange textbooks if not claimed within a reasonable period of time after replacement.

(3) The local superintendent shall assume responsibility for the disposal of unclaimed textbooks no longer suitable for classroom instruction and may dispose of them in the following manner:

(a) Make the unclaimed textbooks available to teachers for use in grouping, reference, supplementary and other classroom activities.

(b) Make the unclaimed textbooks available to pupils within the district.

(c) Publicize in the local newspaper that unclaimed textbooks are available to individual residents of the local district. Unclaimed textbooks disposed of in this manner shall not be made available to used textbook dealers.

(d) Make the unclaimed textbooks available to civic organizations for the purpose of distribution to undeveloped countries.

(e) Make the unclaimed textbooks available to recycling operations.

(f) Destroy unclaimed textbooks in any manner that is practical and in the best interest of the state and local school district. Any funds from the sale of unclaimed textbooks shall be retained by the local district [paid into the state treasury].

Section 22. (1) No child shall be denied full participation in any educational program due to an inability to purchase any and all necessary textbooks. [Beginning with the 1986-87 school year,] Local school districts shall make available free textbooks to all children in grades nine (9) through twelve (12) who are unable to rent or purchase textbooks, using the eligibility guidelines for the free and reduced price lunch program. The parents of such children may be asked to contribute financially toward the rental and deposit cost of their children's textbooks the same percentage that

they contribute financially toward the cost of their children's lunches.

(2) Local school districts shall adopt policies and procedures whereby, at the beginning of the school year, pupils or their parents are given written notice of the availability of, and guidelines and procedures for obtaining, free and reduced rental textbooks. Such policies and procedures shall also insure that the following occur:

(a) Any verbal or written communication with students or parents regarding payment of fees for textbooks shall include a statement that free or reduced rental textbooks will be made available to students in accordance with this section and a statement clearly explaining school procedures for obtaining such textbooks; and

(b) Any written communication regarding payment of fees for textbooks shall include a form that parents can use to request waiver or partial waiver of textbook fees.

(3) In exceptional circumstances, at the discretion of a local school district not providing free textbooks to all pupils, pupils who do not meet free or reduced price lunch guidelines may be provided free textbooks.

(4) Local districts shall keep records for documentation and compliance purposes, which shall be made available to the Department of Education upon said department's request. Such records shall include:

(a) The numbers of pupils in grades nine (9) through twelve (12) receiving free lunches and reduced price lunches;

(b) The number of pupils in grades nine (9) through twelve (12) who request or apply for, or whose parents request or apply for, free or reduced rental textbooks and the number of pupils receiving free or reduced rental textbooks.

(c) Copies of any forms, notices or instructions used by schools in the collection of textbook fees or the provision of free or reduced rental textbooks.

(5) In the provision of textbooks to indigent children, no child shall be discriminated against because of race, sex, color, national origin, age, or handicap and there shall be no overt identification of any such children.

Section 23. Every public school student shall have a textbook(s) or facsimile furnished free of charge, to the extent of state textbook funds available, for each subject studied in grades one (1) through eight (8), and, except for students otherwise partially or wholly exempted from the rental fee, shall have such textbook(s) available for the reasonable rental fee set forth in Section 16 of this regulation for each subject studied in grades nine (9) through twelve (12). Materials for kindergarten classes shall be purchased to comply with the minimum equipment and materials list of the state accreditation standards. The only exceptions to this regulation shall be health, physical education, music, and art textbooks, which may be purchased by the school district in classroom sets one (1) through twelve (12) and which may be available to be taken home by students for further study. Vocational education textbooks may be purchased in reference sets, classroom sets, or individually as identified by content area in the guidelines for textbook adoption. All other exceptions necessitated by curriculum needs or organizational patterns shall [must] be approved by the chief state school officer [Superintendent of Public Instruction].

Section 24. Forms FT-21 designated in Section 12(5) of this regulation; FT-8 and FT-9 designated in Section 17(1) of this regulation; FT-5 designated in Section 17(8) of this regulation; FT-6 designated in Section 17(9) of this regulation; and FT-16 designated in Section 20(2) of this regulation are incorporated herein by reference, and may be inspected, copied, and obtained from the Division of Textbook Services, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

JOHN H. BROCK, Superintendent

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: November 14, 1990

FILED WITH LRC: December 12, 1990 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Herbert Weddington

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: Districts will be able to recoup up to 55% (on average) of their actual textbook costs.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: Increase in local textbook rental fees from $4 to $6 per textbook per student per semester.
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration and Finance
(Proposed Amendment)

702 KAR 4:010. Construction project application.

RELATES TO: KRS 156.031, 157.420
STATUTORY AUTHORITY: KRS 156.070, 157.420
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; and KRS 157.420(3) provides that each school district's capital outlay allotment from the Fund to Support Education Excellence in Kentucky [Foundation Program Fund] and from local sources shall [must] be kept in a separate fund and used only for capital outlay projects approved by the chief state school officer [Superintendent of Public Instruction] in accordance with the requirements of law and based upon the Facilities Plan concept implemented by 702 KAR 1:010. This regulation sets forth procedures and criteria for a district to acquire the required approval of a proposed capital outlay project.

Section 1. A local board of education shall submit for approval by the chief state school officer [Superintendent of Public Instruction], applications on forms provided by the State Board for Elementary and Secondary [of] Education for proposed school construction projects, such forms being incorporated herein by reference and available for inspection, copying, and obtaining from the Division of Buildings and Grounds, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday. An application for each project containing the applicable information shall be submitted by the local district and a decision made by the chief state school officer [Superintendent of Public Instruction] within sixty (60) days. An application shall [must] be submitted for any project which uses [foundation program] capital outlay or special voted building tax funds. An application shall be submitted for a new building, addition, or alteration of an existing building regardless of the source of funds used.

Section 2. When a board of education votes to initiate a project listed in the facilities plan which does not follow the sequential order in the priority schedule of the plan, an amendment to the facilities plan shall [must] be requested by the local board of education. This request shall [must] be accompanied by a copy of the official board order and a letter from the local superintendent enumerating the circumstances which justify the change in priority. The deviation from the sequential order of the priority schedule may then be considered for approval by the chief state school officer [Superintendent of Public Instruction].

Section 3. The local board of education shall adhere to the following procedure for minor projects not listed in the facilities plan, the need for which has arisen since compilation of the existing plan. An application (Form BG #1), along with a copy of the official board order and a letter from the local superintendent enumerating the circumstances justifying the request, shall be submitted for the following minor projects, thus allowing consideration for approval by the chief state school officer [Superintendent of Public Instruction]:
(1) Expansion of a permanent center to include as many as four (4) classrooms when the student population growth can be documented to support the request.
(2) Campus enlargement, maintenance or renovation of buildings and their systems, and additional support space at permanent centers when their need can be documented and justified.
(3) Projects in order to comply with statutes and regulations of other agencies having jurisdiction.

Section 4. Should an emergency requiring the expenditure of capital outlay or special voted capital outlay funds occur, the school district may take the necessary action to correct the problem. The local board shall then forward the board order declaring the emergency, with an application (Form BG #1), to the chief state school officer [Superintendent of Public Instruction]. It shall then follow the existing regulations as with any other project. An emergency shall be a loss of physical facilities suffered as a result of a fire or natural disaster or any other uncontemplated loss of physical facilities which places in jeopardy the health or safety of the pupils of the school district or which disrupts the school program, and the reconstruction of which physical facilities does not require plans and specifications.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).
JOHN H. BROCK, Superintendent

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: November 14, 1990
FILED WITH LRC: December 14, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1991 at 10 a.m. in the State Board

Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael Luscher
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: No effect.
2. Continuing costs or savings: No effect.
3. Additional factors increasing or decreasing costs (note any effects upon competition): No effect.
(b) Reporting and paperwork requirements: No effect.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: No effect.
2. Continuing costs or savings: No effect.
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No effect.
(3) Assessment of anticipated effect on state and local revenues: No effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments:
TIERING: Was tiering applied? No. N/A

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration and Finance
(Proposed Amendment)

702 KAR 4:020. Plans and specifications for construction.

RELATES TO: KRS 156.031, 156.160, 162.060
STATUTORY AUTHORITY: KRS 156.070, 156.160, 162.060
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990; KRS 156.160 requires the State Board for Elementary and Secondary [of] Education to adopt rules and regulations relating to sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, and school buildings and classrooms; and KRS 162.060 requires approval of all plans and specifications for school building construction by the chief state school officer [Superintendent of Public Instruction], in accordance with rules and regulations of the State Board. This regulation implements these statutory duties and prescribes the procedures and criteria for acquiring the requisite plan and specification approval.

Section 1. After approval by the chief state school officer [Superintendent of Public Instruction] of a construction project application on [of] forms provided by the State Board for Elementary and Secondary [of] Education containing program and financial information, which are incorporated herein by reference and may be inspected, copied and obtained from the Division of Buildings and Grounds, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, the architect shall prepare schematics of proposed construction from written educational requirements supplied by the local board of education. These schematics, approved by the local board of education, shall be submitted to the chief state school officer [Superintendent of Public Instruction] for review and approval along with an information copy of the educational requirements. Provided no action is taken by the local board of education within one (1) year from the date of approval and written notification given by the chief state school officer [Superintendent of Public Instruction], the approval is subject to review and[/or] rescission.

Section 2. Upon approval of the schematic plans, the design development plans shall be submitted to the chief state school officer [Superintendent of Public Instruction] for review and approval. The tentative specifications and the tentative cost estimate shall be submitted for review by the chief state school officer [Superintendent of Public Instruction] on forms provided by the State Board for Elementary and Secondary [of] Education, which are incorporated herein by reference and may be inspected, copied and obtained from the Division of Buildings and Grounds, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

Section 3. Design development plans shall include the type of construction, a general vicinity plan, and a plot plan which show the location of existing and proposed buildings, existing and proposed contour lines, utility lines and easements, driveways and highways, floor plan of building, preliminary design of mechanical, electrical and structural systems, sections through the building and elevations of the buildings. The architect shall include a one-fourth (1/4) inch scale drawing of all special areas after acceptable design development plans have been submitted as set forth in Section 2 of this regulation. These drawings shall show all equipment proposed in each special area. After approval of design development plans by the chief state school officer [Superintendent of Public Instruction], the local board of education may authorize the architect or engineer to prepare the construction documents.

Section 4. Approval of the construction documents shall be given in writing by the chief state school officer [Superintendent of Public Instruction] prior to advertisement for bids. The construction documents shall include the provisions required in the design development plans plus detailed information concerning site development, plumbing, heating, ventilation, electrical and structural design. The specifications shall provide for contractural conditions; insurance; bid, performance and payment bonds; prevailing wage scale; and technical specifications. Bid, performance and payment bonds shall be [are] required on contracts in excess of $25,000. A construction manager employed by a local board of education shall provide the owner a 100 percent performance and payment bond in the amount of the fee indicated on the Owner/Construction Manager Contract.

Section 5. Until such time that construction is finally completed [and/]or occupied by the local board of education, the contractors shall carry any and all insurance required by law and regulation to hold the board safe from loss as required by the contract documents. Such insurance shall include but not be limited to liability, builders' risk, including the perils of fire and extended coverage, vandalism, malicious mischief, and boiler and machinery insurance. The architect or engineer shall attest to the board in writing of the existence of coverage according to the law and contract documents. In the event the local board of education elects to carry a portion of the necessary insurance, a plan for such coverage shall be submitted to the chief state school officer [Superintendent of Public Instruction] for [his] approval.

Section 6. Performance specification procedure may be used by local boards of education for proposed capital construction projects. The proposed performance specification as prepared by the local board shall be approved by the chief state school officer [Superintendent of Public Instruction] prior to advertisement for bids.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

JOHN H. BROCK, Superintendent

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: November 14, 1990

FILED WITH LRC: December 14, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael Luscher

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: No effect.

2. Continuing costs or savings: No effect.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No effect.

(b) Reporting and paperwork requirements: No effect.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No effect.

2. Continuing costs or savings: No effect.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No effect.

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

TIERING: Was tiering applied? No. N/A

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration and Finance
(Proposed Amendment)

702 KAR 4:030. Local board's contract with architect, engineer.

RELATES TO: KRS 156.031, 156.160, 322.360
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; KRS 156.160 requires the State Board for Elementary and Secondary [of] Education to prescribe forms, including contract forms, for use in local school districts; and KRS 322.360 requires a local school district, when engaged in the construction of any public work involving engineering (and costing more than $2,000), to utilize a licensed engineer or architect to directly supervise the preparation of plans, specifications, and estimates and the execution of construction. This regulation provides a legal document of agreement concerning work to be done and the amount of pay to be received by the required engineer or architect.

Section 1. A local board of education and an architect or engineer currently registered in Kentucky shall negotiate and enter into a contract for services needed, pursuant to KRS 322.360, on forms provided by the State Board for Elementary and Secondary [of] Education prior to preparation of plans for remodeling, alterations, or construction of school buildings and facilities, said forms being incorporated herein by reference and being available for inspecting, copying, and obtaining from the Division of Buildings and Grounds, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday. Within fifteen (15) days after the execution by the parties thereto, this contract between the local board of education and the architect or engineer shall be submitted to the chief state school officer [Superintendent of Public Instruction] for review and approval. The local district shall be notified of the approval or disapproval of the contract within thirty (30) days.

Section 2. The architect or engineer shall be responsible to the owner to provide on-site visitation, inspection of, and reporting on the construction of the project, to the extent that the architect or engineer shall certify, to the best of his ability, professional judgment, and with due diligence, that all phases of the project have been completed in conformance with the sealed (Kentucky registration stamp affixed to plan sheets) plans and specifications and any duly authorized changes thereto as approved by the chief state school officer [Superintendent of Public Instruction] and other agencies having jurisdiction.

Section 3. The local board of education shall not disburse the final ten (10) percent of the architectural or engineering fee until the certification statement of completion of the project, as required by Section 2 of this regulation, and accompanied by as-built drawings, is filed with and receipt acknowledged by the chief state school officer [Superintendent of Public Instruction] in accord with architect/engineer contract.

Section 4. Architects and engineers simultaneously providing the services of a construction manager shall meet the provisions of 702 KAR 4:020, Section 4.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

JOHN H. BROCK, Superintendent

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: November 14, 1990
FILED WITH LRC: December 14, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael Luscher
(1) Type and number of entities affected:
(a) Direct and indirect costs or savings to those affected:
1. First year: No effect.
2. Continuing costs or savings: No effect.
3. Additional factors increasing or decreasing costs (note any effects upon competition): No effect.
(b) Reporting and paperwork requirements: No effect.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: No effect.
2. Continuing costs or savings: No effect.
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No effect.
(3) Assessment of anticipated effect on state

and local revenues: No effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments:
TIERING: Was tiering applied? No. N/A

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration and Finance
(Proposed Amendment)

702 KAR 4:040. Contract completion; changes; retainage.

RELATES TO: KRS 156.031, 156.160, 162.060, 162.070
STATUTORY AUTHORITY: KRS 156.070, 156.160, 162.060
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; KRS 156.160 requires that the State Board for Elementary and Secondary [of] Education adopt a uniform series of forms, including contract forms, for use in the school districts; KRS 162.060 requires that approval of all plans and specifications for school building construction be granted by the chief state school officer [Superintendent of Public Instruction], in accordance with rules and regulations of the State Board for Elementary and Secondary [of] Education, and that no contract for such construction be let prior to plan approval; and KRS 162.070 requires that contracts for school building construction be awarded to the lowest and best responsible bidder complying with the terms of letting. This regulation requires the local board of education to provide information to confirm a contract which is in accord with the approved completed plans and specifications and to insure that the contract is completed in accord with the plans and specifications.

Section 1. A copy of the bids received based on approved plans and specifications with a copy of the proposed contract on the uniform construction contract forms provided by the State Board for Elementary and Secondary [of] Education [, and incorporated herein by reference], said contract forms being incorporated herein by reference and available for inspection, copying, and obtaining [obtainable] from the Division of Buildings and Grounds, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday, shall be submitted to the chief state school officer [Superintendent of Public Instruction]. No contract shall be awarded that is not in accord with the approved completed plans and specifications. The amount of the contract shall not exceed the funds approved by the chief state school officer [Superintendent of Public Instruction] for the proposed project. The local board of education shall submit to the chief state school officer [Superintendent of Public Instruction] a copy of the completed contract, a copy of the insurance documents, a copy of the bid bond, and a copy of the performance and payment bond.

Section 2. (1) Changes in contract, working drawings, specifications, and contract documents, which are within the scope of the project may be approved. A copy of any change order issued in connection with the project shall [must] be in writing and signed by the architect or engineer and the contractor as a recommendation and approved in writing by an authorized representative of the local board of education and incorporated in the official minutes of the local board of education. This document shall contain an explanation of the reasons for the change.
(2) Any such change order proposal [involving an amount in excess of $2,500] shall first be submitted for approval to the chief state school officer [Superintendent of Public Instruction]. This statement shall become a part of the contract document.

Section 3. The local board of education shall withhold ten (10) percent of the first one million dollars and five (5) percent of the completed performance above one million dollars of the contract price of the work until the work is substantially completed. Upon substantial completion of the work, the ten (10) percent retainage may be reduced to five (5) percent with certification of the architect or engineer and approval of the local board of education. No part of the five (5) percent retainage shall be paid until the chief state school officer [Superintendent of Public Instruction] has made final inspection of the completed construction. However, after receipt of the punch list, reduction to a lump sum amount less than the five (5) percent retainage may be approved by the chief state school officer [Superintendent of Public Instruction] when deemed reasonable and advisable, if the reasons are certified in writing by the architect or engineer and approved by the local board of education. The minimum lump sum amount shall [would] be based on twice the estimated cost to correct the punch list items. The local board of education shall request the required inspection upon approval of the architect's or engineer's certification of substantial completion. Any agreement or contract entered into by a local board of education involving any portion of the capital outlay fund [and/]or construction fund, especially the retainage fund for an approved project, may be invested in such a manner that any additional income from said investment shall [will] accrue only to the local board of education and to no other party or parties.

Section 4. (1) The architect or engineer shall furnish the local board of education the appropriate State Board for Elementary and Secondary [of] Education form with applicable information requesting final approval, said form being incorporated herein by reference and available for inspecting, copying, and obtaining from the Division of Buildings and Grounds, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort,

Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday. The local board of education shall approve such form and forward the chief state school officer [Superintendent of Public Instruction] a completed copy or a letter stating why the board does not agree that the construction is completed.

(2) A written statement approving the completion or a list of items to be completed shall [will] be given to the local board of education, with a copy to the architect or engineer. Written approval by the chief state school officer [Superintendent of Public Instruction] authorizing full payment of the contract shall [will] be given when the building project is completed according to plans and specifications and approved change orders.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

JOHN H. BROCK, Superintendent

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: November 14, 1990

FILED WITH LRC: December 14, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael Luscher

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected:

1. First year: No effect.

2. Continuing costs or savings: No effect.

3. Additional factors increasing or decreasing costs (note any effects upon competition): No effect.

(b) Reporting and paperwork requirements: No effect.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No effect.

2. Continuing costs or savings: No effect.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No effect.

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: N/A

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

TIERING: Was tiering applied? No. N/A

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration and Finance
(Proposed Amendment)

702 KAR 5:080. Bus drivers' qualifications; responsibilities.

RELATES TO: KRS 156.031, 156.160, 189.540

STATUTORY AUTHORITY: KRS 156.070, 156.160, 189.540

NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; 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, said form being incorporated herein by reference and being available for inspection, copying, and obtaining from the Division of Pupil Transportation, Department of Education, 15th Floor, Capital

Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

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, 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. After April 1, 1992, school bus drivers must be twenty-one (21) years of age or older.

Section 7. (1) The school bus driver shall have a current driver's license that is valid in Kentucky. Beginning April 1, 1992, all Kentucky school bus drivers shall possess a commercial driver's license, with the passenger endorsement for a school bus, which 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) Minimum training requirements to become a Kentucky school bus driver shall consist of the training course developed by the Kentucky Department of Education. The training course shall consist of the following instructional units and minimum instructional times [During the 1989-90 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. The prescribed core training course for beginning drivers shall consist of the following instructional units and minimum instructional times]:

(a) Laws and regulations - one (1) hour;

(b) Driving fundamentals - one (1) hour;

(c) Care and maintenance - one (1) hour;

(d) Critical situations - one (1) hour;

(e) Accidents and emergency procedures - one (1) hour;

(f) Pupil management - one (1) hour;

(g) First aid - one (1) hour;

(h) Special education transportation - five-tenths (.5) hour;

(i) Extracurricular trips - five-tenths (.5) hour; and

(j) Vehicle operations - three (3) hours.

[(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:]

(k) [(a)] Vehicle control at speed - one (1) hour; and

(l) [(b)] Bus route identification, driver review and instruction - two (2) hours. [;]

(2) Upon successful completion of the core curriculum the school bus driver applicant shall complete within thirty (30) days:

(a) [(c)] Driver review I, evaluation and instruction - two (2) hours within the first five (5) days of driving; and

(b) [(d)] Driver review II, evaluation and instruction - two (2) hours not less than twenty (20) days nor more than thirty (30) days.

[(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 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, the initial school bus driver training course prescribed at the time the course was taken and to have qualified for 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 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.]

[(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.]

[Section 10. Beginning with the 1990-91 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:]

[(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;]

Section 9. (1) [(2)] Certified drivers shall [must] complete annually an eight (8) hour[s] in-service update relevant to the curriculum prior to the beginning of the school year. [; and]

(2) [(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.

(3) 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 10. [11.] Substitute school bus drivers shall meet the same requirements as regular school bus drivers.

Section 11. [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 12. [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 13. [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 14. [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 15. [16.] The driver shall report to the superintendent any overcrowded conditions on the bus.

Section 16. [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 presented with a written permission signed by the principal or his designate [a written permit signed by the school principal or his designate is presented to the driver].

Section 17. [18.] The driver shall not transport adult employees of the board or any person not employed by the board unless he receives written permission from [of] the district superintendent [to do so].

Section 18. [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 or any other explosive materials of any type to be transported.

Section 19. [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 20. [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 21. [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 22. [23.] The driver shall activate the flashing amber signal lights a sufficient distance from a bus stop [so as] to warn [permit any prudent] motorists of the intended stop. Once the bus comes to a complete stop, the driver shall activate the stop arm and red flashing signal lights. [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.]

Section 23. [24.] For safety reasons, the driver shall not permit fueling of the bus while pupils are on board the bus.

Section 24. [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. Should the [, and if this] order be ignored, the driver shall [is refused, to] eject the pupil from the bus or send for assistance, whichever the circumstance dictates. 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 25. [26. In the interest of safety,] The school bus driver shall stop the bus at all places where the roadway crosses a railroad track or tracks at the grade level. The stop shall be made not less than fifteen (15) feet nor more than fifty (50) feet from the nearest track. After making the stop, the driver shall open the service door and driver side window and carefully look in each direction and listen for approaching trains before proceeding. [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 26. [27.] The driver shall have the authority to assign a pupil to a specific seat on the school bus.

Section 27. [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 28. [29.] The school bus driver shall not operate the school bus at a speed in excess of the posted speed limit on any [the] section of highways over which the bus travels. The bus shall not be operated upon any highway at speeds [, 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 29. [30.] The driver shall wear the driver's seat belt at all times that the bus is operated.

Section 30. [31.] The stop signal arm and flashing warning lights shall be used only at stops where pupils are boarding or leaving the bus.

Section 31. [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 32. [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 33. [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. A driver shall report to the superintendent or his designate immediately any revocation of license or conviction for driving under the influence.

Section 34. [35.] The driver of a school bus shall be on the bus at all times students are loading or unloading.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

JOHN H. BROCK, Superintendent

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: November 14, 1990

FILED WITH LRC: December 12, 1990 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1991, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

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: $20 per driver for commercial drivers licenses testing fee. This may or may not be paid by the school district.
2. Continuing costs or savings: $20 per driver for beginning drivers.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Certification of driver experience for drivers who are eligible for grandfathering on the skills portion of commercial drivers license test.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Undetermined at the time. Several workshops will be conducted on commercial driver training and testing using our staff.
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Reporting test results to state police for those drivers who must take the driving skills test. This will involve only a fraction of the present drivers.
(3) Assessment of anticipated effect on state and local revenues: This will depend upon whether the local school district pays the testing fee.
(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: The state police have trained 5 members of the Division of Pupil Transportation as third party testers for the skill portion of the commercial drivers license test. Drivers who can provide proof through their employer of 2 years experience will be grandfathered on the skills test. Drivers with less than 2 years experience will be required to take the skills test.
TIERING: Was tiering applied? No. This regulation applies equally to all school districts.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Commercial Motor Vehicle Safety Act of 1986.
2. State compliance standards. The Kentucky Commercial Drivers License Act passed during the 1990 legislative session meets the guidelines of the Federal Commercial Motor Vehicle Act.
3. Minimum or uniform standards contained in the federal mandate. School bus drivers are required to possess a "Class B" license with the school bus endorsement. The minimum age for this license is 21.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The eighteen hour driver training course is not required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate approaches the commercial drivers license from the standpoint of minimum requirements. The Kentucky Department of Education is interested in maximum safety for school children.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 3:340. Commonwealth diploma program.

RELATES TO: KRS 156.031, 156.070, 156.160
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; KRS 156.070 authorizes the State Board for Elementary and Secondary [of] Education to prescribe such courses of study, curriculums, and programs as it deems necessary for the common schools; and KRS 156.160 requires the State Board for Elementary and Secondary [of] Education to adopt regulations determining the courses of study for the different grades [scope of instruction that may be offered in the common schools] and the [minimum] requirements for graduation from offered courses. A Commonwealth Diploma shall be issued to students completing a Commonwealth Diploma Program. The purpose of such a diploma and program are [as follows: a)] to encourage high academic achievement in Kentucky high schools; [b)] to encourage more of the capable students to attend college; [c)] to improve the working relationship between high schools and colleges and universities; and [d)] to allow students to gain college credit prior to attending college. This regulation implements a Commonwealth Diploma Program and sets forth the conditions and criteria under which a Commonwealth Diploma shall be issued.

Section 1. The Kentucky State Board for Elementary and Secondary [of] Education shall award to each student in the public schools of this state completing a Commonwealth Diploma Program a Commonwealth Diploma. This diploma shall be printed by the Kentucky Department of Education and sent to the appropriate district upon verification of program completion to the Department of Education by the local district. Each diploma shall be issued in the name of each student so identified. Verification to the Department of Education shall be on forms supplied by the Department of Education and shall be submitted in a timely fashion so as to provide for awarding of the Commonwealth Diploma

at regularly scheduled graduation ceremonies, said forms being incorporated herein by reference and available for inspection, copying, and obtaining from the Office of Instruction, 18th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday. Those students receiving Commonwealth Diplomas shall [should] be cited as recipients at graduation ceremonies.

Section 2. The requirements for obtaining a Commonwealth Diploma are as follows:

(1) Successful completion of at least twenty-two (22) approved units of credit, including all the minimum unit requirements for high school graduation set forth in 704 KAR 3:305 and any additional units [or as] specified by the applicable local board of education.

(2) Successful completion of all minimum requirements of the Precollege Curriculum established by the Council on Higher Education. Minimum Precollege Preparation requirements are as follows:

(a) Language arts - four (4) units (English I, English II, English III, and English IV);

(b) Mathematics - three (3) units (Algebra I or Algebra II, geometry, and one (1) elective);

(c) Science - two (2) units (Biology I or Chemistry I, or Physics I, and one (1) elective); and

(d) Social Studies - two (2) units (including World Civilization and U. S. History).

(3)(a) Successful completion (i.e., receiving a grade or the equivalent of "C" or better) of at least four (4) courses, as hereinafter designated and which contain essential content as described in the Advanced Placement (AP) Program Course Description booklets of the College Entrance Examination Board, such booklets being incorporated herein by reference and copies of which may be obtained from the College Entrance Examination Board:

1. English - one (1) course;

2. Science or mathematics - one (1) course (selected from biology, chemistry, or physics, or mathematics);

3. Foreign language - one (1) course (selected from French, German, Latin, or Spanish); and

4. One (1) additional AP course (selected from English, science, foreign language, history, computer science, political science, music, or art); or

(b) Successful completion (i.e., receiving a grade or the equivalent of "C" or better) of at least four (4) courses, as hereinafter designated and which contain essential content as described in the International Baccalaureate (IB) program course description booklets such booklets being incorporated herein by reference and copies of which may be obtained from the International Baccalaureate North America, Inc.:

1. Language A, the student's first language English, - one (1) course;

2. Natural or experimental science or mathematics - one (1) course (selected from biology, chemistry, physics, or mathematics);

3. Language B, a foreign language - one (1) course (selected from French, or Spanish); and

4. One (1) additional IB or AP course.

(4) Completion of one (1) AP Examination in at least three (3) of the AP or IB areas specified in subsection (3) of this section, without regard to score.

Section 3. During the 1987-88 and 1988-89 school years, the Kentucky Department of Education shall reimburse to local school districts the costs of required AP examinations for all students successfully completing the aforementioned criteria. Beginning with the 1989-90 school year, reimbursement will be contingent upon a student's receiving a specified minimum composite score on the three (3) required AP examination. This requirement shall be phased in over a four-year period, with said minimum composite score starting at five (5) in 1989-90 and being raised by one (1) each school year until it reaches a minimum score of eight (8) in 1992-93. Reimbursement funds shall be sent for distribution to local districts once each year on the basis of documentation supplied by the district.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

JOHN H. BROCK, Superintendent

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: November 14, 1990

FILED WITH LRC: December 12, 1990 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kay Freeland

(1) Type and number of entities affected: 176 school districts.

(a) Direct and indirect costs or savings to those affected:

1. First year: No change.

2. Continuing costs or savings: No change.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Paperwork requirements remain.

(2) Effects on the promulgating administrative body: No effect.

(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:
(b) Reporting and paperwork requirements: Remain the same.
(3) Assessment of anticipated effect on state and local revenues: No effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Amendment needed to comply with KRS 156.031.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are 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. The regulation is applied equally to all districts.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 4:020. Comprehensive school health.

RELATES TO: KRS 156.031, 156.160
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; and KRS 156.160 requires the State Board for Elementary and Secondary [of] Education to adopt regulations governing medical inspection, physical education and recreation, and other rules and regulations deemed necessary or advisable for the protection of the physical welfare and safety of the public school children. This regulation implements the duty of the State Board relative to medical inspections and the physical welfare and safety of public school children.

Section 1. School employee medical examinations shall be required as follows for the protection of the physical welfare and safety of the public school children.
(1) All local boards of education shall require a medical examination of each teacher upon initial employment which shall include a tuberculin skin test. All positive reactors shall be required to comply with the recommendations of the local board of health and the Cabinet for Human Resources for further evaluation and treatment of the tuberculosis infection. Following the required medical examinations for initial employment and any subsequent examinations as may be required for positive tuberculin reactors, each teacher shall submit to the local school superintendent a statement indicating his or [/] her medical status.
(2) All local boards of education shall require upon initial employment and each year thereafter a 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 test 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 initial examination shall include tests for tuberculosis. All positive reactors shall be required to comply with the recommendations of the local board of health and the Cabinet for Human Resources for further evaluation and treatment of the tuberculosis infection. Following the required medical examination for initial employment and any subsequent examinations, as may be required for positive tuberculin reactors, each bus driver shall submit to the local school superintendent a statement indicating his or [/] her medical status. All medical examinations of the school bus drivers shall be reported on a form prescribed by the State Department of Education and entitled, "Medical Examination Report for School Bus Drivers and Substitute School Bus Driver," which is incorporated herein by reference, and submitted to the local school superintendent.
(3) All local boards of education shall require a medical examination of each custodian, cafeteria worker, and other classified school employees not specifically covered by subsection (2) of this section upon initial employment. The medical examination shall include tests for tuberculosis, 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. All positive tuberculin reactors shall be required to comply with the recommendations of the local board of health and the Cabinet for Human Resources for further evaluation and treatment of the tuberculosis infection. Following the required evaluation, each employee shall submit to the local school superintendent a statement indicating his or [/] her medical status. Medical examinations shall be reported on forms prescribed by the State Department of Education and entitled, "Medical Examination of School Employees," which is incorporated herein by reference.
(4) The local board of education shall require all school personnel exhibiting symptoms of chronic respiratory disease to be examined for tuberculosis. The evaluation and any required treatment for tuberculosis infection shall be based upon the recommendations of the local board of health and the standards developed by the Cabinet for Human Resources.
(a) Any personnel exposed to infectious tuberculosis shall be tested and, if necessary, treated for tuberculosis infection according to the recommendation of the local board of health.
(b) In counties with high incidence rates for tuberculosis infection defined as equal to or greater than one (1) percent, the local board of health may, with the approval of the Cabinet for Human Resources, exercise its legal sanction to require more extensive testing for tuberculosis than outlined above.

Section 2. All local boards of education shall require a medical examination of each child within six (6) months prior to, or one (1) month

following his or [/] her initial admission to school. The medical examination, performed and signed for by a physician, shall be reported on forms prescribed by the Department of Education and entitled, "School Medical Examination Form," which is incorporated herein by reference, and shall include a medical history; record of immunizations and tuberculosis testing; assessment of growth and development and general appearance; physical assessment including hearing and vision screening; and recommendations to the school regarding health problems that may require special attention in classroom or physical education activities. All boards of education shall adopt a program of continuous health supervision for all school enrollees; such supervision shall include scheduled screening tests for vision, hearing and scoliosis. The need for any further tuberculin skin test shall [will] depend on the risk of exposure of the child and prevalence of tuberculosis in the community, such need to be determined pursuant to KRS [158.036 and] KRS 214.034.

(1) An effective mechanism for referral and appropriate follow-up of any apparent abnormality noted by screening assessment or teacher observation shall be recorded on school health records within nine (9) weeks of screening program or detection of abnormality.

(2) Each school shall have emergency care procedures. The emergency care procedures shall include first aid facilities, at least two (2) adults in each school who have completed and been certified in a standard first aid course [personnel with first aid training], parents' telephone number, name of family physician, and means of transportation.

(3) Local boards of education shall require all vaccinations and immunizations and tuberculosis testing as required by law or regulations:

(a) Except as otherwise provided by law, all children shall be required to present a valid immunization certificate upon enrollment in school, and a valid up-to-date immunization certificate shall be on file for all children at all times. All children shall also present a tuberculin test certificate or the school medical examination form to the public or private school showing tuberculin skin test administration within one (1) year prior to initial enrollment in school. The governing body of private and public schools shall enforce the provisions of this subsection in accordance with the established laws.

(b) Children transferring into any school district shall comply with the above requirements.

Section 3. (1) Each elementary and secondary school shall initiate a cumulative health record for each pupil entering school. Such record shall be maintained throughout the pupil's attendance. Such record shall be uniform and shall be on forms prescribed by the Department of Education and entitled "Pupil's Cumulative Health Record," which is incorporated herein by reference. Such record shall include screening tests related to growth and development, vision and hearing; teacher observations of general appearance and behavior; and findings and recommendations of physician and dentist including immunization record. A follow-up by the proper health or school authorities shall be made on each defect noted and the result shall be recorded.

(2) Local school authorities shall report all known or suspected cases of communicable disease immediately to the local health department.

Section 4. All boards of education shall, in relation to each school under its jurisdiction, provide and maintain a physical environment that is conducive to the health and safety of school children. It shall be the responsibility of all local boards of education to comply with current laws and regulations applicable to all public buildings pertinent to health, sanitation, and safety. In accordance with current regulations and standards by authorities having jurisdiction, it shall be the responsibility of all local boards of education to establish:

(1) An adequate supply of water of safe, potable, sanitary quality.

(2) A state-approved sanitary disposal of sewage, other water carried waste, and solid waste.

(3) Adequate toilet and lavatory facilities and other sanitary fixtures.

(4) Adequate heating, lighting, and ventilation in all school buildings.

(5) Adequate facilities and equipment for cafeterias and lunchrooms.

(6) Supervision of general sanitation and safety of the school buildings, grounds, and playground equipment.

(7) Adequate first aid facilities.

(8) Adequate control of air pollutants.

Section 5. Each board of education shall designate a person to serve as school health coordinator. Such person shall meet the minimum qualifications required of this position. The school health coordinator shall work in cooperation with all school personnel, the local board of education, the State Department for Elementary and Secondary [of] Education, and the local health department in planning, promoting, and implementing a school health services program that meets the regulations adopted by the State Board of Education.

Section 6. Each local board of education shall require an annual medical examination of each child as a prerequisite for eligibility in interscholastic athletics. A local board of education may require such examination to be paid by the parent of the child.

Section 7. All forms incorporated herein by reference may be inspected, copied, and obtained from the Division of Student Services, Department of Education, 17th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

JOHN H. BROCK, Superintendent

HENRY E. POGUE, IV, Chairman

APPROVED BY AGENCY: November 14, 1990

FILED WITH LRC: December 12, 1990 at 10 a.m.

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CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person:
(1) Type and number of entities affected: 176 school districts.
(a) Direct and indirect costs or savings to those affected:
1. First year: No change.
2. Continuing costs or savings: No change.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Paperwork requirements remain.
(2) Effects on the promulgating administrative body: No effect.
(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:
(b) Reporting and paperwork requirements: Remain the same.
(3) Assessment of anticipated effect on state and local revenues: No effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Amendment needed to comply with KRS 156.031.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are none.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(Proposed Amendment)

704 KAR 7:080. Ride to the Center for the Arts Program Fund.

RELATES TO: KRS 156.031, 157.605, 157.606
STATUTORY AUTHORITY: KRS 156.070, 157.606
NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; and KRS 157.605 and 157.606 establish the "Ride to the Center for the Arts Program Fund" to provide matching funds to local school districts for the cost of transportation of students in grades 6-9 for the purpose of visiting the Kentucky Center for the Arts. This regulation is necessary to provide for the administration of the program and disbursement of money from the fund.

Section 1. Total transportation costs eligible for reimbursement from the Ride to the Center for the Arts Program Fund shall be eighty (80) cents per mile computed from the school to the Kentucky Center for the Arts, and the bus driver's salary for the hours worked. One-half (1/2) (fifty (50) percent) of the total transportation cost may be awarded to the local school district upon receipt of a statement signed by the superintendent verifying the date the trip was made, the number of students transported, the number of buses used, the total mileage, and the bus driver's total hours and hourly rate.

Section 2. Applications for the matching funds shall be made on forms supplied by the Department of Education and which are incorporated herein by reference and available for inspection, copying, and obtaining from the Office of Instruction, 17th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday. [Office of Instruction, Unit for Arts and Humanities], by July 1 of each year [beginning July 1, 1989. Applications prior to July 1, 1989, must also be made on forms supplied by the Office of Instruction and will be processed when received].

Section 3. Preference shall be given to schools who have not participated previously in the program. A review panel selected by the Department of Education [Office of Instruction, Unit for Arts and Humanities,] shall review all applications and make recommendations to the State Board for Elementary and Secondary Education.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).
JOHN H. BROCK, Superintendent

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: November 14, 1990
FILED WITH LRC: December 12, 1990 at 10 a.m.
PUBLIC HEARING: A public hearing on this

administrative regulation shall be held on January 23, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kay Freeland
(1) Type and number of entities affected: 176 school districts.
(a) Direct and indirect costs or savings to those affected:
1. First year: No change.
2. Continuing costs or savings: No change.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Paperwork requirements remain.
(2) Effects on the promulgating administrative body: No effect.
(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:
(b) Reporting and paperwork requirements: Remain the same.
(3) Assessment of anticipated effect on state and local revenues: No effect.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Amendment needed to comply with KRS 156.031.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are 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. The regulation is applied equally to all districts.

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Office of State Fire Marshal
(Proposed Amendment)

815 KAR 10:040. Fire Prevention Code.

RELATES TO: KRS Chapters 198B, 227
STATUTORY AUTHORITY: KRS 227.300
NECESSITY AND FUNCTION: The Commissioner of the Department of Housing, Buildings and Construction is required by KRS 227.300 to establish reasonable regulations based upon good engineering practice and principles providing a reasonable degree of safety for human life against the emergencies of fire and panic, and insuring, as far as practicable, against fire loss. These regulations shall constitute the fire prevention code for Kentucky which shall be known as the Kentucky Standards of Safety. They shall be used, where applicable, as a supplement to the Kentucky Building Code. This regulation is necessary to establish minimum fire safety standards especially for buildings not constructed in accordance with applicable building codes in existence at time of construction. These standards are enforceable by the State Fire Marshal, pursuant to KRS Chapter 227 and local authorities pursuant to KRS 227.320. This amendment is necessary because of conflicts in Articles 16 and 28 with existing regulations for oil and gas wells in the Department for Mines and Minerals. [This regulation includes the substance of 815 KAR 10:020, which is being repealed.]

Section 1. Definitions. Definitions in this section shall apply to this regulation and shall be incorporated into Article 2, Section 201 of the Kentucky Standards of Safety.
(1) "Alternate" or "alternative" means a system, condition, arrangement, materials or equipment submitted to or accepted by the State Fire Marshal or other fire code official as a substitute for another code requirement because the substitute meets the intent of the code.
(2) "Code official" means the State Fire Marshal or other enforcement officer designated by the appointing authority of a local governmental jurisdiction for the enforcement of this code and the codes and standards adopted herein. (See "Fire code official")
(3) "Combustible" means capable of burning or producing flame at ordinary temperatures or being easily ignited.
(4) "Common path of travel" means that portion of exit access that must be traversed before two (2) separate and distinct paths of travel to two (2) exits are available. Paths that merge are common paths of travel. Common path of travel is measured in the same manner as travel distance but terminates at that point where two (2) separate and distinct routes become available.
(5) "Distinct hazard" means any situation, process, material or condition which is likely to cause a fire or explosion or provide a ready fuel supply to augment the spread or intensity of the fire or explosion which poses a threat to life or the property of others, and including any condition likely to result in collapse of some portion of the structure in case of fire or explosion or other impending disaster that may be a threat to life or property.
(6) "Dwelling or private dwelling" means a single unit providing complete and independent

living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

(7) "Fire chief" means the authorized head of a fire department that is recognized by the State Fire Marshal's Office.

(8) "Fire code official" means the State Fire Marshal or other enforcement officer designated by the appointing authority of a local governmental jurisdiction for the enforcement of this regulation and the codes and standards adopted herein. (See "Code official")

(9) "Fire department" means a fire department recognized by the State Fire Marshal's Office.

(10) "Fire lane" means the road, path, or other passageway developed to allow the passage of fire apparatus through congested areas (both built-up and wildland).

(11) "Fire prevention code" means the BOCA National Fire Prevention Code, 1990 edition, as adopted by the Commissioner of the Department of Housing, Buildings and Construction and otherwise known as the Kentucky Standards of Safety.

(12) "Fire suppression system" means a fixed system of approved appliances/devices, valves and piping designed and installed to control/suppress fire either by means of manual or automatic activation.

(13) "Fire suppression system inspector" means any individual having met the minimum requirements adopted by the Office of the State Fire Marshal.

(14) "Floor loading" means forces or other actions that arise on structural systems from the weight of all permanent construction, occupants and their possessions including:

(a) "Dead load" the weight of all permanent structural and nonstructural components of a building, such as walls, floors, roofs, ceilings, stairways and fixed service equipment.

(b) "Live load" the weight superimposed by the use and occupancy of the building, not including the wind load, earthquake load, or dead load.

(15) "Historic building" means an existing building or structure identified and classified as historic property by the Kentucky Heritage Commission or the National Register of Historic Places.

(16) "Kentucky fire incident report" means a form for the reporting of fires which is obtained pursuant to KRS 304.13-380 from the State Fire Marshal for use by fire departments.

(17) "LED" means level of exit discharge.

(18) "NFiPA" means the National Fire Protection Association.

(19) "Occupancy classification" means the various use groups as classified in the Kentucky Building Code and set forth in Section F-202.0 of this regulation.

(20) "Place of assembly" means buildings or portions thereof used for gathering together fifty (50) or more persons for purposes set forth in F-202.0, Use Group A, of this code.

(21) "Process" means the manufacturing, handling, blending, conversion, purification, recovery, separation, synthesis or use or any combination of any commodity or material regulated by this code.

(22) "Single family dwelling" means one (1) unit providing complete independent living facilities for one (1) or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation, and which is not connected to any other unit or building.

(23) "Smoke barrier" means a continuous membrane, either vertical or horizontal, such as a wall, floor, approved door, or ceiling assembly, that is designed and erected with construction materials to restrict the movement of smoke. A smoke barrier may or may not have a fire resistance rating. These barriers shall have protected openings.

(24) "Smoking" means a lighting, igniting, holding or possession of any lighted cigar, cigarette or pipe.

(25) "State Fire Marshal" means the administrative head of the Division of Fire Prevention, Department of Housing, Buildings and Construction, Commonwealth of Kentucky, and signified by the abbreviation, "SFM".

(26) "Unfriendly fire" means a fire that is deliberately set (arson) or ignites through carelessness, negligence, or other cause in a manner as to endanger the safety of any person or property.

(27) "Use group" means the classification of a building or structure based on the purpose for which it is intended to be used.

Section 2. Adoption of Fire Prevention Code. The BOCA National Fire Prevention Code/1990, 8th Edition, published by and copies available from Building Officials and Code Administrators International, Inc., 4051 W. Flossmoor Road, Country Club Hills, Illinois 60477, is hereby incorporated by reference as it is set forth at length in this regulation, with specific changes set forth in Sections 3 through 17 of this regulation. Copies are available at the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

Section 3. Article 1. (1) Amend subsection F-100.1 to read as follows: "F-100.1 Title: These regulations as set forth herein shall be known as the Kentucky Standards of Safety (Fire Prevention Code) and are herein referred to as same or as "this code"."

(2) Create a new subsection to read as follows: "F-100.5 Intent of Code: It is the express intent of this code to provide a reasonable degree of safety for human life. Therefore, where the purpose of any provision of this regulation can be fulfilled by other means, the specific requirements of this code may be modified by the fire code official to allow alternative arrangements that will secure as nearly equivalent safety from fire as practical. Nothing in this code is intended to invalidate any lawfully adopted local government ordinance."

(3) Create a new subsection, "F-100.6 Continuation of Use" to read as follows:

(a) "F-100.6.1 The use and occupancy of any building which was constructed after the implementation of the Kentucky Building Code and for which there has been issued a lawful certificate of use or occupancy by the building code official may be continued without change so long as it is maintained and used as originally permitted and approved."

(b) "F-100.6.2 The use and occupancy of any building, other than a building covered by F-100.6.1, existing on the date of adoption of this code may be continued without change except as may be specifically covered by this code and deemed necessary by written decision of the fire code official for the life safety of the

occupants and the public under Article 1 and 4 of this code."

(4) Create a new subsection, "F-100.7 Change in Use" to read as follows:

(a) "F-100.7.1 It shall be unlawful to make any change in the use of any structure or portion thereof with the potential to create a greater hazard to the public because of increased structural or fire loading or inadequate exits for the number of occupants without the written approval of the building official when required by the Kentucky Building Code."

(b) "F-100.7.2 Any proposed new use not subject to the Kentucky Building Code shall comply with the provisions of this code relating to the new use, as required by the fire code official."

(5) Create subsection F-100.8 to read as follows: "F-100.8 Certificate of Use and Occupancy. If the fire code official finds an existing building or facility to be in substantial compliance with the intent of this code and that there are no violations of any order of the building official or State Fire Marshal pending, he may issue a certificate authorizing the legal use and occupancy of the building or facility and that use may continue without change as allowed by F-100.6.1. Upon request, the building code official shall cooperate with the fire code official, pursuant to Section 106 of the Kentucky Building Code, in assessing existing buildings for relative fire safety."

(6) Amend subsection F-101.2 to read as follows: "F-101.2 Existing buildings: Buildings built under and in full compliance with the codes in force at the time of construction or alteration thereof, and that have been properly maintained and used as originally permitted, shall be exempt from the requirements of this code pertaining to any of the following matters:

1. Fire protection of structural elements.

2. Exits required, except as provided for existing buildings under this code.

3. Isolation of hazardous operations and mixed uses; provided, however, that the fire code official shall require the installation of fire safety devices or systems (fire extinguishers, fire alarms, fire detection devices, sprinklers or similar systems) where they are necessary to provide safety to life and property. In lieu of requiring the installation of safety devices or systems or when necessary to secure safety in addition thereto, the fire code official shall prescribe limitations on the handling and storage of materials or substances or upon operations that are liable to cause fire, contribute to the spread of fire, or endanger life or property."

(7) Amend subsection F-101.3 to read as follows: "F-101.3 Application of building code: The planning, design and construction of new buildings and structures to provide egress facilities, fire protection, and built-in fire protection equipment shall be controlled by the Kentucky Building Code and any alterations, additions or changes in buildings required by the provisions of this code which are within the scope of the Kentucky Building Code shall be made in accordance with the standards set forth therein."

(8) Delete subsections F-101.4 and F-101.4.1 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in their entirety.

(9) Amend subsection F-101.6 to read as follows: "F-101.6 Compliance Alternatives:

(a) "F-101.6.1 If this code requires a particular system, condition, arrangement, material, equipment, or any other particular provision, the fire code official may grant alternatives if he finds that the alternative(s) are consistent with the intent of this code to provide adequate protection for life safety. The decision shall be written and shall provide a reasonable time to comply with the terms of the alternatives."

(b) "F-101.6.2 An application for an alternative may be filed with the fire code official by the owner or occupant and shall be accompanied by evidence, letters, statutes, results of tests or other supporting information as may be required to justify the request. The fire code official shall keep a record of action on applications and a signed copy of the fire code official's decision shall be provided for the applicant. Acceptance of any alternative by the fire code official shall signify compliance with this code under the provision for which an alternative is offered. Failure of the property owner or occupant to comply with the alternatives granted shall void the alternative."

(10) Create subsection "F-101.7 Exempted Facilities" to read as follows:

(a) "F-101.7.1 State prisons, day care centers, hospitals, nursing homes and other facilities required to be licensed by the Kentucky Cabinet for Human Resources or the Corrections Cabinet are not required to comply with the provisions of the fire prevention code if they are inspected and approved by the Office of the State Fire Marshal in accordance with federally mandated codes or the edition of NFiPA Pamphlet #101 (The Life Safety Code) under which the facility was initially approved. This regulation makes no change in the standards previously applicable to these facilities."

(b) "F-101.7.2 This code does not apply to single family dwellings."

(11) Amend F-104.1 to read as follows: "F-104.1 Enforcement officer: It shall be the duty and responsibility of the State Fire Marshal, his designee, or local fire code official acting pursuant to lawful ordinance adopting this code to enforce the provisions of the fire prevention code as herein set forth. The designated enforcement officer of this code is herein referred to as the fire code official."

(12) Create a new subsection to read as follows: "F-104.9 Interpretations: Formal interpretations of the provisions of this code shall be issued by the State Fire Marshal upon written request, and a record of these interpretations shall be maintained by the State Fire Marshal and regularly communicated to all persons who purchased the Fire Prevention Code book and others who are registered with the State Fire Marshal to be on the mailing list. These interpretations shall be used by all fire code officials to provide consistency in the understanding and enforcement of this Code. Upon adoption of these Standards of Safety by any unit of local government, pursuant to KRS 227.320, all interpretations of the Standards of Safety promulgated by the commissioner shall be interpreted likewise by the State Fire Marshal and the interpretations shall be used by all local fire code officials in the understanding and enforcement of this Code."

(13) Delete subsections F-105.6; F-105.7 and

F-105.8 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in their entirety.

(14) Amend subsection F-106.2 to read as follows: "F-106.2 Permits required: Permits, if adopted by city or county ordinance, shall be obtained from the local fire code official according to the local adopting legislation. Inspection or permit fees, if any, shall be stipulated in the local adopting legislation. Permits shall at all times be kept in the premises designated therein and shall at all times be subject to inspection by the fire code official."

(15) Create subsection F-106.8 to read as follows: "F-106.8 The State Fire Marshal shall not become involved in the local permit process, and where local permits are required, the State Fire Marshal shall not perform any related inspections. Exception: Permits required by law to be issued by the State Fire Marshal, shall be issued according to state statute or regulations and inspected accordingly."

(16) Amend Section "F-108.0 Means of Appeal" to read as follows:

(a) "F-108.1 Local Appeals: Any party aggrieved by a decision of the local fire code official and any local fire code official desiring a ruling, may appeal to the local appeals body as provided by local ordinance."

(b) "F-108.1.1 State Fire Marshal appeals: Appeals from decisions of the State Fire Marshal or by his authority, pursuant to KRS 227.230, shall be made in accordance with the provisions of KRS Chapter 227."

(17) Amend subsection F-109.3 to read as follows: "F-109.3 Unsafe buildings. All buildings and structures that are or shall hereafter become unsafe or deficient in adequate exit facilities or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or by reason of illegal or improper use, occupancy or maintenance or which have sustained structural damage by reason of fire, explosion, or natural disaster shall be deemed unsafe buildings or structures. A vacant building, or portion of a building, unguarded or open at door or window shall be deemed a fire hazard and unsafe within the meaning of this code. The fire code official or authorized fire chief shall order the unsafe conditions to be remedied in accordance with this regulation or removed."

(18) Amend subsection F-111.2 to read as follows: "F-111.2 Failure to correct violations: If the notice of violation is not complied with within the time specified by the fire code official, the fire code official shall request the legal counsel of the jurisdiction to institute the appropriate legal proceedings to restrain, correct or abate the violation or to require removal or termination of the unlawful use of the building or structure in violation of the provisions of this code or of any order or direction made pursuant thereto."

(19) Delete subsections F-112.0 through F-112.7 from Article 1 of the 1990 edition of the BOCA National Fire Prevention Code in their entirety.

Section 4. Article 2. Create a new Section, F-202 and subsections F-202.1 through F-202.12 which shall be entitled, "Use Group Classification" and which shall read as follows:

(1) "F-202.1 General: All buildings and structures shall be classified with respect to use in one (1) of the use groups listed in Table F-202 below.

TABLE F-202

1.	Use Group A	assembly (See Section F-202.2)
2.	Use Group B	business (See Section F-202.3)
3.	Use Group E	educational (See Section F-202.4)
4.	Use Group F	factory and industrial (See Section F-202.5)
5.	Use Group H	high hazard (See Section F-202.6)
6.	Use Group I	institutional (See Section F-202.7)
7.	Use Group M	mercantile (See Section F-202.8)
8.	Use Group R	residential (See Section F-202.9)
9.	Use Group S	storage (See Section F-202.10)
10.	Use Group U	utility and miscellaneous (See Section F-202.11)"

(2) "F-202.2 USE GROUP A, ASSEMBLY USES:"

(a) "F-202.2.1 General. All buildings and structures, or parts thereof, shall be classified in Use Group A which are used or designed for the gathering together of persons for purposes of civic, social or religious functions, recreation, food or drink consumption or awaiting transportation. Exception: Assembly type uses with a total occupant load of less than fifty (50) shall be classified as Use Group B (Business)."

(b) "F-202.2.2 Use Group A-1, theaters: This use group shall include all theaters and all other buildings and structures, or parts thereof, intended for the production and viewing of the performing arts or motion pictures and usually provided with fixed seats, including theaters, motion picture theaters and television and radio studios admitting an audience. Stages and platforms shall comply with the applicable provisions of the Kentucky Building Code."

(c) "F-202.2.3 Use Group A-2 structures: This use group shall include all buildings and places of public assembly, without theatrical stage accessories, designed for use as dance halls, night clubs and for similar purposes, including all rooms, lobbies and other spaces connected thereto with a common means of egress and entrance."

(d) "F-202.2.4 Use Group A-3 structures: This use group shall include all buildings with or without an auditorium in which persons assemble for amusement, entertainment or recreation, and incidental motion picture, dramatic or theatrical presentations, lectures or other similar purposes without theatrical stage other than a raised platform; and principally used without permanent seating facilities, including art galleries, exhibition halls, museums, lecture halls, libraries, restaurants other than night clubs, and recreation centers; and buildings designed for other similar assembly purposes including passenger terminals."

(e) "F-202.2.5 Use Group A-4 structures: This use group shall include all buildings used as churches and for similar religious purposes."

(f) "F-202.2.6 Use Group A-5, outdoor assembly: This use group shall include structures used for outdoor assembly intended for participation in or reviewing activities including grandstands, bleachers, coliseums,

stadiums, amusement park structures and fair or carnival structures. These structures shall comply with the provisions of the Kentucky Building Code listed in Appendix A for special uses and occupancies."

(3) "F-202.3 USE GROUP B, BUSINESS USES: F-202.3.1 General: All buildings and structures, or parts thereof, shall be classified in Use Group B which are used for the transaction of business, for the rendering of professional services, or for other special services that involve stocks of goods, wares or merchandise in limited quantities for use incidental to office uses or sample purposes."

(4) "F-202.4 USE GROUP E, EDUCATIONAL USES. F-202.4.1 General: All buildings and structures, or parts thereof, other than those used for business training or vocational training, shall be classified in Use Group E which are used by more than five (5) persons at one (1) time for educational purposes including, among others, schools, academies, colleges and universities. Educational type uses with a total occupant load less than fifty (50) shall be classified in Use Group B. School buildings, or parts thereof, for business training or vocational training shall be classified in the same use group as the business or vocation taught."

(5) "F-202.5 USE GROUP F, FACTORY AND INDUSTRIAL USES."

(a) "F-202.5.1 General. All buildings and structures, or parts thereof, in which occupants are engaged in performing work or labor in the fabricating, assembling or processing of products or materials shall be classified in Use Group F, including, among others, factories, assembling plants, industrial laboratories and all other industrial and manufacturing uses, except those of Use Group H involving highly combustible, flammable or explosive products and materials."

(b) "F-202.5.2 Use Group F-1 structures: Factory and industrial use which are not otherwise classified as low hazard Use Group F-2, shall be classified as moderate hazard factory and industrial, Use Group F-1."

(c) "F-202.5.3 Use Group F-2 structures: Factory and industrial uses which involve the fabrication or manufacturing of noncombustible materials which during finishing, packing or processing do not involve a significant fire hazard shall be classified as Use Group F-2."

(6) "F-202.6 USE GROUP H, HIGH HAZARD USES."

(a) "F-202.6.1 General: All buildings and structures, or parts thereof, shall be classified in Use Group H which are used for the manufacturing, processing, generation or storage of corrosive, highly toxic, highly combustible, flammable or explosive materials that constitute a high fire or explosion hazard, including loose combustible fibers, dust and unstable materials."

(b) "F-202.6.2 Exceptions: The following shall not be classified as Use Group H but shall be classified in the usage group which they most nearly resemble:

1. Any building or portion of a building containing less than the exempt amount of those materials shown in Table F-202.6 when maintained in accordance with this code.

2. Buildings containing rooms conforming to the requirements of Article 6 of the Kentucky Building Code listed in Appendix A.

3. Rooms containing flammable liquids in tightly-closed containers of one (1) gallon (0.0038 m^3) capacity or less for retail sale or private use on the premises and in quantities not exceeding two (2) gallons per square foot (0.082 m^3/m^2) of room area.

4. Rooms used for preparation or storage of food products for retail sale on the premises.

5. Retail paint salesrooms with quantities of paint not exceeding two (2) gallons per square foot (0.082 m^3/m^2) of room area.

6. Liquor stores and distributors without bulk storage.

7. The storage or use of materials for agricultural purposes for use on the premises.

8. Closed systems housing flammable or combustible liquids or gases used for the operations of machinery or equipment.

9. Cleaning establishments which utilize combustible liquid solvents having a flash point of 140 degrees F. (60 degrees C.) or higher in closed systems employing equipment listed by an approved testing laboratory, provided this use is separated from all other areas of the building by one (1) hour fire-resistance rated construction.

10. Cleaning establishments which utilize a liquid solvent having a flash point at or above 200 degrees F. (93 degrees C.).

11. Refrigeration systems.

12. Tire retail stores without bulk storage.

13. Any other building or portion thereof which is exempt from this classification by the Kentucky Building Code."

(c) The following table shall apply to this section:

"F-TABLE 202.6
EXEMPT AMOUNTS OF HAZARDOUS MATERIALS, LIQUIDS AND CHEMICALS

	Material	Maximum quantities[e]
1.	Flammable Liquids	
	Class 1-A	30 gal.[b]
	Class 1-B	60 gal.[b]
	Class 1-C	90 gal.[b]
2.	Combustible liquids[c]	
	Class II	120 gal.[b]
	Class III-A	250 gal.[b]
3.	Combination flammable liquids[a]	120 gal.[b]
4.	Flammable gases	3,000 cu. ft. at one atmosphere of pressure at 70°F.
5.	Liquefied flammable gases	60 gal.
6.	Combustible fibers-loose	100 cu. ft.
7.	Combustible fibers-baled	1,000 cu. ft.
8.	Flammable solids	500 lbs.
9.	Unstable material	No exemptions
10.	Corrosive liquids	55 gal.
11.	Oxidizing material-gases	6,000 cu. ft.
12.	Oxidizing material-liquids	50 gal.
13.	Oxidizing material-solids	500 lbs.
14.	Organic peroxides	10 lbs.
15.	Nitromethane (unstable materials)	No exemptions
16.	Ammonium nitrate	1,000 lbs.
17.	Ammonium nitrate compound mixtures containing more than 60% nitrate and poisonous gas	1,000 lbs.
18.	Highly toxic material and poisonous gas	No exemptions
19.	Smokeless powder	20 lbs.[d]
20.	Black sporting powder	5 lbs.[d]

Note a. Containing not more than the exempt amounts of Class 1-A, 1-B or 1-C flammable liquids.
Note b. The maximum quantities shall be increased by 100 percent in areas which are not accessible to the public. In buildings where automatic fire suppression systems are installed, the maximum quantities shall be increased 100 percent in the areas accessible to the public.
Note c. Tank storage up to 660 gallons for fuel burning equipment meeting the requirements of the mechanical code in Appendix A shall be permitted.
Note d. Maximum quantities in the amount specified by NFiPA 495 shall be permitted when stored in accordance with NFiPA 495 listed in Appendix A.
Note e. 1 gallon = 0.00379 m^3, 1 cubic foot = 0.028 m^3, 1 pound = 0.454 kg."

(d) "F-202.6.3 Multiple hazards. Buildings in this category shall be further classified H1 - H4 as set forth in the Kentucky Building Code and materials representing hazards that are classified in one or more of the Use Group H subuses shall conform to the code requirements for each of the use groups so classified."

(7) "F-202.7 USE GROUP I, INSTITUTIONAL USES."

(a) "F-202.7.1 General. Licensed institutional facilities shall conform to Section F-101.2.1."

(b) "F-202.7.2 Jails. Jails shall conform to the requirements of the Corrections Cabinet. State prisons shall conform to the requirements of the Life Safety Code, NFiPA 101."

(8) "F-202.8 USE GROUP M, MERCANTILE USES. F-202.8.1 General: All buildings and structures, or parts thereof, shall be classified in Use Group M which are used for display and sales purposes involving stocks of goods, wares or merchandise incidental to these purposes and accessible to the public; including, among others, retail stores, motor fuel service stations, shops and salesrooms and markets. Highly combustible goods shall be limited to small quantities that do not constitute a high hazard; and if not so limited, the construction shall comply with the requirements for Use Group H as set forth in the provisions of the Kentucky Building Code in appendix A."

(9) "F-202.9 USE GROUP R, RESIDENTIAL USES."

(a) "F-202.9.1 General: All buildings and structures, or parts thereof, shall be classified in Use Group R in which families or households live, or in which sleeping accommodations are provided for individuals with or without dining facilities, excluding those that are classified as institutional buildings."

(b) "F-202.9.2 Use Group R-1 structures. This use group shall include all hotels, motels, boarding houses and similar buildings arranged for shelter and sleeping accommodations and in which the occupants are primarily transient in nature, making use of the facilities for a period of less than thirty (30) days."

(c) "F-202.9.3 Use Group R-2 structures: This use group shall include all multiple-family dwellings (apartment buildings) having more than two (2) dwelling units, except as provided in Section F-202.9.4 and shall also include all boarding houses and similar buildings arranged for shelter and sleeping accommodations in which the occupants are primarily not transient in nature."

(d) "F-202.9.3.1 Dormitories: A dormitory facility which accommodates more than five (5) persons more than two and one-half (2 1/2) years of age shall be classified as Use Group R-2. Exception: Licensed facilities."

(e) "F-202.9.4 Use Group R-3 structures: This use group shall include all buildings arranged for the use of one (1) or two (2) family dwelling units adjacent to or located above one another provided they are completely separated by fire-resistance rating, if required by the Kentucky Building Code, and each unit has independent means of egress."

(f) "F-202.9.5 Use Group R-4 structures: This use group shall include all detached one (1) or two (2) family dwellings not more than three (3) stories in height, and their accessory structures."

(10) "F-202.10 USE GROUP S, STORAGE USES."

(a) "F-202.10.1 General: All buildings and structures, or parts thereof, shall be classified in Use Group S which are used primarily for the storage of goods, wares or merchandise, except those of Use Group H that involve highly combustible or explosive products or materials; including, among others, warehouses, storehouses and freight depots."

(b) "F-202.10.2 Moderate hazard uses: Buildings used for the storage of moderate hazard contents which are likely to burn with moderate rapidity, but which do not produce either poisonous gases, fumes or explosives, shall be classified in Use Group S-1."

(c) "F-202.10.3 Low hazard uses: Low hazard uses shall include buildings used for the storage of noncombustible materials, and of low hazard wares that do not ordinarily burn rapidly such as products on wood pallets or in paper cartons without significant amounts of combustible wrappings, but with a negligible amount of plastic trim such as knobs, handles or film wrapping. These uses shall be classified as Use Group S-2."

(11) "F-202.11 USE GROUP U, UTILITY AND MISCELLANEOUS USES. F-202.11.1 General: All buildings and structures of an accessory character and miscellaneous structures not classified in any specific use group shall be constructed, equipped and maintained to meet the requirements of this code commensurate with the fire and life hazard incidental to their use. Utility and miscellaneous uses shall include fences over six (6) feet (1829 mm) high, tanks, cooling towers, retaining walls and buildings such as private garages, carports, sheds and agricultural buildings."

(12) "F-202.12 Further identification on use group classification shall be found in the Kentucky Building Code listed in Appendix A."

Section 5. Article 3. (1) Amend subsection F-302.1 to read as follows: "F-302.1 General: A person shall not deposit hot ashes or cinders, or smoldering coals, or greasy or oily substances susceptible to spontaneous ignition, into any combustible container or place the same within ten (10) feet (3048 mm) of any combustible materials, except in metal or other noncombustible covered receptacles. These receptacles, unless resting on a noncombustible floor or on the ground outside of the building, shall be placed on noncombustible stands and in every case shall be kept at least two (2) feet (610 mm) away from any combustible wall or partition, or exterior window or door opening."

(2) Amend subsection F-303.1 to read as follows: "F-303.1 General: Any person using a torch or other flame or heat producing device for removing paint from any building or structure shall provide one (1) approved fire extinguisher or water hose connected to the water supply on the premises where burning is done. In all cases, the person doing the burning shall remain on the premises one (1) hour after each use of the torch, flame or heat producing device."

(3) Create subsection F-304.2 to read as follows: "F-304.2 Dumpsters: Dumpsters that are located adjacent to buildings for collection of trash and debris shall not be placed within ten (10) feet of a combustible portion of a building, including the eave of a roof. Exception: Where approved by the fire code official."

(4) Amend subsection F-305.1 to read as follows: "F-305.1 General: The storage of combustible or flammable material shall conform to the requirements of this code and NFiPA 30, 40, 231, 231C, 231D and 231F, as listed in Appendix A."

(5) Amend subsection F-306.1 as follows: "F-306.1 General: Combustible materials such as cotton batting, straw, dry vines, leaves, trees, artificial flowers or shrubbery and foam plastic materials shall not be used for decorative purposes in show windows or other parts of buildings in a quantity to constitute a fire hazard, unless the materials are flame retardant."

(6) Amend subsection F-306.2.2 to read as follows: "F-306.2.2 Special effects: Any parade float utilizing special effects which are designed to create smoke, flame, heat or sparking conditions shall be approved by the local fire code official prior to utilization."

(7) Create a new subsection, F-306.4, to read as follows: "F-306.4 Decorations. Furnishings or decorations of an explosive or highly combustible character shall not be used."

(8) Amend Section F-307 as follows: "F-307.3 Candles: The use of candles and open flame devices in places of assembly shall conform to the requirements of Subsections F-701.4 and F-701.5."

(9) Delete subsection F-307.3.1 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in its entirety.

(10) Amend Section F-310.1 to read: "F-310.1 Commercial kitchen exhaust systems shall be cleaned at frequent intervals to remove deposits of residue and grease in the system whenever buildup of residue and grease is apparent."

(11) Delete subsection F-310.1.1 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in its entirety.

(12) Create a new subsection, F-310.2, to read as follows: "F-310.2 Maintenance and inspection of commercial kitchen exhaust systems shall be in conformance to this section and Article 5."

(13) Create a new subsection, F-310.3, to read as follows: "F-310.3 An inspection and servicing of the fire extinguishing system shall be made in accordance with F-507.2."

(14) Create a new subsection, "F-310.4 Cleaning", to read as follows:

(a) "F-310.4.1 Flammable solvents or other flammable cleaning aids shall not be used."

(b) "F-310.4.2 At the start of the cleaning process, electrical switches, detection devices and system components that may be accidentally activated shall be locked, pinned, protectively covered or sealed."

(c) "F-310.4.3 Care shall be taken not to apply cleaning chemicals on fusible links or other detection devices of the automatic extinguishing system."

(d) "F-310.4.4 When cleaning procedures are completed, all electrical switches, detection devices, and system components shall be returned to an operable state by qualified personnel. Cover plates shall be replaced and dampers and diffusers shall be positioned for proper air flow."

(15) Amend subsection F-312.2 to read as follows: "F-312.2 Prohibited areas: Smoking shall be prohibited where conditions exist to make smoking a fire hazard including areas of piers, wharves, warehouses, stores, industrial plants, institutions, schools, and in spaces where combustible materials are stored or handled. Smoking in places of assembly shall conform to Section F-701.6."

(16) Amend subsection F-312.6 to read as follows: "F-312.6 Ashtrays: Where smoking is permitted, there shall be provided on each table and at other convenient locations noncombustible ashtrays or match receivers. Ashtrays shall be designed with deep grooves or snuffers that hold cigarettes securely. The sides shall be steep enough to force smokers to place cigarettes entirely within the ashtray. Commercial type ashtrays filled with sand or with closing lids shall be used where appropriate."

(17) Amend subsection F-313.1 to read as follows: "F-313.1 Required access for fire apparatus: All premises which the fire department may be called upon to protect in case of fire and which are not readily accessible from public roads shall be provided with suitable gates, access roads, and fire lanes so that all buildings and water supplies on the premises are at all times accessible to fire apparatus. The designation, maintenance and marking of fire lanes on private property shall be accomplished as specified by the locally authorized fire department of the jurisdiction. The designation, maintenance and marking of fire lanes on public ways shall be accomplished by local ordinance on recommendation of the local fire department. No person shall park a motor vehicle on, or otherwise obstruct, any required fire lane and no person shall park a motor vehicle within ten (10) feet of a fire hydrant. Enforcement of designated fire lanes and fire hydrant clearance shall be the responsibility of the local police or other authority as determined by local ordinance of the jurisdiction within which the lanes and hydrants are located."

(18) Amend subsection F-313.2 to read as follows: "F-313.2 Vertical clearance. All fire apparatus access roads shall have an unobstructed vertical clearance of not less than thirteen (13) feet six (6) inches. Exception: Upon approval, vertical clearance may be reduced, provided the reduction does not impair access by fire apparatus and approved signs are installed and maintained indicating the established vertical clearance."

(19) Amend subsection F-314.1 to read as follows: "F-314.1 Abatement of electrical hazards: When any electrical hazards are identified, the conditions shall be abated. All identified hazardous electrical conditions in permanent wiring shall be corrected in

accordance with NFiPA 70 listed in Appendix A."

(20) Amend subsection F-315.1 to read as follows: "F-315.1 Applicability. This section shall apply to portable equipment, either with or without wheels, used for heating tar, pitch, asphalt, or other similar substances for application on roofs, streets, floors, pipes, or other objects."

(21) Delete subsection F-315.1.1 from Article 1 of the 1990 Edition of the BOCA National Fire Prevention Code in its entirety.

(22) Create a new subsection, F-315.5, to read as follows: "F-315.5 Certain fuels prohibited. No person shall use solid fuel or Class I flammable liquids as fuel for an asphalt (tar) kettle."

(23) Create a new subsection "F-315.6 Asphalt (Tar) Kettles in Transit" to read as follows:

(a) "F-315.6.1 Open flame. Open flame in an asphalt (tar) kettle while in transit is prohibited."

(b) "F-315.6.2 Latching devices. Kettle doors or lids shall be closed and secured while in transit."

(c) "F-315.6.3 Asphalt (tar) kettles on trucks. Kettles not equipped with wheels shall not be fired or used when mounted on a truck, except if the truck body is of all metal construction and the kettle is securely attached to the bed of the truck. Firing of small patch kettles while located in the bed of a truck is prohibited. Tank trucks and trailers used for transportation of asphalt or similar substances shall be constructed and operated in accordance with the NFiPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids."

(24) Amend subsection F-316.2 to read as follows: "F-316.2 Permit required: When required by local legislation, a person shall not store, keep or have on hand more than twenty-five (25) pounds (11.35 kg) of nitrate film without securing a permit from the fire code official for the activity. A person shall not sell, lease or otherwise dispose of any nitrate film to any person not having a permit to handle, use or display the film."

(25) Amend subsection F-317.2 to read as follows: "F-317.2 Permit required: When required by local legislation, all retailers, jobbers and wholesalers storing or handling more than twenty-five (25) pounds (11.35 kg) of cellulose nitrate (phroxylin) plastics shall obtain a permit from the local fire code official. A permit shall also be obtained from the local fire code official for the manufacture of articles of cellulose nitrate (pyroxylin) plastics, including the use of cellulose nitrate (pyroxylin) plastics in the manufacture or assembling of other articles."

(26) Create a new Section, "F-319.0 Reporting Fires and Hazardous Substances" and subsections F-319.1 through F-319.3.1 to read as follows:

(a) "F-319.1 Reporting emergency conditions. In the event of an unfriendly fire or accidental release of a hazardous gas, liquid or solid in any building or premises, the discoverer shall immediately spread an alarm to all occupants of the building or premises and to all persons who might be endangered by the fire or release and with all reasonable dispatch and diligence call or otherwise notify the fire department legally committed to serve the area."

1. "F-319.1.1 Unfriendly fires. If an unfriendly fire occurs and is extinguished, the discoverer shall immediately notify the fire department legally committed to serve the area."

2. "F-319.1.2 Hazardous materials. Where state or local legislation has been adopted specifying reportable quantities of hazardous materials released, notification shall conform to the provisions of legislation."

(b) "F-319.2 Notification of the State Fire Marshal. The Fire Chief or highest ranking fire department officer shall promptly notify the Office of the State Fire Marshal upon becoming aware of any of the following:

1. A hazardous materials incident.

2. A fire or fire related fatality (including vehicles and single family dwellings).

3. A fire or fire related injury serious enough to become a fatality.

4. A fire involving major structural damage in a regulated building, including:

a. All institutional, educational, state owned or state leased and high hazard occupancies.

b. All business, mercantile and industrial occupancies having a capacity over 100 persons.

c. All assembly occupancies, except churches, having a capacity over 100 persons.

d. Churches with a capacity over 400 persons and more than 6,000 square feet in floor area.

e. Any other building more than three (3) stories in height or 20,000 square feet of floor area."

(c) "F-319.3 Fire Department Operations at Emergencies. The highest ranking fire department officer conducting operations in connection with the extinguishment of any fire, or control of any explosion or other emergency situation shall have full power and authority to direct all operations for extinguishment or control and to take the necessary precautions to save life, protect property and prevent further injury or damage. In the pursuit of these operations, including the investigation of the cause of the emergency or the situation which required fire department notification, the highest ranking officer may control or prohibit the approach to the scene of the emergency by any vehicle, vessel, thing or person." "F-319.3.1 Fire scene control. No person shall obstruct the operations of the fire department in connection with the extinguishment of any fire, or the actions relative to other emergencies, or disobey any lawful command of the highest ranking officer in charge of the emergency or any part thereof, or any lawful order of a police officer assisting the fire department."

Section 6. Article 4. (1) Create a new subsection "F-400.4 Purpose and Intent" to read as follows:

(a) "F-400.4.1 Every building or structure shall be provided with exits of kinds, numbers, location and capacity appropriate to the individual building or structure, with due regard to the character of the occupancy, the number of persons exposed, the fire protection available, and the height and type of construction of the building or structure, to afford all occupants convenient facilities for escape."

(b) "F-400.4.2 In existing buildings, it is not always practical to strictly apply the provisions of this code. Physical limitations may require disproportionate effort or expense with little increase in life safety. In these cases, the fire code official shall be satisfied that reasonable safety is assured."

(c) "F-400.4.3 In existing building, it is

intended that any condition that represents a serious threat to life be mitigated by application of appropriate safeguards. It is not intended to require modifications for conditions that do not represent a significant threat to life even though the circumstances are not literally in compliance with the code."

(d) "F-400.4.4 The requirements for existing buildings may be modified if their application clearly would be impractical in the judgment of the fire code official, but only where it is clearly evident that a reasonable degree of safety is provided."

(2) Create a new subsection F-400.5 to read as follows: "F-400.5 Alternatives and Modifications. Compliance with this section may be used by the fire code official in lieu of other specific provisions of the code to satisfy the intent of the code as it relates to inadequate number of exits, excessive travel distances to exits, unenclosed or improperly enclosed exit stairs, inadequate fire separation or smoke barriers and other appropriate circumstances. Because all building systems interact with each other, any consideration of compliance alternatives should take into account all existing and proposed conditions to determine their original or continued acceptability.

These alternatives are not all-inclusive and do not preclude consideration and approval of other appropriate alternatives by the fire code official. Buildings with alternative fire protection features accepted by the fire code official shall be considered as conforming with the code."

(a) "F-400.5.1 Inadequate number of exits:

1. Provide connecting fire-exit balconies, acceptable to the enforcement authority, between buildings; or

2. Provide alternate exit or egress facilities leading to safety outside the building or to a place of safe refuge in the building or an adjoining building, acceptable to the enforcement authority; or

3. Provide an exterior fire escape(s), acceptable to the enforcement authority, where the providing of enclosed interior or enclosed exterior stairs is not practical; or

4. Install approved smoke detectors or fire suppression system."

(b) "F-400.5.2 Excessive travel distances to exits:

1. Install an approved smoke detection system throughout the building; or

2. Install an approved complete automatic fire suppression system; or

3. Subdivide the exit travel route with smoke barriers acceptable to the enforcement authority; or

4. Increase the fire resistance rating of corridor walls and doors acceptable to the enforcement authority; or

5. Provide additional approved means of escape."

(c) "F-400.5.3 Unenclosed or improperly enclosed exit stairs to the satisfaction of the fire code official as follows:

1. Improve enclosure or exit stairway; or

2. Add a partial fire suppression system; or

3. Add a sprinkler draft curtain; or

4. Add a smoke detection system."

(d) "F-400.5.4 Inadequate fire separation walls or smoke barriers to the satisfaction of the fire code official as follows:

1. Improve enclosure or exit stairway; or

2. Add a partial fire suppression system; or

3. Add a sprinkler draft curtain; or

4. Add a smoke detection system."

(e) "F-400.5.5 Acceptance of Alternatives. The acceptance of any alternative(s) shall be in writing and shall be deemed to satisfy the intent of this code as it relates to the provisions for which the alternative(s) is offered as listed below:

1. Any alternative(s) specifically listed in F-400.5.1 through F-400.5.4 and complied with as set forth therein;

2. Any other alternative which is accepted or allowed by the fire code official.

(3) Create a new subsection F-400.6 to read as follows: "F-400.6 Upgrading of Existing Buildings. If, upon inspection, the fire code official finds that enforcement of this code requires alterations to a building, he shall identify the sections of this code which require correction and specify the type of correction necessary in order to achieve compliance. This decision shall be in writing to the owner or occupant and shall include a reasonable time for completion of the corrections. Failure of the owner or occupant to make the corrections described by the fire code official within the time frame specified shall be considered a violation subject to further action pursuant to F-111.2. Any party aggrieved by a decision of the fire code official may appeal in accordance with F-108.

(4) Amend subsection F-401.1 to read as follows: "F-401.1 Number of Means of Egress: Except as accepted in writing by the fire code official pursuant to Section F-101.6 or F-400.5 or as permitted in any Exception No. 1 - 4 of this section, every floor area of all occupancy types shall be provided the minimum number of approved, remote means of egress based on the occupant load as follows:

500 or fewer persons - two (2) means of egress

501 - 1000 persons - three (3) means of egress

1001 or more persons - four (4) means of egress

Exception No. 1 - Living units in Use Group R-2 (apartment buildings, rooming houses and multiple single family dwelling units)

Living Units. A living unit may have a single exit provided:

a. That living unit has an exit door directly to the street or yard at ground level; or

b. That living unit has direct access to an outside stair serving a maximum of two (2) units both located on the same floor; or

c. That living unit has direct access to an interior stair serving that unit only and separated from all other portions of the building with fire barriers having a one (1)-hour fire resistance rating with no opening therein; or

d. Any individual living unit below the fourth story may have an outside window openable from the inside without the use of tools or special knowledge as the second exit.

Building Exits. A building of three (3) stories or less may have a single exit under the following conditions:

a. The stairway is completely enclosed by smoke barriers; and

b. Doors protecting all openings into the stairs are approved solid wood core or steel doors with self-closing devices; and

c. The stairway does not serve more than one-half (1/2) story below the level of exit

discharge; and

d. All corridors serving as access to exits are smoke resistant; and

e. There is not more than approximately thirty-five (35) feet of travel distance from the entrance door of any living unit to an exit; and

f. Three-quarter (3/4) hour rated vertical and horizontal separation between living units is provided.

Fire Tower Exits. A building of any height with not more than four (4) living units per floor, with a smokeproof enclosure or outside stair as the exit, immediately accessible to all living units served thereby, may have a single exit. (A unit is immediately accessible if there is not more than 20 ft. (6.1 m) of travel distance from the entrance door of any living unit to an exit.)

Exception No. 2 - Use Group M:

A. Where no part of the store is more than 75 feet from the exit or covered mall, where it is considered a pedestrian way, a single exit is permitted.

B. Where no part of the store is more than 100 feet from the exit or covered mall, where it is considered a pedestrian way and the story on which it is located is protected throughout by an approved automatic sprinkler system, a single exit is permitted.

Exception No. 3 - Use Group B:

A. For a room or area with a total occupant load of less than 100 persons having an exit that discharges directly to the outside at the level of exit discharge of the building with a total distance of travel, including travel within the exit, from any point of not over 100 feet (30 m), a single exit may be permitted. Travel shall be on the same floor level or, if the traversing of stairs is required, stairs shall not be more than fifteen (15) feet (4.5 m) in height, and they shall be provided with complete enclosures to separate them from any other part of the building, with no door openings therein. A single outside stairway may serve all floors allowed within the fifteen (15) feet (4.5 m) vertical travel limitation.

B. Any business occupancy not over three (3) stories and not exceeding an occupant load of thirty (30) people per floor may be permitted with a single separate exit to each floor if the total travel distance to the outside of the building does not exceed 100 feet (30 m) and if the exit is enclosed and serves no other levels and discharges directly to the outside. A single outside stairway may serve all floors.

Exception No. 4 - Use Group F:

A. In low and ordinary hazard industrial occupancies, a single means of egress shall be permitted from any story or section, provided that the exit can be reached within seventy-five (75) feet.

B. There shall be at least two (2) separate means of egress from every high hazard area regardless of size.

Exception No. 5 - Use Group S:

A. In low hazard storage occupancies, a single means of egress shall be permitted from any story or section.

B. In ordinary hazard storage occupancies, a single means of egress shall be permitted from any story or section, provided that the exit can be reached within the distance allowed as common path of travel."

(5) Amend Table F-401.2 to read as follows:

TABLE F-401.2
ENCLOSURE EXCEPTIONS

Building use group	Exception conditions[a]
Business	When connecting not more than two (2) floor levels and less than 3,500 square feet per floor, or when connecting not more than three (3) floor levels and the building is equipped throughout with an approved automatic fire suppression system.
Education	When connecting not more than two (2) floor levels and approved by the State Fire Marshal.
Factory-industrial, storage	When connecting not more than two (2) floor levels, or when connecting not more than three (3) floor levels and the building is equipped throughout with an approved automatic fire suppression system.
Mercantile	When connecting not more than two (2) floor levels and less than 2,000 square feet per floor, or when connecting not more than two (2) floor levels and the building is equipped throughout with an approved automatic fire suppression system.
Residential-hotels	When connecting not more than two (2) floor levels and the building is equipped throughout with an approved automatic fire suppression system.

Note a. 1 square foot = 0.093 m^2.

(6) Create a new subsection F-401.2.2 to read as follows: "F-401.2.2 Increase in Exits. Additional exits shall be provided to satisfy the travel distance requirements found in Section F-401.5."

(7) Amend subsection F-401.3 and create paragraphs F-401.3.1 through F-401.3.9 to read as follows: "F-401.3 Exit capacity: The capacity of the exits serving a floor shall be sufficient for the occupant load thereof determined as follows:

(a) F-401.3.1 Design occupant load: In determining required facilities, the number of occupants for whom exit facilities shall be provided shall be established by the largest number computed in accordance with each of the following:

a. Actual number: The actual number of occupants for whom each occupied space, floor, or building is designed.

b. Number by Table F-401.3: The number of occupants computed at the rate of one (1) occupant per unit of area as prescribed in Table F-401.3.

c. Number by combination: The number of occupants of any space as computed in a. and b. above, plus the number of occupants similarly computed for all spaces that discharge through the space in order to gain access to an exit.

(b) F-401.3.2 Increased occupant load: The occupant load permitted in any building or portion thereof is permitted to be increased from that number established for the given use by Table F-401.3 when all other requirements of the code are also met based on the modified number. Where required by the fire code official, an approved aisle, seating, or fixed equipment diagram to substantiate any increase in occupant load shall be submitted. Where required by the fire code official, the diagram shall be posted.

(c) F-401.3.3 Maximum occupant load: The occupant load of any space or portion thereof shall not exceed one (1) occupant per three (3) square feet (0.28 m^2) of occupiable floor space.

(d) F-401.3.4 Fixed seats: The occupant load for an assembly or educational area having fixed seats shall be determined by the number of fixed seats installed. The capacity of fixed seats without dividing arms shall equal one (1) person per eighteen (18) inches (457 mm). For booths, the capacity shall be one (1) person for twenty-four (24) inches (610 mm).

(e) F-401.3.5 Mezzanine levels: The occupant load of a mezzanine level discharging through a floor below shall be added to that floor's occupant load, and the capacity of the exits shall be designed for the total occupant load thus established.

(f) F-401.3.6 Roofs: Roof areas occupied as roof gardens or for assembly, educational, storage or other purposes shall be provided with exit facilities to accommodate the calculated occupant load, but there shall not be less than two (2) approved means of egress from roof areas of Use Groups A and E.

TABLE F-401.3
MAXIMUM FLOOR AREA ALLOWANCES PER OCCUPANT

Use	Floor area in square feet per occupant
Assembly with fixed seats	See Section 401.3.4
Assembly without fixed seats	
Concentrated (chairs only/ not fixed)	7 net
Standing space	3 net
Unconcentrated (tables & chairs)	15 net
Bowling alleys, allow 5 persons for each alley including 15 feet of runway and for additional areas	7 net
Business areas	100 gross
Court rooms/other than fixed seating areas	4 net
Educational	
Classroom area	20 net
Shops & other vocational room areas	50 net
Industrial areas	100 gross
Institutional areas	
Inpatient treatment areas	240 gross
Outpatient areas	100 gross
Sleeping areas	120 gross
Library	
Reading rooms	50 net
Stack area	100 gross
Mercantile basement & grade floor areas	30 gross
Areas on other floors	60 gross
Storage, stock, shipping areas	300 gross
Parking garages	200 gross
Residential	200 gross
Storage areas, mechanical equipment room	300 gross

Note a. 1 foot = 304.8 mm; 1 square foot = 0.093m^2

(g) F-401.3.7 Assembly buildings: All buildings used for assembly purposes shall front on at least one (1) street on which the main entrance and exit discharge shall be located. Where there is a single main entrance, the entrance shall be capable of serving as the main exit and shall provide an egress capacity for at least one-half (1/2) of the total occupant load. In addition to having access to a main exit, each level of a building of Use Group A shall be provided with additional exits which shall provide an egress capacity for at least two-thirds (2/3) of the total occupant load served by that level.

(h) F-401.3.8 Exit capacity. The capacity of means of egress for a floor, balcony, tier or other occupied space shall be sufficient for the occupant load thereof.

(i) F-401.3.9 Minimum width: The width of each means of egress component shall computed in accordance with Table 401.3.1 for the required capacity of the component, but shall not be less than the minimum width as prescribed by this code for each component.

TABLE F-401.3.1
EGRESS WIDTH PER OCCUPANT

Use group	Without fire suppression system (inches per person)[a]	
	Stairways	Doors, ramps, corridors
A,B,E,F,M,R,S	0.3	0.2
H	-	-
I-1	0.4	0.2
I-2	1.0	0.7
I-3	0.3	0.2

Use group	With fire suppression system (inches per person)[a]	
	Stairways	Doors, ramps, corridors
A,B,E,F,M,R,S	0.2	0.15
H	0.3	0.2
I-1	0.2	0.2
I-2	0.6	0.5
I-3	0.3	0.2

Note a. 1 inch = 25.4mm"

(8) Amend subsection F-401.4 to read as follows: "F-401.4 Corridor enclosure. All corridors serving as an exit access shall be constructed of materials which provide an effective smoke barrier.

(9) Amend subsection F-401.5 to read as follows: "F-401.5 Travel Distance to Exits: Travel distance to at least one (1) exit shall not exceed 200 feet in nonsprinklered buildings and 250 feet in buildings equipped throughout with an approved automatic sprinkler system.

Exceptions:

1. Use Group F-2, S-2 shall not exceed 300 feet without sprinklers and 400 feet with sprinklers.

2. An additional 200 feet is permitted for travel distance within a covered mall.

3. In a high rise occupancy with a complete automatic fire suppression system, 300 feet travel distance is permitted.

4. In Use Group H and a HPM facility travel distance shall be limited to 75 feet."

(10) Amend Section F-403 by deleting subsections F-403.1, F-403.2 and F-403.3 and replacing with the following new subsections:

(a) "F-403.1. Egress Illumination. Illumination of means of egress shall be provided in accordance with this section for every building and structure. Exception: Means of egress illumination may be eliminated in structures of Use Group F or S occupied only during daylight hours, with skylights or windows arranged to provide, during these hours, the required level of illumination on all portions of the means of egress."

(b) "F-403.1.1 Artificial lighting. Illumination of means of egress shall be continuous during the time that the conditions of occupancy require that the means of egress be available for use. Artificial lighting shall be employed at places and for periods of time as required to maintain the illumination to the minimum foot-candle values herein specified."

(c) "F-403.1.2 Floor lighting. The floors of means of egress shall be illuminated at all points including angles and intersections of corridors and passageways, stairways, landings of stairs, and exit doors to values of not less than 1.0 foot-candle measured at the floor. Exception: In auditoriums, theaters, concert or opera halls, and other places of assembly, the illumination of the floors of exit access may be reduced during periods of the performances to values not less than one-fifth foot candle."

(d) "F-403.1.3 Any required illumination shall be so arranged that the failure of any single lighting unit, such as the burning out of an electric bulb, will not leave any area in darkness."

(e) "F-403.1.4 The same equipment or units installed to meet the requirements of this Code may also serve the function of illumination of means of egress, provided that all applicable requirements of this section for illumination are also met."

(f) "F-403.4 Sources of Illumination. Illumination of means of egress shall be from a source of reasonably assured reliability, such as public utility electric service."

(g) F-403.4.1 Electricity. Where electricity is used as a source of illumination of means of egress, the installation shall be properly made in accordance with the National Electrical Code, NFiPA 70.

(h) F-403.4.2 Battery powered. No battery operated electric light nor any type of portable lamp or lantern shall be used for primary illumination of means of egress, but may be used as an emergency source to the extent permitted under Emergency Lighting, Section F-403.5.

(i) F-403.4.3 Other lighting sources. No luminescent, fluorescent, or reflective material shall be permitted as a substitute for any of the required illumination herein specified."

(j) "F-403.5 Emergency lighting. Means of egress in all rooms, buildings or spaces with an occupant load of more than 100 persons shall be provided with emergency lighting. Exception: All places of assembly shall have emergency lighting. Churches with an occupant load of 300 persons or less and used only for religious purposes are exempt."

(k) "F-403.5.1 Continuity. Where maintenance of illumination depends upon changing from one energy source to another, there shall be no appreciable interruption of illumination during the changeover. Where emergency lighting is provided by a prime mover-operated electric generator, a delay of not more than ten (10) seconds shall not permitted."

(l) "F-403.5.2 Duration. Emergency lighting facilities shall be arranged to maintain the specified degree of illumination for a period of one and one-half (1 1/2) hours in the event of failure of the normal lighting."

(m) "F-403.5.3 Approved batteries. Emergency lights shall use only reliable types of storage batteries, provided with suitable facilities for maintenance in properly charged condition. Dry batteries shall not be used to satisfy these requirements. Electric storage batteries used in lights or units shall be approved for their intended use and shall comply with the National Electrical Code, NFiPA 70, listed in Appendix A."

(n) "F-403.5.4 Power failure. An emergency lighting system shall be so arranged as to provide the required illumination automatically in the event of any interruption of normal lighting, such as any failure of public utility or other outside electrical power supply, opening of a circuit breaker or fuse, or any manual act(s), including accidental opening of a switch controlling normal lighting facilities."

(o) "F-403.5.5 Automation of system. An emergency lighting system either shall be continuously in operation or shall be capable of repeated automatic operation without manual intervention."

(11) Amend subsection F-404.4 to read as follows: "F-404.4 Single- and multiple-station smoke detectors: A minimum of one (1) approved single-station or multiple-station smoke detector shall be installed in each guestroom, suite or sleeping area in buildings of Use Group R-1 and in dwelling units in the immediate vicinity of the bedrooms in buildings of Use Groups R-2 and R-3. In buildings of Use Group R-3, smoke detectors shall be required on every story of the dwelling unit, including basements. In dwelling units with split levels, a smoke detector installed in the upper level shall suffice for the adjacent lower level provided that the lower level is less than one (1) full story below the upper level. If there is an intervening door between the adjacent levels, a smoke detector shall be installed on both levels. All detectors shall be installed in accordance with NFiPA 74 listed in Appendix A; except that the use of smoke detectors installed in existing occupancies prior to the effective date of this Code which are installed and maintained in operable condition according to manufacturer's instructions, may be continued without change."

(12) Amend Section F-404.5 to read as follows: "F-404.5 Manual alarms. Fire Protective Signaling Systems (manual alarms) shall be required in all buildings of Use Group E; all buildings of Use Group B when three (3) or more stories in height; all buildings of Use Group R-1; all buildings of Use Group R-2 when four (4) or more stories in height.

Exception No. 1 - Buildings of Use Group B less than seven (7) stories in height equipped with a complete approved automatic sprinkler

system.

Exception No. 2 - Buildings of Use Group R-1 where each guest room has exterior exit access and the building is not greater than three (3) stories in height."

(13) Create a new Section "F-407.0 Emergency Generators" to read as follows:

(a) "F-407.1 Conduct or Witness Test. The fire code official may conduct or witness a test on the complete system upon installation."

(b) "F-407.2 Tested Periodically. Systems shall be tested periodically on a schedule and in a manner acceptable to the fire code official to assure their maintenance in proper operating condition as required by NFiPA 70 listed in Appendix A."

(c) "F-407.3 Battery Systems Maintenance. Where batteries are used for starting or ignition of prime movers, the fire code official shall require periodic maintenance."

(d) "F-407.4 Written Record. A written record shall be kept on tests and maintenance."

(e) "F-407.5 Testing under Load. Means for testing legally required standby systems under load shall be provided."

(14) Create a new Section "F-408.0 Storage Room Separations" to read as follows: "F-408.1 Storage Rooms. Rooms used for storage in quantities deemed hazardous by the fire code official in Use Groups A, B, E, R-1 and R-2 in excess of fifty (50) square feet shall be constructed of materials having a minimum of one (1)-hour fire resistance rating, be protected by an approved automatic fire suppression system or comply with alternatives accepted by the fire code official pursuant to Section F-400.5."

(15) Create a new Section "F-409.0 Marking of Means of Egress" to read as follows:

(a) "F-409.1 Where required. Exits in all rooms, buildings or spaces with an occupant load greater than fifty (50) persons shall be clearly marked with approved exit signs.

Exceptions:

1. Main exterior doors that obviously and clearly are identifiable as exits.

2. Previously approved exit signs."

(b) "F-409.2 Marking of Signs. Access to exits shall be marked by readily visible signs in all cases where the exit or way to reach it is not immediately visible to the occupants."

(c) "F-409.3 Location and design of signs. Every required sign designating an exit or way of exit access shall be so located and of size, distinctive color, and design as to be readily visible and shall provide contrast with decorations, interior finish, or other signs. (See, also, Section F-604.0)"

(d) "F-409.4 Size of Signs. Every sign required by this Code shall have the word "EXIT" or other required wording in plainly legible letters not less than six (6) inches high with the principal strokes of letters not less than three-quarters (3/4) inch wide. Exception: Existing signs having the required wording in plainly legible letters not less than four and one-half (4 1/2) inches high may be continued in use."

(e) "F-409.5 Illumination of Signs. Every sign shall be suitably illuminated by a reliable light source giving a value of not less than five (5) foot-candles on the illuminated surface. Illumination shall be continuous as required under the provisions of Section F-403.0, Illumination and Signs, and where emergency lighting facilities are required, exit signs shall be illuminated from the same source."

(f) F-409.6 Information signs. A sign shall be provided at each floor landing in all interior stairways more than three (3) stories above grade designating the floor level above the floor of discharge. All elevator lobby call stations on all floor levels in buildings more than seventy-five (75) feet (22860 mm) above the lowest level of fire department access shall be marked with approved signs reading as follows: Use Stairways in Case of Fire - Do Not Use Elevators."

(16) Create a new Section, "F-410.0 Special Occupancy Requirements" to read as follows:

(a) "F-410.0 Special Occupancy Requirements."

(b) "F-410.1 Assembly."

1. "F-410.1.1 Location of Places of Assembly. Places of assembly located above or below the level of exit discharge shall comply with the minimum construction type set forth in Chart F-410.1.1."

CHART F-410.1.1

Use group	Type of Construction: Noncombustible — Type 1 Protected 1A	Type 1 Protected 1B	Type 2 Protected 2A	Type 2 Protected 2B	Type 2 Unprotected 2C
A-1 Assembly, theaters	N.L.	N.L.	5 St. 65'	3 St. 40'	2 St. 30'
A-2 Assembly, night clubs and similar uses	N.L.	4 St. 50'	3 St. 40'	2 St. 30'	1 St. 20'
A-3 Assembly; lecture halls, recreation centers, terminals, restaurants other than nightclubs	N.L.	N.L.	5 St. 65'	3 St. 40'	2 St. 30'
A-4 Assembly, churches	N.L.	N.L.	5 St. 65'	3 St. 40'	2 St. 30'

Use group	Type of Construction: Noncombustible/Combustible — Type 3 Protected 3A	Type 3 Unprotected 3B	Type 4 Heavy Timber 4	Combustible Type 5 Protected 5A	Type 5 Unprotected 5B
A-1 Assembly, theaters	3 St. 40'	2 St. 30'	3 St. 40'	1 St. 20'	1 St. 20'
A-2 Assembly, night clubs and similar uses	2 St. 30'	1 St. 20'	2 St. 30'	1 St. 20'	1 St. 20'

A-3 Assembly; lecture halls, recreation centers, terminals, restaurants other than nightclubs	3 St. 40' 1 St. 20'	2 St. 30'	3 St. 40'
A-4 Assembly, churches	3 St. 40' 1 St. 20'	2 St. 30'	3 St. 40'

Exception: i Places of assembly are permitted to be one (1) additional story in height than specified in buildings provided with 100% automatic sprinkler protection.

Exception: ii Places of assembly with an occupant load in excess of fifty (50) may be located on the second story if approved by the fire code official pursuant to F-400.5.

2. "F-410.1.2 Assembly Aisles: Assembly aisles in buildings or portions of buildings of Use Group A shall conform to the requirements of the Kentucky Building Code listed in Appendix A."

(c) "F-410.2 Educational."

1. "F-410.2.1 Corridor Width. Exit access corridors shall be not less than six (6) feet clear width."

2. "F-410.2.2 Closets. Janitor closets shall be protected by an automatic sprinkler or an approved automatic detection device."

3. "F-410.2.3 Smoke resistance of interior corridors. Interior corridors shall be smoke resistant. Classroom doors opening into corridors shall have a minimum twenty (20) minute rating or be one and three-quarter (1 3/4) inch solid bonded wood core doors.

Exception 1. When all classrooms served by the corridor have an exterior exit.

Exception 2. When the building has an approved automatic sprinkler system approved by the State Fire Marshal.

Exception 3. When corridor smoke detection is provided and interconnected to the building alarm system."

4. "F-410.2.4 Windowless rooms. Approved emergency lighting shall be installed in windowless classrooms."

(d) "F-410.3 Hotels and Dormitories."

"F-410.3.1 Separation of corridors. Guest room doors which open onto an interior exit access corridor shall have a minimum twenty (20) minute fire-resistance rating or be solid wood core or steel door and be self-closing. All self-closing devices used for this purpose shall be approved by the fire code official. Spring-loaded hinges are acceptable."

(e) "F-410.4 Apartments."

"F-410.4.1 Protection of corridors. Doors between living units and interior exit access corridors shall have a minimum twenty (20) minute fire-resistance rating or be solid wood core or steel doors. All corridors serving as exit access shall provide an effective smoke barrier.

Exception 1. When the building has an approved sprinkler system in the corridor.

Exception 2. When there are approved interconnected smoke detectors in each corridor on every level. Detectors shall be spaced not greater than thirty (30) feet on center."

2. "F-410.4.2 Doors. All doors, rated or not, between living units and corridors shall be self-closing. All self-closing devices used for this purpose shall be approved by the fire code official. Spring loaded hinges are acceptable. Exception: Where accepted by the fire code official pursuant to Section F-101.6 or F-400.5."

3. "F-410.5 Lodging or Rooming Houses."

4. "F-410.5.1 Required means of egress. Lodging or rooming houses shall conform to the requirements of Use Group R-2 in the Kentucky Building Code listed in Appendix A.

Exception: Lodging or rooming houses which have accommodations for sixteen (16) or fewer persons shall have a primary means of egress available to every sleeping room and a secondary means of escape consisting of one (1) of the following:

a. A door, stairway, passage or hall (independent of and remote from the primary means of escape) which provides an unobstructed way of travel to the exterior at street or ground level, or

b. A passage through an adjacent, nonlockable space to an approved means of escape which is independent of and remote from the primary means of escape, or

c. A window in accordance with Section F-603.0."

(f) "F-410.6 Mercantile."

1. "F-410.6.1 No dwelling unit may have its sole means of egress through any mercantile occupancy in the same building."

2. "F-410.6.2 Dwelling unit above mercantile prohibited. No multiple dwelling occupancy shall be located above a mercantile occupancy.

Exception 1. When the dwelling and their exits are separated from the mercantile occupancy with one (1) hour construction.

Exception 2. When approved by the fire code official."

3. "F-410.6.3 Door swing. Doors which serve only the street floor in mercantile occupancies with 3,000 square feet or less may swing inward."

(g) "F-410.7 Business."

1. "F-410.7.1 Limitation of dwelling unit over business use. A residential occupancy shall not be permitted over a business occupancy unless the residential occupancy and its exits are separated by one (1) hour construction.

Exception: When approved by the fire code official."

2. "F-410.8 Mixed Uses."

3. "F-410.8.1 Dissimilar use groups. When a building is occupied for two (2) or more uses, not of the same use group, it shall comply with the requirements of the Kentucky Building Code listed in Appendix A."

Section 7. Article 5. (1) Amend Section F-500.3 to read as follows: "F-500.3 Acceptance test: All fire protection systems shall be tested in accordance with the requirements of this code and with the Kentucky Building Code listed in Appendix A. The tests shall be the responsibility of the owner or an authorized representative, and the fire code official shall be given an opportunity to be present. All tests required by this code and the standards listed in this code shall be conducted at the expense of the owner or the owner's representative."

(2) Create a new subsection to read as follows: "F-500.7 Inspections and Test Requirements: All inspections and tests required by Sections F-503.0, F-504.0, F-505.0, F-506.0,

F-507.0, F-508.0, F-509.0, F-511.0, F-512.0, F-514.0 and F-515.0 shall be conducted only by persons authorized by the State Fire Marshal's Office and shall be recorded on forms approved by the State Fire Marshal's Office."

(3) Amend the Exception in F-513.2 to read as follows: "Exception: The written log of tests as specified in Section F-504.1 shall not be required in buildings of Use Group R-2 or R-3."

(4) Create a new "Section F-518.0 Commercial Kitchen Exhaust" to read as follows: "F-518.1 Periodic inspection: An approved inspection shall be performed a minimum of once every six (6) months on each commercial kitchen exhaust suppression system. Inspections and tests shall only be made by a licensed rangehood suppression systems contractor. The inspection shall ascertain that the system will cover all the cooking surfaces with the extinguishing agent when manually or automatically actuated. The manual actuation, automatic actuation, and system interconnections shall also be inspected to determine that they operate as required. All inspections and tests shall be recorded on forms approved by the State Fire Marshal's office; a copy of the inspection report shall be forwarded to the State Fire Marshal's Office within ten (10) working days of the date of inspection."

(5) Create a new "Section F-519.0 Manual Fire Alarm Systems" to read as follows: "F-519.1 Manual fire alarm systems inspection: Manual fire alarm systems within all buildings shall be checked monthly by the owner or owner's representatives. The use of the system for fire drill purposes shall be accepted as a test of only those parts of the system actually used in the drill procedure. Accurate logs shall be maintained on the premises indicating box number, location, data and type of device tested. Any defect, modification or repair shall be logged, and the log shall be available to the fire department."

Section 8. Article 6 is hereby adopted in its entirety.

Section 9. Article 7. (1) Create a new subsection, "F-700.2 Fire Exit Drills" to read as follows:

(a) "F-700.2.1 Fire exit drills conforming to the provisions of this Article shall be regularly conducted in occupancies where specified by the provisions of this Article or by appropriate action of the fire code official. Drills shall be designed in cooperation with the local authorities."

(b) "F-700.2.2 Fire exit drills, where required by this code, shall be held with sufficient frequency to familiarize all occupants with the drill procedure and to have the conduct of the drill a matter of established routine."

(c) "F-700.2.3 Responsibility for the planning and conduct of drills shall be assigned only to competent persons qualified to exercise leadership under the supervision of the owner-operator or administrator."

(d) "F-700.2.4 In the conduct of drills, emphasis shall be placed upon orderly evacuation under proper discipline rather than upon speed."

(e) "F-700.2.5 Drills shall include suitable procedures to make sure that all persons in the building, or all persons subject to the drill, actually participate."

(f) "F-700.2.6 Drills shall be held at unexpected times and under varying conditions to simulate the unusual conditions that occur in the case of fire."

(g) "F-700.2.7 The fire code official may observe fire exit drills but shall not activate the alarm system."

(h) "F-700.2.8 Records of required drills shall be kept and made available to the fire code official."

(2) Amend subsection F-701.1 to read as follows: "F-701.1 Drills. The employees or attendants of places of public assembly shall be schooled and drilled in the duties they are to perform in case of fire, panic, or other emergency in order to be of greatest service in effecting orderly exit of assemblages."

(3) Amend subsection F-701.2 to read as follows: "F-701.2 Employees or attendants of assembly occupancies shall be instructed in the proper use of portable fire extinguishers and other manual fire suppression equipment if provided. The management shall be responsible for procuring the required training. Training records shall be kept and made available to the fire code official."

(4) Amend subsection F-701.3 to read as follows: "F-701.3 In theaters, motion picture theaters, auditoriums, and other similar assembly occupancies with occupant load of 300 or more, occupancies where there are noncontinuous programs, an audible announcement shall be made prior to the start of each program to notify occupants of the location of the exits to be used in case of fire or other emergency. Exception: Assembly occupancies in schools when used for nonpublic events."

(5) Amend subsection F-701.4 to read as follows: "F-701.4 Open Flame Devices. No open flame devices shall be used in any assembly occupancy.

Exception 1. When necessary for ceremonial, religious, or demonstration purpose, the fire code official may permit open flame devices under restrictions as are necessary to avoid danger of ignition of combustible materials or injury to occupants.

Exception 2. Open flame devices may be used on stages when a necessary part of theatrical performances, provided adequate precautions satisfactory to the fire code official are taken to prevent ignition of any combustible materials.

Exception 3. Gas lights may be permitted provided adequate precautions satisfactory to the fire code official are taken to prevent ignition of any combustible materials.

Exception 4. Candles may be used on tables if securely supported on substantial noncombustible bases so located as to avoid danger of ignition of combustible materials and only if approved by the fire code official. Candle flames shall be protected.

Exception 5. As permitted in F-701.5."

(6) Create new subsection F-701.5 to read as follows: "F-701.5 Special Food Service Devices. Portable cooking equipment, not flue-connected, shall be permitted only as follows:

1. Equipment fueled by small heat sources that can be readily extinguished by water, such as candles or alcohol-burning equipment (including "solid alcohol"), may be used provided adequate precautions satisfactory to the fire code official are taken to prevent ignition of any combustible materials.

2. Candles may be used on tables used for food service if securely supported on substantial

noncombustible bases so located as to avoid danger of ignition of combustible materials and only if approved by the fire code official. Candle flame shall be protected by a suitable noncombustible globe.

3. "Flaming Sword" or other equipment involving open flames and flamed dishes, such as cherries jubilee, crepes suzette, etc., may be permitted provided that necessary precautions are taken and subject to the approval of the fire code official.

(7) Create a new subsection "F-701.6 Smoking" to read as follows:

(a) "F-701.6.1 For purposes of abatement of fire, smoking in assembly occupancies shall be regulated by the fire code official of the jurisdiction."

(b) "F-701.6.2 Smoking in rooms or areas where smoking is prohibited, plainly visible "NO SMOKING" signs shall be posted."

(c) "F-701.6.3 No person shall smoke in prohibited areas that are so posted. Exception: The fire code official may permit smoking on a stage only when it is a necessary and rehearsed part of a performance and only by a regular performing member of the cast."

(d) "F-701.6.4 Where smoking is permitted, suitable ashtrays or receptacles shall be provided in convenient locations. Ashtrays shall conform to the requirements of F-312.6."

(8) Create a new subsection "F-701.7 Furnishings, Decorations, and Stage Scenery" to read as follows:

(a) "F-701.7.1 Draperies, curtains, and other similar furnishings, decorations, and stage settings shall be in accordance with the provisions of F-306.0."

(b) "F-701.7.2 The fire code official shall impose controls on the amount and arrangement of combustible contents, including decorations, in assembly occupancies to provide an adequate level of safety to life from fire."

(c) "F-701.7.3 There shall be no exposed foamed plastics."

(9) Create a new subsection "F-701.8 Coat Racks" to read as follows: "F-701.8.1 Clothing and personal effects shall not be stored in corridors and lobbies."

(10) Create a new subsection F-701.9 to read as follows: "F-701.9 Unvented fuel fired heaters shall not be used in assembly occupancies."

(11) Amend Section F-702.1 and create paragraphs F-702.1.1 through F-702.1.7 to read as follows: "F-702.1 Drills. Exit drills shall be conducted regularly in accordance with the applicable provisions of this section and Section F-700.2."

(a) "F-702.1.1 Drills shall be executed at different hours of the day or evening; during the changing of classes; when the school is at assembly; during the recess or gymnastic periods; etc., so as to avoid distinction between drills and actual fires. If a drill is called when pupils are going up and down the stairways, as during the time classes are changing, the pupils shall be instructed to form in file and immediately proceed to the nearest available exit in an orderly manner."

(b) "F-702.1.2 Every fire exit drill shall be an exercise in school management for principal and teachers, with the chief purpose of every drill being the complete control of the class so that the teacher will form its ranks quickly and silently, may halt it, turn it, or direct it as desired. Great stress shall be laid upon the execution of each drill in a brisk, quiet, and orderly manner. Running shall be prohibited. In case there are pupils incapable of holding their places in a line moving at a reasonable speed, provisions shall be made to have them taken care of by the more sturdy pupils, who will keep them from moving independently from the regular line of march."

(c) "F-702.1.3 Monitors shall be appointed from the more mature pupils to assist in the proper execution of all drills. They shall be instructed to hold doors open in the line of march or to close doors where necessary to prevent spread of fire or smoke. There shall be at least two (2) substitutes for each appointment so as to provide for proper performance in case of absence of the regular monitors. The searching of toilet or other rooms shall be the duty of the teachers or other members of the staff. If the teachers are to search, it should be done after they have joined their classes to the preceding lines."

(d) "F-702.1.4 As all drills simulate an actual fire condition, pupils shall not be allowed to obtain clothing after the alarm is sounded, even when in home rooms, on account of the confusion that would result in forming the lines and the danger of tripping over dragging apparel."

(e) "F-702.1.5 Each class or group shall proceed to a predetermined point outside the building and remain there while a check is made to see that all are accounted for, leaving only when a recall signal is given to return to the building, or when dismissed. These points shall be sufficiently far away from the building and from each other as to avoid danger from any fire in the building, interference with fire department operations, or confusion between different classes or groups."

(f) "F-702.1.6 Where necessary for drill lines to cross roadways, signs reading "STOP! SCHOOL FIRE DRILL," or equivalent, shall be carried by monitors to the traffic intersecting points in order to stop traffic during the period of the drill."

(g) "F-702.1.7 Fire exit drills in schools shall not include any fire extinguishing operations."

(12) Create a new subsection "F-702.5 Fire Alarm Signals" to read as follows:

(a) "F-702.5.1 All fire exit drill alarms shall be sounded on the fire alarm system."

(b) "F-702.5.2 Whenever any of the school authorities determine that an actual fire exists, they shall notify the fire department using the public fire alarm system or other facilities as are available."

(c) "F-702.5.3 In order to prevent pupils from being returned to a building that is burning, the recall signal shall be one that is separate and distinct from, and cannot be mistaken for, any other signals. These signals may be given by distinctive colored flags or banners. If the recall signal is electrical, the push buttons or other controls shall be kept under lock, the key for which shall be in the possession of the principal or some other designated person in order to prevent a recall at a time when there is a fire. Regardless of the method of recall, the means of giving the signal shall be kept under a lock."

(d) "F-702.5.4 Inspection."

(e) "F-702.5.4.1 It shall be the duty of principals and teachers to inspect all exit

facilities daily in order to make sure that all stairways, doors, and other exits are in proper condition."

(f) "F-702.5.4.2 Open-plan buildings require extra surveillance to ensure that exit paths are maintained clear of obstruction and are obvious."

(13) Delete Section F-703, F-704 and F-705 in their entirety.

(14) Create a new Section, "F-707.0 Residential Occupancies" to read as follows:

(a) "F-707.1 Hotel and Motel Emergency Organization."

1. "F-707.1.1 Hotel and Motel Employee Duties. All employees of hotels shall be instructed and drilled in the duties they are to perform in the event of fire, panic, or other emergency."

2. "F-707.1.2 Monthly drills. Drills of the emergency organization shall be held at monthly intervals, covering the operation and maintenance of the available first aid fire appliances, the testing of guest alerting devices, and a study of instructions for emergency duties."

3. "F-707.1.3 Emergency Duties in Hotels, Motels and Dormitories. The owner or other person in control of the premises shall take immediate action to control any fire on the premises. Upon discovery of fire, some or all of these duties will become immediately imperative, the number and sequence depending upon the exact situation encountered:p

Alarms

Notify office.

Notify public fire department.

Notify private fire brigade.

Guests

Warn guests or others who are or may become endangered.

Assist occupants to safety, with special attention to aged, infirm, or otherwise incapacitated persons.

Search rooms to be sure all occupants have escaped.

Man all elevators, including those of automatic type, with competent operators.

Extinguishment

Extinguish or control the fire using available first aid equipment.

Send messenger to meet public fire department upon arrival in order to direct latter to exact location of fire. (The public fire department is in full command upon arrival.)

Special Equipment

Fire Pumps - stand by for instant operation.

Ventilating Equipment - in case of dense smoke, stand by, operate under proper instructions to clear area affected.

Refrigerating Equipment - if machines are definitely endangered, shut them down and blow refrigerant to sewer or atmosphere to prevent explosion.

Generators and Motors - protect against water damage with tarpaulins - shut down motors not needed - keep generators operating to furnish lights, elevator power, etc.

Boilers - if necessary to abandon boiler room, extinguish or dump fire and lower steam pressure by blowing to sewer or atmosphere to prevent possible explosion.

(b) "F-707.2 Dormitory Drills."

1. "F-707.2.1 Fire exit drills shall be conducted quarterly in accordance with F-701.0."

(c) "F-707.3 Emergency instructions for Residents or Guests of Hotels, Motels or Dormitories."

1. "F-707.3.1 A floor diagram reflecting the actual floor arrangement, exit locations, and room identification shall be posted in a location and manner acceptable to the fire code official on or immediately adjacent to every guest room door in hotels and in every resident room in dormitories."

2. "F-707.3.2 Fire safety information shall be provided to allow guests to make a decision to either: evacuate to the outside; evacuate to an area of refuge; remain in place; or any combination of the three (3)."

(d) "F-707.4 Emergency Instructions for Residents of Apartment Buildings."

1. "F-707.4.1 Emergency instructions shall be provided to each living unit on a yearly basis indicating the location of alarms, exiting paths, and actions to be taken, both in response to a fire in the living unit and in response to the sounding of the alarm system."

(e) "F-707.5 Furnishings and Decorations."

1. "F-707.5.1 New draperies, curtains, and other similar furnishings and decorations in hotels and dormitories shall be in accordance with the provisions of F-306.0."

(f) "F-707.6 Unvented fuel-fired heaters shall not be used in residential occupancies. Exception: Listed and approved unvented fuel-fired heaters in one (1) and two (2) family dwellings."

(g) "F-707.7 Gas Grills on balconies of multifamily dwellings."

1. "F-707.7.1 Gas grills with propane containers shall not be located on balconies above the first floor attached to a multifamily dwelling of three (3) or more living units located one (1) above the other. (See NFiPA 58-1989, Section 3-4.9.2)"

(15) Create a new Section, "F-708.0 Mercantile Occupancies" to read as follows:

(a) "F-708.1 Training. In every mercantile store of more than 3,000 gross square feet, employees shall be regularly trained in fire exit drills."

(b) "F-708.2 Fire extinguishers. Employees of mercantile occupancies shall be instructed in the proper use of portable fire extinguishers."

(16) Create a new Section, "F-709.0 Business Occupancies" to read as follows:

(a) "F-709.1 Drills. In any building subject to occupancy by more than 500 persons or more than 100 above or below the street level, employees and supervisory personnel shall be instructed in fire exit drill procedures and shall hold practice drills periodically where practicable."

(b) F-709.2 Employees of business occupancies shall be instructed in the proper use of portable fire extinguishers."

Section 10. Articles 8 through 15 [16] are adopted in their entirety unchanged.

Section 11. Article 16. (1) Delete subsections F-1600.1 through F-1602.2 from Article 16 of the 1990 Edition of the BOCA National Fire Prevention Code in their entirety.

(2) Create a new subsection, F-1603.3, to read as follows: "F-1603.3 The storage and handling of all flammable and combustible liquids at gas or oil wells shall comply with the NFPA Pamphlet #30 referenced in Appendix A."

Section 12. [11.] Article 17. Delete subsection F-1700.2 in its entirety.

Section 13. [12.] Articles 18 through 26 are adopted in their entirety unchanged.

Section 14. [13.] Article 27. (1) Amend Subsection F-2700.1 to read: ""F-2700.1 Scope: See Kentucky Revised Statute 227.750 through 227.810, Title 815, Chapter 30 of Kentucky Administrative Regulations for requirements for fireworks."

(2) Delete Subsections F-2700.2 through F-2701.4 in their entirety.

Section 15. [14.] Article 28. (1) Amend Subsection F-2800.3 and create paragraphs F-2800.3.1 through F-2800.3.2 to read as follows:

(a) "F-2800.3 Permit Requirements. A permit shall be obtained as set forth in this Subsection."

(b) "F-2800.3.1 Local Permit Requirements. A permit shall be obtained from an authorized local fire code official for the following:

1. The storage or handling of Class I liquids in excess of one (1) gallon in any building of "residential occupancy," in excess of ten (10) gallons inside any other building, and in excess of fifty (50) gallons outside of any building.

2. Storage and handling of Class II liquids in excess of ten (10) gallons in any buildings of "residential occupancy," in excess of sixty (60) gallons inside any other building, and in excess of 120 gallons outside of any building.

3. The storage and handling of Class III liquids in excess of 275 gallons inside any building, and in excess of 1,100 gallons outside of any building.

4. Quantities of paints, oil, varnishes, and similar flammable liquids in excess of those given above, for use on the premises, stored for not more than thirty (30) days. For storage exceeding thirty (30) days, a state permit shall be required.

5. Permits shall not be required for the storage and handling of crude oil on oil and gas leases."

(c) "F-2800.3.2 State Permit Requirements for Flammable Liquids. A permit shall be obtained from the State Fire Marshal for all changes in construction, remodeling or operation of any refinery, bulk storage plant, distributing station, service station, or airports not under jurisdiction of the Kentucky Building Code."

Section 16. [15.] Article 29 is adopted in its entirety unchanged.

Section 17. [16.] Article 30. (1) Amend Subsection F-3000.2 and create paragraphs F-3000.2.1 through F-3000.2.2 to read as follows:

(a) "F-3000.2 State Permits for Liquefied Petroleum Gas. A permit shall be obtained from the State Fire Marshal prior to:"

(b) "F-3000.2.1 The transportation, selling, storing for resale, or delivering of liquefied petroleum gases, or for engaging in the business of installing or servicing liquefied petroleum gas equipment; or for persons who actually perform installations or servicing operations. Licenses issued under this section shall be in accordance with the provisions of KRS 234.120. Under this section licenses or permits are not required for storage or transportation in quantities of less than one (1) gallon where the gas is an integral part of a device for its utilization, or for use as a motor fuel while in the fuel tank of the motor vehicle."

(c) "F-3000.2.2 The construction or substantial remodeling of any plant or building containing an occupancy for which a license is required under KRS 234.120 relating to the storage and handling of liquefied petroleum gases. This requirement shall be a supplement to any Kentucky Building Code requirement."

Section 18. [17.] Articles 31 through 34 and Appendix A are adopted in their entirety unchanged, except Appendix A is amended by adding the following references: "NFiPA 231, 1990; NFiPA 231C, 1986; NFiPA 231D, 1989; NFiPA 231F, 1987; and the Kentucky Building Code as set forth in Title 815, Chapter 7 of the Kentucky administrative regulations".

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: December 11, 1990
FILED WITH LRC: December 13, 1990 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on January 22, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. 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 received. 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: Judith G. Walden, Office of General Counsel, Department of Housing, Building, and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by January 17, 1991, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Existing commercial, public buildings and multifamily dwellings.

(a) Direct and indirect costs or savings to those affected: The regulation will result in costs of making fire safety alterations to buildings but only if a hazard exists in the facility.

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: Regular inspections reports, hearings, etc., as have been carried on for many years. No new costs.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No increased costs are involved because staff will provide similar inspections.

1. First year: Cost of publication of the new book will be offset by the price for which it is sold.

2. Continuing costs or savings: More efficient

than previous codes because they are designed to interact with requirements of the Kentucky Building Code.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No change in paperwork requirements through the citations for violations, computer adjustments, etc.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on local revenue except a potential for permits if they so choose.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Adoption of National Fire Codes was rejected in favor of use of BOCA National Fire Code with fire codes referenced in Appendix. Consistency with KBC is important.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS Chapter 198B and uniform standard building code.

(a) Necessity of proposed regulation if in conflict: Need appropriate up-to-date minimum standards to require fire safety in both old buildings and maintenance of fire safety in buildings constructed under the KBC.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Article 1 of the Kentucky Standards of Safety and the KBC are harmonized to avoid conflict. It allows the building official to refer to Standards of Safety if necessary and lets fire official enforce code where it was never approved when built. SFM enforcement powers include the ability to help enforce all laws relating to fire safety.

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. This regulation is tiered by allowing alternatives to meet the intent of the code and to allow different treatment of existing buildings based upon whether or not they have had prior approval or met other building codes.

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___ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. Intended to affect local government to the extent that every local government is supposed to adopt and enforce the Standards of Safety, pursuant to KRS 227.320.

3. State the aspect or service of local government to which this administrative regulation relates. Fire safety inspections, reporting and enforcement.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Merely provides appropriate standards for use statewide by each local government.

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS Chapter 13A, 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation will allow the department to permit the use of new parts and materials without amending specific regulations for each new item. This regulation will eliminate the repetitious amending of the Plumbing Code now required to include new materials item by item. This amendment adds new products approved by the Plumbing Code Committee on November 7, 1990. [This amendment adds new products approved by the Plumbing Code Committee in March and June, 1990.]

Section 1. Definitions as used in this regulation. (1) "APML" shall mean the "Approved Parts or Materials List."

(2) "ABS" means acrylonitrile-butadiene-styrene pipe.

(3) "ASTM" means American Society for Testing Materials.

(4) "Parts or materials" shall mean all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(5) "Committee" shall mean the State Plumbing Code Committee.

(6) "Code" shall mean the State Plumbing Code.

(7) "Department" shall mean the Department of Housing, Buildings and Construction.

(8) "Person" shall mean any individual, public or private corporation, political subdivision, government agency, municipality, copartnership, association, firm, trust, estate, or other entity whatsoever.

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). The use of any part or material in any drainage or plumbing system or section thereof, other than those currently authorized by the code, is prohibited unless the use of such part or material has been considered by the committee and approved by the department as being equal to or better than other similar approved items for inclusion in the APML. The APML may also specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person desiring to have the APML amended shall petition, in writing, for an opportunity to be heard by the committee no later than fourteen (14) days prior to the next scheduled meeting of the committee. The request shall include a description of the part or material for which approval is sought, available technical data, and a listing of other authorities which have the use of the part or material, and any other pertinent information requested by the committee.

(2) The committee will consider all parts or materials for which approval is sought and will forward thirty (30) days thereafter its

recommended disposition to the department. Provided, however, that a hearing shall be held before the committee if requested, within thirty (30) days following the determination of the committee, by a person having an interest in the subject matter. Upon approval of a recommendation by the department, the APML shall be amended by listing the new part or material in Section 5 of this regulation.

Section 4. Custody of the APML. It shall be the responsibility of the Director, Division of Plumbing, to maintain an up-to-date APML and to make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department of Housing, Buildings and Construction, Frankfort, Kentucky 40601. The cost of reproduction shall not exceed ten (10) cents per page.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been approved by the Kentucky Plumbing Code Committee and the Division of Plumbing and shall be allowed for installation in Kentucky.

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032.

(2)(a) Flushmate water closet tank.

(b) Microphor company. Two (2) quart flush toilets.

(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.

(3) Tubular traps with gasket in trap seal.

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and be provided with a sump cover.

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

(c) Drain pump and HiLo Industries Power Drain for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

(d) Sewage ejector pit - eighteen (18) inch by twenty-two (22) inch with steel cover pit and eighteen (18) inch by thirty (30) inch with steel cover sump pit as manufactured by Lunsford and Associates, Inc.

(e) Little Giant Pump Company, Drainosaur Water Removal System, Model #WRS-6. This approval is limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.

(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a performed thermoplastic rubber gasket.

(c) Dektite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping provided the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste only. Underground shall be laid on six (6) inches of sand grillage and may be backfilled by hand and tamped six (6) inches around piping or may be surrounded by six (6) inches of sand grillage.

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Therma-Stor Products Group.

(b) Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, [and] W-152 and W-154.

2. Eemax Electric [Thermar] Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirement that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and shall be installed with the product.

3. Vitaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater and shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130 pressure type and shall be

equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chronomite Laboratories, Inc. - instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

11. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.

12. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP and shall be equipped with an approved temperature and pressure relief valve.

13. Ariston electric water heaters, model numbers P-15S and P-10S and shall be equipped with an approved temperature and pressure relief valve.

14. Vaillant Corporation gas fired point of use water heater.

(11) Compression joints. Fail-safe hot and cold water systems.

(12) Orion fittings for acid waste piping systems for above and below ground.

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping.

(14) Johns Manville Flex I drain roof drain system.

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick.

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping.

(17) Elkay Aqua-chill water dispensers.

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum.

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only.

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.

(20) Interceptors.

(a) Town and Country plastic interceptors to be used as a grease trap.

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections only.

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.

(21) Plastic Oddities Srv (sewer relief vent) clean-out.

(22) Contech [ARMCO] A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test requirements of ASTM D-3034-74 except dimensions at the time of manufacture.

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.

(24) Eljer plumbing ware - Elgers ultra one/G water closet.

(25) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company; shall have a three (3) inch vent; alternate additional waste openings to be located in pump chamber above top of base chamber.

(26) Exemplar Energy garden solar water heater.

(27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. ProSet E-Z flex coupling is approved for similar or dissimilar materials.

(28) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries.

(29) Clamp-All Corporation Pipe Coupling Systems is approved size for size on dissimilar materials on new or existing installations. Snap-All Increaser/Reducer transition bushings are approved only for repairs using dissimilar materials or sizes.

(30) Mission Rubber Company "Band-Seal Specialty Coupling" is approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35.

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a safing material for floors and walls in showers, bathtubs and floor drain pans.

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers only.

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: November 7, 1990
FILED WITH LRC: December 6, 1990 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on January 22, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. 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 received. 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: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by January 17, 1991, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Manufacturers of new products not yet made part of a national standard allowed by the Kentucky Plumbing Code.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings because the regulation only establishes acceptability of previously unapproved products. Provides ability of manufacturer to market his product in state.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition): Enhances competition for products in state.

(b) Reporting and paperwork requirements: Paperwork requirements and recordkeeping needs remain the same; no costs or savings involved.

(2) Effects on the promulgating administrative body: Formalizes, with proper regulatory oversight the procedures for acceptability of new products in the state plumbing code.

(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: Unchanged by this amendment.

(3) Assessment of anticipated effect on state and local revenues: No effect on revenues because the regulation merely identifies existing procedures in regulatory form.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The previous method of filing new parts or materials did not statutorily meet KRS Chapter 13A requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This is the only known law or policy dealing with this product.

(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. Tiering was used in that each product presented for approval is considered separately for compliance with generally recognized safety and workability standards.

PUBLIC PROTECTION & REGULATION CABINET
Department of Housing, Buildings & Construction
Office of State Fire Marshal
(Proposed Amendment)

815 KAR 20:120. Water supply and distribution.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 13A.120, 198B.040 (10), 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This regulation relates to the types of piping, pipe sizes for a potable water supply system and the methods to be used to protect and control it. The amendments to Section 20 and the "Application Chart" in Section 2 of this regulation are necessary to clarify the type of backflow prevention desired in sprinkler systems added to domestic water distribution systems. This amendment was approved by the Plumbing Code Committee on November 7, 1990 and the Board of Housing on November 29, 1990. [This amendment to Section 10 of this regulation allows copper tubing size PE to be smaller than three-fourths (3/4) inch inside diameter if outside compression fittings, instead of insert fittings, are used and allows the use of polybutylene between the diverter spout of a tub and the shower nozzle if the pipe size is increased from one-half (1/2) to three-fourths (3/4) inch.]

Section 1. Definition of Terms. (1) ASSE - American Society of Sanitary Engineers.

(2) ASTM - American Society for Testing Materials.

(3) Critical level (CL) - the level to which the vacuum breaker may be submerged before backflow will occur. Where CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(4) DWV - drain, waste and vent piping.

(5) SDR - standard dimensional ratio.

Section 2. Quality. (1) The bacteriological and chemical quality of the water supply shall comply with the regulations of the department and other governing authorities. Toxic materials shall be kept out of the potable water system.

(a) Piping conveying, and all surfaces in contact with potable water shall be constructed of nontoxic materials.

(b) Chemicals or other substances that could produce either toxic conditions, taste, odor, or discoloration in a potable water system shall not be introduced into, or used in, such systems.

(c) The interior surface of a potable water tank shall not be lined, painted, or repaired with any material which will affect either the taste, odor, color, or potability of the water supply when the tank is placed in, or returned to, service. All interior tank coatings shall be from the list approved by the authority having jurisdiction.

(2) Potable water only shall be accessible to plumbing fixtures that supply water for drinking, bathing, culinary use or the processing of medicinal, pharmaceutical or food products.

(3) The potable water supply system shall be designed, installed, and maintained in such manner as to prevent contamination from

nonpotable liquids, solids, or gases being introduced into the potable water supply through cross connections or any other piping connections to the system.

(4) Cross connections shall be prohibited except when and where, as approved by the authority having jurisdiction, suitable protective devices are installed.

(5) Cross connections between a private water supply and a public water supply shall not be made.

(6) When cross connection control devices are properly installed, they create a closed water system. A properly sized thermal expansion tank shall be installed in the cold water supply located as near the water heater as possible.

(7) Backflow and back siphonage protection. Means of protection against backflow shall be as required in paragraphs (a) through (l) of this subsection in order of degree of protection provided. Backflow includes both back pressure and back siphonage.

(a) Air gap. Provides the best level of protection in all backflow situations. Minimum required air gap shall be determined as follows:

1. How measured. The minimum required air gap shall be measured vertically from the lowest end of a potable water outlet to the flood rim or line of the fixture or receptacle into which it discharges.

2. Size. The minimum required air gap shall be twice the effective opening of a potable water outlet, unless the outlet is a distance less than three (3) times the effective opening away from a wall or similar vertical surface, in which case the minimum required air gap shall be three (3) times the effective opening of the outlet. The minimum required air gap shall not be less than shown in the following table - Minimum Air Gaps for Plumbing Fixtures.

MINIMUM AIR GAPS FOR PLUMBING FIXTURES

Fixture	Minimum Air Gap When not affected by near wall (inches)	Minimum Air Gap When affected by near wall (inches)
Lavatories and other fixtures with effective opening not greater than 1/2 inch diameter	1	1 1/2
Sink, laundry trays, gooseneck bath faucets and other fixtures with effective openings not greater than 3/4 inch diameter	1 1/2	2 1/4
Over rim bath fillers and other fixtures with effective openings not greater than 1 inch diameter	2	3
Drinking water fountains - single orifice not greater than 7/16 (0.437) inch diameter or multiple orifices having total area of 0.150 square inches (area of circle 7/16 inch diameter)	1	1 1/2
Effective openings greater than 1 inch	2 x diameter of effective opening	3 x diameter of effective opening

NOTE 1. Side walls, ribs, or similar obstructions do not affect air gaps when spaced from inside edge of spout opening a distance greater than three (3) times the diameter of the effective opening for a single wall, or a distance greater than four (4) times the diameter of the effective opening for two (2) intersecting walls.

NOTE 2. Vertical walls, ribs, or similar obstructions extending from the water surface to or above the horizontal plane of the spout opening require a greater air gap when spaced closer to the nearest inside edge of spout opening than specified in NOTE 1 above. The effect of three (3) or more such vertical walls or ribs has not been determined. In such cases, the air gap shall be measured from the top of the wall.

(b) Reduced pressure principle back pressure backflow preventer. Reduced pressure principle back pressure backflow preventers provide the best mechanical protection against backflow available, and may be considered equivalent to an air gap in most situations.

(c) Double check valve assembly: applicable to low level of hazard back pressure backflow conditions only. These devices are manufactured assemblies consisting of two (2) independently acting check valves and including shutoff valves at each end, and petcocks and test gauges for testing the watertightness of each check valve.

(d) Pressure type vacuum breaker: applicable to back siphonage conditions only.

(e) Atmospheric type vacuum breaker: applicable to back siphonage conditions only. When applicable, all atmospheric type vacuum breakers shall be installed after the last cutoff valve on the water line. These devices may operate under normal atmospheric pressure when the critical level (CL) is installed at the required height in accordance with the following table:

CRITICAL LEVEL (CL) SETTINGS FOR ATMOSPHERIC TYPE VACUUM BREAKERS

Fixture or Equipment	Method of Installation
Aspirators, ejectors, and and showers	CL at least 6 in. above flood level of receptacle
Bidets	CL at least 6 in. above flood level of receptacle
Cup beverage vending machines	CL at least 12 in. above flood level of machine
Dental units	On models without built-in vacuum breakers: CL at least 6 in. above flood level rim of bowl.
Dishwashing machines	CL at least 6 in. above flood level of machine

Flushometers (closet & urinal)	CL at least 6 in. above top of fixture supplied
Garbage can cleaning machines	CL at least 6 in. above flood level of machine
Hose bibs (sinks or receptacles)	CL at least 6 in. above flood level of receptacle served
Hose outlets	CL at least 6 in. above highest point on hose line
Laundry machines	CL at least 6 in. above flood level of machine
Lawn sprinklers	CL at least 12 in. above highest sprinkler or discharge outlet
Steam tables	CL at least 12 in. above flood level
Tanks & vats	CL at least 6 in. above flood level rim or line

NOTE 1. Critical level (CL) is defined as the level to which the vacuum breaker may be submerged before backflow will occur. Where CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(f) Barometric loop: applicable only to back siphonage conditions. The use of a barometric loop shall not be acceptable as the primary back siphonage preventer.

(g) Location of backflow and back siphonage preventers. Backflow and back siphonage preventers shall be in an accessible location, preferable in the same room as the fixture or connection they protect. Devices may be installed in utility or service spaces. Devices and air gaps shall not be subject to flooding or freezing.

(h) Inspection of devices. Periodic inspections shall be made of all backflow and back siphonage preventers to determine whether they are in proper working condition. Reduced pressure principle back pressure backflow preventers shall be tested on at least an annual basis. Records shall be kept on all such inspections.

(i) Approval of devices. Before any device for the prevention of backflow or back siphonage is installed, it shall have first been certified by a recognized testing laboratory acceptable to the plumbing official. Devices installed in a building potable water supply distribution system for protection against backflow shall be maintained in good working condition by the person or persons responsible for the maintenance of the system.

(j) Protection of potable water system. All potable water openings, outlets, and connections, except those serving residential units, shall be protected against backflow in accordance with one (1) of the following paragraphs, (a) through (l) of this subsection.

(k) Degree of hazard. The protection required at any given outlet or connection shall be determined based on the degree of hazard posed by that outlet or connection as follows:

1. Severe hazard. Potential for contamination by toxic substances or disease-causing organisms.

2. Moderate hazard. Potential for contamination by nontoxic but objectionable substances.

3. Minor hazard. Potential for contamination by generally nontoxic, nonobjectionable substances, but which may cause the consumer to question the quality of water.

(l) Minimum acceptable protection. All openings and outlets shall be protected by an air gap between the opening and floor level rim whenever possible. The acceptable protection for various types of outlets or connections shall be as shown in the following table:

CROSS CONNECTIONS, DEGREE OF HAZARD AND ACCEPTABLE PROTECTION FOR VARIOUS PLUMBING OUTLETS AND CONNECTIONS

	Degree of Hazard			Acceptable Protection				
					Backflow		Back siphonage	
Type of Connection	Severe	Moderate	Minor	Air Gap	Reduced Pressure Device	Double Check Valve Assembly	Pressure Type Vacuum Breaker	Atmospheric Type Vacuum Breaker
I. Connections subject to back pressure from:								
A. Pumps, tanks, and lines handling:								
1. Toxic substance	X			X	X			
2. Nontoxic subst.		X		X	X	X		
B. Boilers								
1. With chemical additives	X			X	X			
2. Without chemical additives		X		X	X	X		
C. Gravity due to obvious site conditions subject to:								
1. Contamination by toxic substances	X			X	X			
2. Contamination by nontoxic subst.		X		X	X	X		

II. Water outlets and connections not subject to back pressure:							
A. Connection to sewer or sewage pump	X		X				
B. Outlet to receptacles containing toxic substances	X		X	X		X	X
C. Outlet to receptacles containing nontoxic substances		X	X	X	X	X	X
D. Outlet into domestic water tanks			X	Each case treated separately			
E. Flush valve toilets	X		X	X		X	X
F. Flush valve urinals		X	X	X		X	X
G. Outlets with hose attachments subject to contamination from:							
1. Toxic substances	X		X	X		X	X
2. Nontoxic subst.		X	X	X	X	X	X
H. Outlets to recirculating cooling tower:							
1. With chemical additives	X		X	X			
2. Without chemical additives		X	X	X	X		

APPLICATION CHART

TYPE AND PRESSURE	DESCRIPTION	INSTALLED AT	EXAMPLES OF INSTALLATIONS	APPLICABLE STANDARDS
Reduced Pressure Principle Backflow Preventer For high hazard cross connections.	Two independent check valves with intermediate relief valve. Supplied with shutoff valves and ball type test cocks.	All cross connections subject to backpressure or back siphonage where there is a high potential health hazard from contamination. Continuous pressure.	Main Supply Lines Commercial Boilers Cooling Towers Hospital Equipment Processing Tanks Laboratory Equipment Waste Digesters Car Wash Sewerage Treatment	A.S.S.E. No. 1013 A.W.W.A. C506 FCCCHR of U.S.C. CSA B.64.4 Sizes 3/4 " - 10"
(A) Double Check Valve Assembly For low hazard cross connections.	Two independent check valves. Supplied with shutoff valves and ball type test cocks.	All cross connections subject to back pressure where there is a low potential health hazard or nuisance. Continuous pressure.	Main Supply Lines Food Cookers Tanks and Vats Lawn Sprinklers Fire Sprinkler Lines Commercial Pools	A.S.S.E. No. 1015 A.W.W.A. C506 FCCCHR of U.S.C. CSA B.64.5 Sizes 3/4" - 10"
(B) Dual Check Valve Backflow Preventer For low hazard applications.	Two independent check valves. Checks are removable for testing.	Cross connections where there is a low potential health hazard and moderate flow requirements.	Post ground hydrants.	NOT TOXIC A.S.S.E. No. 1024 Sizes 3/4" & 1"
(A) Backflow Preventer with Intermediate Atmospheric Vent For moderate hazard cross connections in small pipe sizes.	Two independent check valves with intermediate vacuum breaker and relief valve.	Cross connections subject to back pressure or back siphonage where there is a moderate health hazard. Continuous pressure.	Boilers (Small) Cooling Towers (Small) Dairy Equipment Residential	A.S.S.E. No. 1012 CSA B.64.3 Sizes 1/2" & 3/4"
		Pump outlet to prevent backflow to carbon dioxide gas and carbonated water into the water supply system to beverage machines.	Postmix Carbonated Beverage Machine	Special Approvals

(B) Laboratory Faucet and Double Check Valve with Intermediate Vacuum Breaker In small pipe sizes for moderate to low hazard.	Two independent check valves with intermediate vacuum breaker and relief vent.	Cross connection subject to back pressure or back siphonage where there is a moderate to low health hazard.	Laboratory Faucets and Pipe Lines Barber Shop and Beauty Parlor Sinks	A.S.S.E. No. 1035 (N-LF9)
(A) Atmospheric Vacuum Breakers For moderate to high hazard cross connections.	Single float and disc with large atmospheric port.	Cross connections not subject to backpressure or continuous pressure. Install at least 6" above fixture rim. Protection against back siphonage only.	Process Tanks Dishwashers Soap Dispensers Washing Machines Lawn Sprinklers	A.S.S.E. No. 1001 ANSI.A112.1.1 CSA B.64.1.1 FCCCHR of U.S.C. Sizes 1/4" - 3"
(B) Antisiphon Pressure Breakers For moderate to high hazard cross connections.	Spring loaded single float and disc with independent 1st check. Supplied with shutoff valves and ball type test cocks.	This valve is designed for installation in a continuous pressure potable water supply system 12" above the overflow level of the system being supplied. Protection against back siphonage only.	Laboratory Equipment Cooling Towers Comm. Laundry Machines Swimming Pools Commercial Plating Tanks Lg. Total & Urinal Facilities Degreasers, Photo Tanks Livestock Water Systems Lawn Sprinklers	A.S.S.E. No. 1020 CSA B.64.1.2 FCCCHR of U.S.C. Sizes 1/2" - 2"
(C) Hose Connection Vacuum Breakers For residential and industrial hose supply outlets.	Single check with atmospheric vacuum breaker vent.	Install directly on hose bibs, service sinks and wall hydrants. Not for continuous pressure.	Hose Bibs Service Sinks Hydrants	A.S.S.E. No. 1011 CSA B.64.2 Size 3/4" Hose

Section 3. Water Required. (1) Every building equipped with plumbing fixtures and used for habitation or occupancy shall be equipped with a supply of potable water.

(2) In buildings used as residences or buildings in which people assemble or are employed, both hot and cold water shall be supplied.

Section 4. Water Service. (1) The water service piping to any building shall be not less than three-fourths (3/4) inch nominal pipe size but shall be of sufficient size to permit a continuous and ample flow of water to all fixtures on all floors at all times.

(2) The underground water service pipe from the main or water supply system to the water distribution system shall not be less than five (5) feet apart horizontally from the house sewer and shall be separated by undisturbed or compacted earth except they can be placed in the same trench provided:

(a) The bottom of the water service pipe at all points shall be at least eighteen (18) inches above the top of the sewer at its highest point.

(b) The water service pipe shall be placed on a solid shelf excavated at one (1) side of the common trench.

(c) The number of joints in the water service pipe shall be kept to a minimum.

Section 5. Distribution. (1) The water supply shall be distributed through a piping system entirely independent of any other piping system.

(2) Piping which has been used for any other purpose than conveying potable water shall not be used for conveying potable water.

(3) Nonpotable water may be used for flushing water closets and urinals, provided such water shall be piped in an independent system.

(a) When a dual water distribution system is used, the nonpotable water supply shall be durably and adequately identified by color markings and metal tags, or other appropriate method as may be approved by the governing authority. Each outlet on the nonpotable water distribution system which might be used for drinking or domestic purposes shall be permanently posted: DANGER - UNSAFE WATER. Each branch, fitting or valve shall be identified by the word - "NONPOTABLE WATER" either by signs or brass tags that are permanently affixed to the pipe, fittings, valves, etc. These identification markings shall not be concealed. Their maintenance shall be the responsibility of the owner.

(4) Any backflow device or cross-connection control device shall be approved by the department.

(5) Combination stop and waste valves, cocks, or hydrants shall not be installed in the underground water distribution system without the installation of an approved backflow preventer.

(6) No private water supply shall be interconnected with any public water supply.

(7) Water used for cooling of equipment or in other processes shall not be returned to the potable water system. Such water shall be discharged into a drainage system through an air gap, or may be used for nonpotable purposes on written approval of the plumbing official.

Section 6. Water Supply to Fixtures. Plumbing fixtures shall be provided with a sufficient supply of water for flushing to keep them in a sanitary condition. Every water closet or

pedestal urinal shall be flushed by means of an approved tank or flush valve. The tank or valves shall furnish at least a sufficient amount of water to thoroughly cleanse the surface area of water closets, urinals or similar fixtures. When a water closet, urinal, or similar fixture is supplied directly from the water supply system through a flushometer or other valve, such valves shall be set above the fixture in a manner so as to prevent any possibility of polluting the potable water supply by back siphonage. All such fixtures shall have a vacuum breaker. Plumbing fixtures, devices or appurtenances shall be installed in a manner that shall prevent any possibility of a cross connection between the potable water supply system, drainage system or other water system.

Section 7. Connections to Boilers. Potable water connections to boiler feed water systems in which boiler conditioning chemicals are introduced shall be made through an air gap, or provided with a reduced pressure principle backflow preventer located in the potable water line before the point where such chemicals are introduced. Boilers shall be equipped with a check valve in the cold water supply to the boiler.

Section 8. Water Supply to Drinking Fountains. The orifice of a drinking fountain shall be provided with a protective cowl to prevent any contamination of the potable water supply system.

Section 9. Sizing of Water Supply Piping. (1) The minimum size water service from the property line to the water heater shall be three-fourths (3/4) inch. The hot and cold water piping shall extend three-fourths (3/4) inch in size to the first fixture branch. No two and one-half (2 1/2) inch fixture branches are supplied from any one-half (1/2) inch pipe. (EXCEPTION: A combination of two (2) of the following fixtures may be connected utilizing the one-half (1/2) inch branch: a flush tank water closet, a lavatory or drinking fountain.)

(2) The following schedule shall be used for sizing the water supply piping to fixtures. The branch pipe to any fixture shall terminate not more than thirty (30) inches from the point of connection to the fixture and in every instance shall be brought to the floor or wall adjacent to the fixture. No concealed water branch pipe shall be less than one-half (1/2) inch nominal pipe size.

Fixture Branches	Nominal Pipe Size (Inches)
Bath tubs	1/2
Combination sink and tray	1/2
Cuspidor	1/2
Drinking fountain	1/2
Dishwasher (domestic)	1/2
Kitchen sink (res.)	1/2
Kitchen sink (com.	1/2 or 3/4 as required
Lavatory	1/2
Laundry tray	1/2
Sinks (service, slop)	1/2
Sinks flushing rim	3/4
Urinal (flush tank)	1/2
Urinal (direct flush type)	1/2 or 3/4 as required
Water closet (tank type)	1/2
Water closet (flush valve type	1
Hot water boilers	3/4
Hose bibs	1/2
Wall hydrant	1/2
Domestic clothes washer	1/2
Shower (single head)	3/4

(3) Water hammer. In all building supply systems in which devices or appurtenances are installed utilizing quick acting valves that cause noises due to water hammer, protective devices such as air chambers or approved mechanical shock absorbers shall be installed as close as possible to the quick acting valve causing the water hammer.

(a) Where mechanical shock absorbers are installed, they shall be in an accessible place.

(b) Where mechanical devices are used, the manufactures specifications shall be followed as to location and method of installation.

Section 10. Water Supply Pipes and Fittings, Materials. Water supply piping for a potable water system shall be of galvanized wrought iron, galvanized steel, brass, Types K, L, and M copper, cast iron, Types R-K, R-L, and R-M brass tubing, standard high frequency welded tubing conforming to ASTM B-586-73, fusion welded copper tubing conforming to ASTM B-447-72 and ASTM B-251, DWV welded brass tubing conforming to ASTM B-587-73, seamless stainless steel tubing, Grade H conforming to ASTM A-268-68, filament-wound reinforced thermosetting resin pipe conforming to ASTM D-2996 (red thread for cold water use and silver and green thread for hot and cold). Polyethylene (PE) plastic pipe conforming to ASTM D-2239-69, copper tubing size PE conforming to ASTM D-2737 for water service only if installed with compression couplings, Poly(vinyl chloride) (PVC) plastic pipe conforming to ASTM D-1785-69, Chlorinated Poly(vinyl chloride) (CPVC) plastic pipe conforming to ASTM D-2846-70, Poly(vinyl chloride) (PVC) standard dimensional ratio (SDR) 21 and (SDR) 26 conforming to ASTM D-2241-84, polybutylene (PB) plastic pipe conforming to ASTM-D-3309-85b with brass, copper or celcon fittings, Quicktite connection using a celcon asetal copolymer, polybutylene cone and stainless steel ring, plastic pipe and fittings shall bear the NSF seal of approval. (EXCEPTION: Polybutylene pipe utilizing insert fittings of brass, copper or celcon shall use only copper clamping rings.) Polybutylene hot and cold water connectors to lavatories, sinks and water closets shall conform to ASTM-D-3309-85b, and polybutylene plastic pipe conforming to ASTM 2662 for cold water applications only. Fittings shall be brass, copper or approved plastic or galvanized cast iron or galvanized malleable iron. Piping or fittings that have been used for other purposes shall not be used for the water distribution system. All joints in the water supply system shall be made of screw, solder, or plastic joints. Cast iron water pipe joints may be caulked, screwed, or machine drawn. When Type M copper pipe, Type R-M brass tubing, standard high frequency welded tubing or stainless steel tubing is placed within a concrete floor or when it passes through a concrete floor it shall be wrapped with an approved material that will permit expansion or contraction. In no instance shall Polyethylene, PVC or CPVC be used below

ground under any house or building (refer also to 815 KAR 20:060 and 815 KAR 20:073).

Section 11. Temperature and Pressure Control Devices for Shower Installations. Temperature and pressure control devices shall be installed on all shower installations that will maintain an even temperature and pressure and shall provide nonscald protection. Such devices shall be installed on all installations other than in homes or apartment complexes.

Section 12. Water Supply Control. (1) A main shutoff valve shall be provided near the curb, in or near the meter box or property line on the water service pipe. In addition, a main supply control valve shall be placed inside a foundation wall. The main supply control valve shall be accessible and provided with a drip or drain valve. A pit or similar type installation is prohibited for a potable water supply shutoff valve.

(2) Pressure on gravity tanks shall have their supply lines valved at or near their source.

(3) Each family unit in a two (2) family or multifamily dwelling shall have each family unit controlled by an arrangement of shutoff valves which will permit each unit to be shutoff without interfering with the cold water supply to any other family unit or portion of the building.

(4) In all buildings other than dwellings, shutoff valves shall be installed which permit the water supply to each piece of equipment to be isolated without interference with the supply to other equipment.

(5) Each fixture or group of bath fixtures shall be valved and each lawn sprinkler opening shall be valved. In residential construction all fixtures except bathtub and showers shall be valved individually or in lieu each group of fixtures shall be valved.

(6) A group of fixtures or fixture group shall mean two (2) or more fixtures adjacent to or near each other in the same room or back to back on a common wall.

(7) The cold water branch to each hot water storage tank or water heater shall be provided with a shutoff valve located near the equipment and only serving this equipment.

Section 13. Water Supply Protection. All concealed water pipes, storage tanks, cisterns, and all exposed pipes or tanks subject to freezing temperatures shall be protected against freezing. Water services shall be installed at least thirty (30) inches in depth.

Section 14. Temperature and Pressure Relief Devices for Water Heaters. Temperature and pressure relief devices shall be installed on all water heaters on the hot water side not more than three (3) inches from the top of the heater. Temperature and pressure relief devices shall be of a type approved by the department. When a water heater is installed in a location that has a floor drain, the discharge from the relief device shall be piped to within two (2) inches of the floor; when a water heater is installed in a location that does not have a floor drain, the discharge from the relief device shall be piped to the outside of the building with an ell turned down and piped to within four (4) inches of the surface of the ground. The relief device may also discharge through an air gap to a sump basin, service sink, open receptacle or any other point of discharge in which equivalent safety is provided as approved by the Division of Plumbing. Relief devices shall be installed on a pneumatic water system (see Section 17).

Section 15. Protection of a Private Water Supply or Source. Private water supplies or sources shall be protected from pollution in a manner approved by the department. Such approval shall be obtained before an installation is made.

Section 16. Domestic Solar Water Heaters. Domestic solar water heaters may have a "single wall heat exchanger" provided the solar panel and the water heater exchanger use a nontoxic liquid such as propylene glycol or equal, and that the heat exchanger is pretested by the manufacturer to 450 PSI and that the water heater has a warning label advising that a nontoxic heat exchanger fluid shall be used at all times and that a pressure relief valve is installed at the highest point in the solar panel.

Section 17. Domestic Water Heater Preheating Device. A domestic water heater preheating device may be used and connected with the high pressure line from the compressor of a domestic home air conditioner or heat pump water heater. Double wall heat-exchangers with two (2) separate thicknesses separating the heat exchange fluid (other than potable water) from the potable water supply shall be provided. The water inlet to the heat exchange vessel shall be provided with a check valve, and adjacent to, and at the outlet side of the check valve, an approved pressure relief valve set to relieve at five (5) PSI above the maximum water pressure at the point of installation shall be provided if the heat exchange units contain more than twenty (20) pounds of refrigerants. This device shall be equipped with a temperature limit control that would actuate a pump that would circulate hot water from the water heater through the preheater device. Condensate drain water shall be piped in accordance to the plumbing code and in no instance shall it be permitted to drain into crawl space, or into a sewer or vent stack, or be installed in areas subject to freezing. If a drain is not available or if a drain is located above the vent, a condensate pump shall be utilized.

Section 18. Tanks and Vats, below Rim Supply. Tanks and vats with potable water supply below the rim shall be subject to the following requirements:

(1) Where a potable water outlet terminates below the rim of a tank or vat and the tank or vat has an overflow of diameter not less than given in the following table, sizes of overflow pipes for water supply tanks, the overflow pipe shall be provided with an air gap as close to the tank as possible.

SIZES FOR OVERFLOW PIPES FOR WATER SUPPLY TANKS

Maximum capacity of water supply line to tank	Diameter of over-flow pipe (inches ID)	Maximum capacity of water supply line to tank	Diameter of over-flow pipe (inches ID)
0- 50 gpm	2	400- 700 gpm	5
50-150 gpm	2 1/2	700-1000 gpm	6
150-200 gpm	3	Over 1000 gpm	8

(2) The potable water outlet to the tank or vat shall terminate a distance not less than one and one-half (1 1/2) times the height to which water can rise in the tank above the top of the overflow. This level shall be established at the maximum flow rate of the supply to the tank or vat, and with all outlets, except the air gap overflow outlet closed.

(3) The distance from the outlet to the high water level shall be measured from the critical point of the potable water supply outlet.

Section 19. Water Distribution for Fan Coil Units. When a domestic water heater is used for heating purposes through a fan coil medium, its temperature shall not exceed 140 degrees Fahrenheit. It shall utilize not less than three-fourths (3/4) inch Type M copper in its piping and its run shall not exceed 140 feet between the water heater and the heating unit (relates to 815 KAR 20:070).

Section 20. Fire Protection Systems. Fire protection systems using water from the potable water distribution system shall be equipped with two (2) check valves, one (1) of which may be an alarm check valve [inside of buildings present special cross-connection prevention problems that require the use of protective devices. The devices used to connect such situations shall be of the double check valve assembly as outlined in part 2 or 3 of the application chart].

Section 21. Water Distribution and Connections to Mobile Homes. (1) An adequate and safe water supply shall be provided to each mobile home conforming to the regulations of the department.

(2) All materials, including pipes and fittings used for connections shall conform with the other sections of this code.

(3) An individual water connection shall be provided at an appropriate location for each mobile home space. The connection shall consist of a riser terminating at least four (4) inches above the ground with two and three-fourths (2 3/4) inch valve outlets with screw connection, one (1) for the mobile home water system and the other for lawn watering and fire control. The ground surface around the riser pipe shall be graded so as to divert surface drainage. The riser pipe shall be encased in an eight (8) inch vitrified clay pipe or equal with the intervening space filled with an insulating material to protect it from freezing. An insulated cover shall be provided which shall encase both valve outlets but not prevent connection to the mobile home during freezing weather. A shutoff valve may be placed below the frost depth on the water service line, but in no instance shall this valve be a stop-and-waste cock.

Section 22. Conservation of Water (refer to 815 KAR 20:070).

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: December 5, 1990
FILED WITH LRC: December 6, 1990 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on January 22, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. 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 received. 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: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by January 17, 1991, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Master and journeyman plumbers.

(a) Direct and indirect costs or savings to those affected: No costs or savings involved.

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 created by amendment.

(2) Effects on the promulgating administrative body: None beyond requirements of updating state plumbing code with approved amendments to regulation.

(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: State or local revenue will not be affected.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Plumbing Code Committee and Board of Housing review all proposed amendments and accept on basis within limits defined.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known 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? Yes. Tiering has been applied to establish more stringent backflow siphonage protection on the more hazardous openings and connections. Not all

connections are subject to danger from the water supply from backflow siphonage under low pressure conditions.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 13:080. Authorized procedures.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)
STATUTORY AUTHORITY: KRS 211.964
NECESSITY AND FUNCTION: KRS 211.964 directs the Cabinet for Human Resources to adopt rules and regulations relating to emergency medical technicians (EMTs). The function of this regulation is to establish procedures which EMTs are authorized to perform.

Section 1. Authorized Certified EMT Procedures. (1) Except as otherwise provided in subsections (2) and (3) of this section, certified EMTs may perform any of the procedures as set forth in the "Basic Emergency Medical Technician: National Standard Curriculum," Third Edition, 1984, published by the United States Cabinet of Transportation, National Highway and Traffic Safety Administration, Washington, D. C. 20590, and in the accompanying text entitled "Emergency Care," Fifth Edition, 1990, published by The Brady Company, Prentice-Hall, Inc., Englewood Cliffs, N.J. 07632. A copy of both publications, included by reference as if fully incorporated herein, shall be on file in the office of the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, and shall be available for public inspection between 8 a.m. and 4:30 p.m., Monday through Friday.

(2) EMTs shall not perform any of the following procedures:

(a) The administration of intravenous fluids or plasma expanders, or both;

(b) Perform a cricothyrotomy;

(c) Relieve a tension pneumothorax through the use of needles;

(d) Insert an esophageal obturator airway or esophageal gastric tube airway;

(e) Perform external cardiac defibrillation except by use of automatic or semiautomatic defibrillation equipment authorized according to the requirements specified in 902 KAR 13:120.

(3) An EMT shall not use medical antishock trousers unless:

(a) He has completed a Kentucky emergency medical technician course during which the use of medical antishock trousers was taught after July 1, 1985; or

(b) He is currently certified as an emergency medical technician and completes the four (4) hour training session on the medical antishock trousers and successfully passes an examination administered by the cabinet consisting of both written and practical application examinations. The standards for such examinations shall be the same as for an EMT course. The training and examination shall be conducted by an EMT instructor or instructor trainer in accordance with the criteria set forth in the "Basic Emergency Medical Technician: National Standard Curriculum," Third Edition, 1984 and the standards and protocols of the Cabinet for Human Resources; or

(c) He has completed an emergency medical technician course in another state which included the use of medical antishock trousers and has taken and passed, as a part of his Kentucky challenge examination, an examination in the use of medical antishock trousers; and

(d) He uses medical antishock trousers in accordance with the standards and the protocol of the cabinet.

[Section 2. All EMTs are to be certified in use of medical antishock trousers prior to January 1, 1988. Any EMT who is not certified in the use of medical antishock trousers as provided in this regulation shall obtain such certification by a method provided herein no later than January 1, 1988 in order to qualify for renewal of his certification as an EMT in Kentucky.]

Section 2. [3.] EMT-defibrillation Pilot Program. EMTs who have successfully completed the cabinet's ten (10) hour training course for the semiautomatic defibrillation pilot program and have successfully passed an examination consisting of both written and practical application examinations, shall be authorized to perform defibrillation procedures in accordance with the standards and protocols established by the cabinet. Such authorization shall expire on June 30, 1991. Following June 30, 1991, the pilot program EMTs may perform automatic or semiautomatic defibrillation authorized according to the requirements specified in 902 KAR 13:120.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: December 5, 1990
FILED WITH LRC: December 13, 1990 at 9 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 22, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 17, 1991, 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: Robert Calhoun
(1) Type and number of entities affected: Only those ambulance services that apply for and meet the criteria for coordinating the training, and providing the services thereafter, will be affected.
(a) Direct and indirect costs or savings to those affected: This is not a mandatory requirement, therefore ambulance services will voluntarily assume cost for providing the service.
1. First year: Ambulance services will be responsible for training, purchase of equipment and staffing of each ambulance. Increased cost will probably amount to approximately $6-10,000 per ambulance the first year.
2. Continuing costs or savings: Likely to experience increased cost.
3. Additional factors increasing or decreasing costs (note any effects upon competition): 1)

The equipment, one per ambulance costs approximately $6,000; 2) Might need to increase staff salaries (approximately 2-5%). However, will provide greater lifesaving skills for heart failure victims.

(b) Reporting and paperwork requirements: Service provides reports 1) at end of training; 2) quarterly; and 3) annually.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Will cause increase to staff with a greater increase to central office rather than regional office staff the first year.

1. First year: Approximately 5% increase to staff time. Central office to prepare for implementation, review applications, and maintain service data files. However, expect only 10 to 20 ambulance services to apply the first year.

2. Continuing costs or savings: Will increase as more services participate.

3. Additional factors increasing or decreasing costs: Regional staff will monitor follow-up activities of ambulance services. Their responsibilities will likely begin to increase the second year.

(b) Reporting and paperwork requirements: Will 1) review training applications and report results to ambulance service; 2) maintain ambulance service data files, and provide status reports to Division of Licensing and Regulation.

(3) Assessment of anticipated effect on state and local revenues: No change. There will be no separate certification of skill.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This skill allows use of an automatic machine to deliver treatment, whereas use of a manual operated machine requires training to paramedic level, a more time consuming and expensive training program.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy conflicts with, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. Only if the ambulance service that voluntarily provides service is partially or fully financed by a local government. Only as an optional decision. This is not a mandatory requirement.

3. State the aspect or service of local government to which this administrative regulation relates. The ambulance service, if they voluntarily decide to offer this new procedure.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Will increase cost to provide service. However, may charge an increased fee to consumer to offset the increased cost.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 17:010. State health plan.

RELATES TO: KRS 216B.040(2)(a)

STATUTORY AUTHORITY: KRS 194.050, 194.090(2)(a) [1986 Acts Chapter 474]

NECESSITY AND FUNCTION: [Pursuant to 1986 Acts Chapter 474 the Statewide Health Coordinating Council is created to prepare and review, as necessary, a state health plan which establishes a health planning policy for the Commonwealth and describes the health services needed to provide for the well being of persons residing in the state. The Cabinet for Human Resources prepares a Preliminary State Health Plan for the Statewide Health Coordinating Council in preparing the state health plan. The plan becomes final upon approval of the governor.] The Kentucky State Health Plan provides review criteria and standards which are used by the Commission for Health Economics Control in Kentucky [utilizes the state health plan] in review of applications for certificates of need to establish and modify health services and health facilities in the Commonwealth. The function of this regulation is to incorporate the Kentucky State Health Plan 1990-1993 into the administrative regulations [assist in the inventory of existing health resources and to set planning goals and guidelines].

Section 1. The Kentucky State Health Plan 1990-1993 [1988-1990], was adopted by the Council for Health Services on August 16, 1990 [Statewide Health Coordinating Council on April 6, 1989], and approved by Governor Wallace G. Wilkinson as the document that provides review criteria and standards [sets out planning policies and guidelines] for use by the Commission for Health Economics Control in Kentucky. A copy of the Kentucky State Health Plan 1990-1993 [1988-1990] is on file in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621 and is open and available for public inspection during normal business hours.

Section 2. The [Review Criteria and Standards Section, pages 175 through 199, of the] Kentucky State Health Plan 1990-1993 [1988-1990] is hereby adopted in its entirety by reference as regulations of the Cabinet for Human Resources as if fully set out herein.

C. HERNANDEZ, M.D., M.P.H., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: December 6, 1990
FILED WITH LRC: December 14, 1990 at 10 a.m.
PUBLIC HEARING: A public hearing on this

regulation has been scheduled for January 22, 1991 at 9 a.m. in the DES Conference Room, located on the Second Floor of the CHR Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 17, 1991 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: Mel Counts

(1) Type and number of entities affected: Entities to be affected may include a currently licensed health facility or service, or any person or combination of persons requesting a certificate of need for licensure.

(a) Direct and indirect costs or savings to those affected: This regulation incorporates by reference the State Health Plan's review criteria and standards for certificate of need review. There will not be any direct or indirect cost to affected entities.

1. First year: This regulation incorporates by reference the State Health Plan's review criteria and standards for certificate of need review. There will not be any direct or indirect cost to affected entities.

2. Continuing costs or savings: This regulation incorporates by reference the State Health Plan's review criteria and standards for certificate of need review. There will not be any direct or indirect cost to affected entities.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Since this administrative regulation would apply to all health facilities or service providers seeking a certificate of need, it would have no effect on competition.

(b) Reporting and paperwork requirements: There are no specific reporting requirements or paperwork required as a result of this regulation.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This administrative regulation simply incorporates by reference the Kentucky State Health Plan 1990-1993. There will not be any direct and indirect costs or savings as a result of this regulation.

1. First year: There will be no costs or savings as a result of this administrative regulation.

2. Continuing costs or savings: There will be no continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements related to this administrative regulation.

(3) Assessment of anticipated effect on state and local revenues: There will be no affect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Senate Bill 68, Section 1, require the State Health Plan be "prepared triennially, updated annually". Therefore, no alternative methods were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy that will be in conflict, overlapped, or duplicated.

(a) Necessity of proposed regulation if in conflict: There is no regulation in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no regulation in conflict.

(6) Any additional information or comments: No additional information or comments.

TIERING: Was tiering applied? No. The review criteria and standards are applied equally to all entities submitting applications for certificates of need to determine consistently with the State Health Plan.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(Proposed Amendment)

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

RELATES TO: KRS 194.050
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility as prescribed by Public Law 97-35 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981 as amended) to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. [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 states the eligibility and benefits criteria for [each of two (2) components of] energy assistance[, subsidy and crisis, under the Home Energy Assistance Program (HEAP)].

Section 1. Definitions. [Terms used in HEAP are defined as follows:]

(1) [(8)] An "authorized representative" means [is] the person [applying on behalf of a household] who presents to the cabinet or its representative a written statement signed by the appropriate household member authorizing that person to apply on the household's behalf.

(2) [(6)] "Crisis component" means [is] the component that [administered by local organizations under contract with the cabinet to] provides assistance to households which are experiencing a home heating crisis [assistance].

(3) [(4)] "Economic unit" means [is] one (1) or more persons sharing common living arrangements.

(4) "Emergency" means the household is without heat at the time of application.

(5) [(2)] "Energy" means electricity, gas, and any other fuel that is used to sustain reasonable living conditions.

(6) "Gross income" means all earned and unearned income, including lump sum payments received by the households during the calendar month preceding the month of the application.

(7) "Heating season" means the period from October through April.

(8) [(3)] "Household" means any individual or group of individuals [who are] living [together]

in the principal residence as one (1) economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

(9) [(7)] "Life threatening situation" [under the crisis component] means without heat or will be without heat within forty-eight (48) hours and temperatures are at a dangerous level for household members.

(10) [(1)] "Principal residence" means [is] the place:

(a) Where a person is living voluntarily and not on a temporary basis;

(b) [the place] He considers home;

(c) [the place] To which, when absent, he intends to return; and

(d) [the place] Is identifiable from other residences, commercial establishments, or institutions.

(11) [(5)] "Subsidy component" means [is] the component that provides [portion of benefits reserved as] energy assistance for heating.

Section 2. Application. (1) Each household or authorized representative [of the household requesting assistance] shall complete an application and provide information necessary to determine eligibility and benefit amount.

(2) An application shall not be considered completed until all information needed [to determine eligibility and benefit amount] is received.

Section 3. Eligibility Criteria. (1) Income. [A household shall meet the following conditions of eligibility for receipt of a HEAP payment under the subsidy and crisis components:]

[(a) The amount of continuing and noncontinuing earned and unearned gross income including lump sum payments received by the household during the calendar month preceding the month of application shall be considered. Income received on an irregular basis shall be prorated.]

(a) [(b)] Gross income [for the calendar month preceding the month of application] shall be at or below the applicable amount shown on the income scale for the appropriate size household. [Excluded from income are payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant shall spend for that purpose, payments made to others on the household's behalf, loans, reimbursements for expenses, incentive payments (JET and JTPA) normally disregarded in AFDC, federal payments or benefits which shall be excluded according to federal law, and Supplemental Medical Insurance premiums.]

Income Scale

Family Size	Monthly	Yearly
1	$ 575 [548]	$ 6,908 [6,578]
2	771 [735]	9,262 [8,822]
3	968 [922]	11,616 [11,066]
4	1,164 [1,109]	13,970 [13,310]
5	1,360 [1,296]	16,324 [15,554]
6	1,556 [1,483]	18,678 [17,798]

(b) [(c)] For each household member more than six (6), the above income eligibility limitation [for six (6)] shall be increased by $196 [187] monthly or $2,354 [2,244] yearly.

(c) Excluded from income are:

1. Payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant must spend for that purpose;

2. Payments made to others on the household's behalf;

3. Loans;

4. Reimbursements for expenses;

5. Incentive payments (JET and JTPA) normally disregarded in AFDC;

6. Federal payments or benefits which shall be excluded according to federal law; and

7. Supplemental medical insurance premiums.

(2) Liquid assets.

(a) [(d)] The household shall have total liquid assets at the time of application of not more than $5,000.

(b) Excluded assets are:

1. Cars; [,]

2. Household or personal belongings; [,]

3. Principal residence; [,]

4. Cash surrender value of insurance policies; [,]

5. Prepaid burial policies; [,]

6. Real property; [,] and

7. Cash on hand or in a bank account if the cash is income considered under subsection (1)(a) of this section [paragraph (a) of this subsection].

(3) Crisis component.

(a) Applicants shall meet the income and liquid assets criteria; and

[(e) Applicants for the crisis component shall]

(b) Be without heat; [,]

(c) Be without fuel within five (5) days; [,]

(d) Have received a notice of disconnection of service; [, or]

(e) Require a heat system repair to obtain adequate heat; or

(f) For those households whose home heating costs are included as an undesignated portion of the rent, the household must have received a notice of eviction for nonpayment of rent.

[(2) Households are eligible to receive benefits under the subsidy component once and under the crisis component not to exceed the maximum amount of benefits. The maximum amount of benefits from both components shall not exceed $300.]

Section 4. Benefit Levels. [Payment amounts for the subsidy and crisis components are set at a level to serve a maximum number of households while providing a reasonably adequate benefit relative to energy costs. In the subsidy component, the highest level of assistance shall be provided to households with lowest incomes and highest energy costs in relation to income, taking into account family size.]

(1) Subsidy component. Payments to the [eligible] households heating fuel providers [under the subsidy component] shall be made for the full benefit amount. Benefits shall be determined from fuel usage data and from the cost of the six (6) primary heating fuels prior to the implementation of the subsidy component. Households shall receive benefits based on the household's poverty level and the type of heating fuel. Those households with the lowest incomes and highest season fuel costs shall receive the highest benefits. [based on type of energy for heating, monthly household income, and household size as follows:]

(a) For residents of unsubsidized housing, benefits shall be a percentage of the average annual heating season energy costs of the

primary heating fuel.

(b) For residents of subsidized housing, benefits shall be a percentage of the applicant's share of the actual total energy costs for his current residence during the heating season. Each household shall have the option of documenting actual costs for the previous heating season or using the average annual heating season energy cost for the primary fuel. Subsidized housing applicant's share of heating season energy costs shall be identified as follows:

1. Total shelter costs will be identified as the fair market value of the residence plus the utility allowance per the public housing administering agency's regulations.

2. Each household's share of the total shelter costs will be identified per the public housing administering agency's procedures.

3. Each household's share of shelter costs will be divided by the total shelter costs of the residence to identify the percentage of shelter costs that is borne by the household.

4. Total energy costs for the household's residence is identified either as the average heating season energy costs for the primary heating fuel or, if the household chooses, the actual costs of all energy for the residence for the previous heating season.

5. The household's share of heating season energy costs shall be the same percentage of total energy costs as the household's share of total shelter costs.

(c) Benefit matrix subsidy component.

Household Income as a % of 100% Federal Poverty Level	Benefit Amount as a % of Heating Season Energy Costs (October through April)
0-14%	19.6%
15-29%	17.1%
39-44%	14.6%
45-59%	12.1%
60-74%	9.6%
75-89%	7.1%
90-110%	4.6%

[Benefit Scales
Subsidy Component

Scale A.
Energy Sources: Electricity

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or More
$ 0 - $400	$123	$135
$401 - $800	$105	$117
Over $800	---	$101]

[Scale B.
Energy Sources: LP Gas (Propane), Fuel Oil, Kerosene, Natural Gas

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or More
$ 0 - $400	$113	$125
$401 - $800	$ 95	$107
Over $800	---	$ 88]

[Scale C.
Energy Sources: Coal, Wood

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or More
$ 0 - $400	$100	$112
$401 - $800	$ 82	$ 94
Over $800	---	$ 75]

[(2) If the cabinet receives a percentage of the federal funds authorized by Congress, benefits to eligible households under the subsidy component may be reduced proportionately.]

(2) Crisis component. [(3)] Benefits to [eligible] households [under the crisis component] shall be the minimum amount necessary to alleviate the crisis. Benefits may be [in the form of] fuel or other energy for heating, heaters, blankets, sleeping bags, emergency shelter [vouchers to purchase these item], or repair to a heating system to obtain adequate heat. The contracting agency shall determine the type and value of assistance necessary to alleviate the crisis.

(a) In determining the minimum amount of assistance [necessary to alleviate the crisis], the contracting agency shall [may] take into consideration direct subsidies for payment of utility cost received by the household from other programs.

(b) A household may receive assistance more than once, but may not receive more than the maximum allowable for the primary heating fuel which shall be the cost of an average sixty (60) day supply based on energy usage data and the cost of fuel as determined prior to component implementation.

(c) [(b)] The benefits for a household threatened with eviction whose heat is an undesignated portion of the rent shall not exceed [, shall be for] the energy portion, (in gas and electric) of the monthly [rent owed which is defined as an amount up to the] Standard Utility Allowance (SUA) in the Food Stamp Program. Those benefits are as follows:

Household Size	SUA
1 and 2	$105 [145]
3	$109 [151]
4 or more	$120 [166]

These benefit amounts are available per each month that the household is in arrears on the rent with the maximum benefits not to exceed the average sixty (60) day supply for the primary heating fuel.

Section 5. Benefit Delivery Methods. [Benefits shall be provided to eligible households as follows:]

[(1) When feasible, payment under the subsidy I component is authorized by a two (2) party check made payable to the recipient and the provider or landlord if the heating is included as an undesignated portion of rent.]

[(2) When a two (2) party check is not issued under the subsidy I component, the recipient shall sign a statement on the application prior to receipt of funds affirming that benefits received under HEAP shall be used solely for home energy.]

(1) [(3)] Payment under the subsidy [II] component is authorized by a one (1) party check made payable to the vendor or landlord if the heating is included as an undesignated portion of rent.

[(4) Under the subsidy component,] At the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider (for example, when the recipient heats with both a wood stove and electric space heaters). However, the total amount of the payments shall not exceed the maximum for the primary source of [energy for] heating. [The household may decide how to divide payment if more than one (1) provider is used.]

(2) [(5)] For the crisis component, no direct cash payments shall be made to the recipient. [Benefits shall be provided to eligible households by the contracting agency in the amount and value determined by the contracting agency necessary to alleviate the crisis, not to exceed the maximum allowable payment.] Payments [under the crisis component] shall be authorized to the energy provider by one (1) party checks upon delivery of fuel, heaters, blankets, sleeping bags, emergency lodging, restoration or continuation of service, or upon repair of the heating system.

Section 6. Right to a Fair Hearing. Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055[, Hearings and appeals].

Section 7. Time Standards. (1) Under the subsidy component, [the cabinet shall make] an eligibility determination shall be made promptly after receipt of a completed and signed application but not to exceed thirty (30) days.

(2) Under the crisis component, completed applications shall be processed so that the crisis is resolved within forty-eight (48) hours and in life threatening situations within eighteen (18) hours.

(3) Applicants [under the crisis component] shall have five (5) working days from the date of application to provide information necessary to complete the application.

Section 8. Effective Dates. (1) [The following shall be the] Implementation and termination dates for HEAP, depending upon the availability of funds, are:

[(1)](a) Applications for the subsidy component shall be accepted [from households containing at least one (1) member who is elderly (age sixty (60) or older) or receiving benefits due to 100 percent disability] beginning October 15, 1990 [16, 1989] and ending by October 31, 1990 [27, 1989].

[(b) Applications for the subsidy II component shall be accepted from households that were not eligible for subsidy I component beginning January 8, 1990, and ending by January 12, 1990, or until expenditures have resulted in utilization of available funds.]

(b) [(2)] Applications for the crisis component shall be accepted beginning December 3 [January 15], 1990 and ending by March 29, 1991, or until all available funds have been expended. [April 27, 1990, except in emergency situations where the household is without heat at the time of application. Applications for emergencies shall be accepted beginning December 18, 1989.]

[(3)] Applications shall be processed in the order taken until funds are expended. [HEAP subsidy component shall be terminated when actual and projected component expenditures have resulted in utilization of available funds or October 27, 1989.]

(2) [(4)] HEAP may be reactivated after termination under the same terms and conditions as shown in this regulation if additional federal funds are made available.

Section 9. Allocation of Funds. (1) Up to fifteen (15) percent of the total HEAP allocation shall be reserved for weatherization assistance.

(2) An amount of funds sufficient to provide benefits to all eligible households that apply during the subsidy application period shall be reserved for the subsidy component. [Up to $4,990,800 of benefit funds shall be reserved for the crisis component. The funds reserved for the crisis component shall be allocated, by local administering agency, based upon the 1980 Census poverty levels of the counties served by the local administering agency. At any point after January 15, 1990 all unobligated allocations may be reallocated by the contracting agency at the discretion of the Department for Social Insurance in order to assure crisis benefits availability on a statewide basis.]

(3) The balance of benefit funds for HEAP shall be reserved for the crisis component. The funds reserved for the crisis component shall be allocated based upon the 1980 census poverty levels of the counties served by the local administering agency. [Up to $10,400,000 of benefit funds shall be reserved for the subsidy component. Any funds remaining unobligated from the subsidy component may be made available under the crisis component.]

(4) An amount [to be determined by the Department for Social Insurance] shall be reserved from the crisis component under subsection (3) [(2)] of this section to assure component availability until March 29, 1991 [15, 1990] for emergency crisis assistance for households who are without heat.

(5) Up to $25,000 shall be reserved for the Preventive Assistance Program administered by the Department for Social Services to assist families with an energy payment not to exceed $300 for each family if the payment shall prevent the removal of a child from a family or if it shall assist in reuniting a child with the family.

Section 10. Energy Provider Responsibilities. Any provider accepting payment from HEAP for energy or services provided to eligible recipients shall comply with the following:

(1) Reconnection of utilities and delivery of fuel shall be accomplished upon certification for payment;

(2) The household shall be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program. For balances remaining after acceptance of the HEAP payment, the customer shall be offered the opportunity for a deferred payment arrangement or a level payment plan;

(3) HEAP recipients shall not be treated worse than households not receiving benefits;

(4) The household on whose behalf benefits are paid shall not be discriminated against, either

in the costs of goods supplied or the services provided; and

(5) A landlord shall not increase the rent of recipient households due to receipt of this payment.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: November 15, 1990
FILED WITH LRC: December 6, 1990 at 3:30 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1991, at 9 a.m. at the Department for Employment Services Conference Room, Second Floor West, Cabinet for Human Resources Building. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1991, five days prior to 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: Amendment of this regulation is necessary to be in compliance with the federal fiscal year 1991 Low Income Home Energy Assistance Program (LIHEAP) Block Grant. HEAP will have two components: subsidy and crisis. Subsidy will provide heating assistance benefits up to 119,000 households, and crisis will provide heating assistance up to 45,967 households experiencing a heating crisis. The 23 local community action agencies will administer the program.

(a) Direct and indirect costs or savings to those affected: In the subsidy component, all eligible households that apply will receive benefits to average $90 per household for unsubsidized housing and $15 for subsidized housing. To the extent that funds remain available, assistance will be provided to eligible households experiencing a crisis, and will be the minimum necessary to alleviate the crisis. Assistance may be fuel or other energy for heating, heaters, blankets, sleeping bags, emergency shelters, or repair to a heating system to obtain adequate heat. The average crisis benefits per household is estimated at $175. Administrative benefits not to exceed 10 percent of the reimbursable benefit costs will be made available to reimburse the community action agencies for allowable administrative cost.

1. First year: A total of up to $17.7 million shall be available for benefits under HEAP. Up to $11,000,000 shall be allocated for subsidy and the balance, including all unexpended funds from subsidy will be allocated to the crisis component. Up to $1.77 million shall be available to reimburse administrative costs.

2. Continuing costs or savings: The LIHEAP Block Grant Application and Plan Narrative is submitted annually and is based upon the estimated federal appropriation level. There will not be any continuing costs or savings under the amendments being made to the regulation in accordance with the requirements of the current state plan.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The Cabinet for Human Resources is not aware of any additional factors increasing or decreasing costs. This regulation has no effect on competition.

(b) Reporting and paperwork requirements: All HEAP applicants shall complete an application and provide materials to verify eligibility. The local administering agencies shall report services provided, submit invoices necessary for reimbursement and shall be subject to reporting and paperwork requirements necessary for appropriate administration of energy assistance programs including audits.

(2) Effects on the promulgating administrative body: The Department for Social Insurance shall be responsible for the overall administration of HEAP.

(a) Direct and indirect costs or savings: Up to 10 percent of the LIHEAP Block Grant allocation (including the Energy Assistance Trust Funds appropriated to LIHEAP by the General Assembly and not transferred to another block grant) may be used for administration.

1. First year: Normal costs associated with administration of this program and contract management shall be incurred.

2. Continuing costs or savings: There will not be any continuing costs or savings under the current state plan.

3. Additional factors increasing or decreasing costs: The Department for Social Insurance is not aware of additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Administrative requirements for grants under appropriate state and federal law and regulations shall be met. This includes maintenance of the state plan and regulation, revisions as necessary to outreach material, annual reports, audits, and all such other usual and normal administrative requirements for grants management.

(3) Assessment of anticipated effect on state and local revenues: HEAP shall have little impact upon state or local revenues. Increased tax revenues will be generated from recipient expenditures for or receipt of energy assistance benefits. The expenditure for the state fiscal year 1991 Energy Assistance Trust Fund appropriation ($6.195 million) will reduce the amount of funds invested to the Trust Fund and thus reduce the amount of interest revenues earned by the Trust Fund.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is being amended in accordance with the requirements of the federal fiscal year 1991 LIHEAP State Plan which was subject to substantial public review and comment, a legislative review and public hearing, and a Kentucky intergovernmental review through the Kentucky State Clearinghouse Program criteria has been set at a level to maximize the number

of households assisted with the minimum amount necessary for a reasonable benefit. Various levels of funding for the two (2) components were examined. Balancing a federal intent that funds be used for heating assistance with the need for adequate crisis assistance funding, the cabinet proposed the funding levels reflected in the State Plan. The public review and comment supported the funding levels.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or governmental policy is in conflict, overlapping, or a 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: No additional information or comment.

TIERING: Was tiering applied? Yes

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes X No___ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. This regulation will affect cities which own and operate utilities for heating.

3. State the aspect or service of local government to which this administrative regulation relates. Municipal utilities.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The provision of energy assistance benefits helps low income households pay for and maintain heat. Municipal utilities, and thus the cities, will benefit through reductions in the amount of payments in arrears and through helping households to maintain service.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 97-35 as amended (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, as amended).

2. State compliance standards. This regulation specifies income eligibility at 110 percent of poverty. It also provides for local administration by community action agencies.

3. Minimum or uniform standards contained in the federal mandate. The federal statute permits income elgibility to range between 110 percent and 150 percent of poverty. The statute requires that local administering agencies, which prior to enactment of the statute, administering similar energy assistance programs be given priority for selection. The statute requires crisis assistance that is weather or supply related or other energy crisis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The block grant concept permits state flexibility within broad guidelines contained in the statute. In order to target assistance to the most needy, the state has adopted the minimum income eligibility criteria permitted under the statute. Other criteria designed to target benefits to the most in need are a resources test of $5,000. To address amounts available for households in crisis assistance, household resources available for energy may be considered and for those households threatened with eviction, the benefit will not exceed the allowable heating benefit level of the Food Stamp Program. The statute does not address benefit type or amount. This regulation sets the type and value of assistance at a level to provide a reasonable benefit to serve the maximum number of households with the available funds.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Due to the limited amount of funds and a need in excess of our ability to serve at the level of available funds, it is necessary to target assistance to those households most in need.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:020. Payment for drugs.

RELATES TO: KRS 205.550, 205.560

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a program of Medical Assistance [under Title XIX of the Social Security Act]. KRS 205.550 and 205.560 require that the secretary prescribe the methods for determining costs for vendor payments for medical services. This regulation sets forth the method for determining amounts payable by the department for drugs.

Section 1. Maximum Allowable Cost Reimbursement Limits. (1) Reimbursement to pharmacies participating in the Medical Assistance Program for those drugs contained on the Kentucky Medical Assistance Program Outpatient Drug List (as published by the Cabinet for Human Resources), or preauthorized for individual recipients based on medical necessity, and provided to eligible recipients shall be determined in accordance with the following policies [is limited to the lowest of]:

(a) Drug costs shall be determined in the pharmacy program using the Medi-Span, Inc. tape pricing system with pricing determined by the actual package size utilized. The state maximum allowable cost (SMAC) amounts in effect on October 1, 1990 shall be frozen in place.

(b) Effective with regard to services provided through November 30, 1990, when an average wholesale price (AWP) and direct price are listed in Medi-Span, reimbursement shall be the lesser of the SMAC, federal maximum allowable cost (FMAC), or AWP minus five (5) percent, plus a dispensing fee (and unit dose add-on, as appropriate) or the billed charge unless the physician has written "do not substitute" or

"brand necessary" on the prescription. Effective with regard to services provided on or after December 1, 1990, when an average wholesale price (AWP) and a direct price is listed for drugs provided by those companies who had determined that at least fifty (50) percent of their products were sold directly to Kentucky pharmacies, and for which the Medicaid Program used direct pricing as of September 30, 1990, reimbursement shall be the lesser of the direct price, the SMAC, the FMAC, or AWP minus five (5) percent, plus a dispensing fee (and unit dose add-on, as appropriate) or the billed charge unless the physician has written "do not substitute" or "brand necessary" on the prescription.

(c) If an AWP is not listed, reimbursement shall be the lesser of the SMAC, FMAC, or direct price plus a dispensing fee (and unit dose add-on, as appropriate), or the billed charge unless the physician has written "do not substitute" or "brand necessary" on the prescription.

(d) If the physician has written "do not substitute" or "brand necessary" on the prescription, reimbursement shall be based on the lower of the pharmacy's usual and customary charge or the estimated acquisition cost (EAC) for the respective drug plus a dispensing fee (and unit dose add-on, as appropriate).

[(a) The maximum allowable cost (MAC) of the drug, if any, whether federal or state or both, plus a dispensing fee; or]

[(b) The estimated acquisition cost (EAC) of the drug plus a dispensing fee; or]

[(c) The provider's usual and customary charge to the public for a like product and service.]

[(2) Reimbursement to skilled nursing and intermediate care facilities for drugs provided to eligible recipients is allowable in accordance with the following:]

[(a) The Kentucky Medical Assistance Program Outpatient Drug List (with additions and deletions thereto) shall be provided by the program to each participating facility, and for the drugs contained therein, the limits specified in subsection (1) of this section are applicable;]

[(b) For drugs not on the drug list, the maximum reimbursement shall be the same as set forth in subsection (1)(a) through (c) of this section. EAC's shall be determined in the same manner as for drugs included on the outpatient drug list. SNF/ICF facilities shall not impose an additional charge on medicaid eligible recipients for drugs because of the limitations set forth in Section 1(2) of this regulation;]

[(c) A packaging cost allowance of not more than six (6) cents per dose may be added to the drug cost (if not already included) for unit dose packaged drugs. The packaging cost (up to six (6) cents, plus the drug cost is added to the dispensing fee to determine the total reimbursement amount for a unit dose packaged prescription;]

(e) For nursing facility residents meeting Medicaid patient status criteria, [(d)] there shall be no more than two (2) dispensing fees allowed per drug within a calendar month [thirty (30) day period], except for Schedules II, III, and IV controlled substances and for nonsolid dosage forms, including topical medication preparations, for which no more than four (4) dispensing fees per drug shall [will] be paid within a calendar month. For nursing facility residents not meeting Medicaid patient status criteria and nonresidents of nursing facilities, there shall be no more than one (1) dispensing fee allowed per drug per calendar month for drugs classified by the Medicaid Program as maintenance drugs. [thirty (30) day period.] Though dispensing fees are limited, this shall not be construed as placing a limit on the quantity of reimbursable drugs for which the program will pay for any patient, since the reasonable cost of the drug (as defined herein) is reimbursable as a covered service in whatever quantity is considered medically necessary for the patient. Nonsolid dosage forms include all covered drug items other than oral tablets or capsule forms. [Drug items or other related supplies purchased for routine use and which may be purchased without a prescription, including food supplements, are not reimbursable in SNFs or ICFs under the drug program, though the cost of such drug, supply item or food supplement, is an allowable cost for the facility with the cost computed in accordance with the state regulation covering medicaid reimbursement for the facility;]

(f) [(e)] Whenever possible, unused drugs paid for by the department shall be returned to the pharmacy with the credit for the cost of the drug and the unit dose packaging cost (if applicable) accruing to the cabinet. [as an offset against allowable ancillary cost; and]

[(f) Interim payments made to participating facilities for allowable drug costs shall be settled at actual allowable costs computed in accordance with the upper limits shown herein at the end of the facilities' fiscal year.]

(2) [(3)] Reimbursement to hospitals for drugs provided to eligible recipients is on the basis of reasonable cost pursuant to 907 KAR 1:013. While reimbursement for drugs provided to patients in brain injury units in nursing facilities and units providing ventilator dependent care in nursing facilities is within the all-inclusive rate for the brain injury unit or ventilator care unit, the upper limits in this regulation shall be applicable with regard to payments for drugs provided in those settings.

[Section 2. Physician Maximum Allowable Cost (MAC) Override. The MAC price limitation in Section 1 of this regulation shall not apply in any case where a physician certifies in his own handwriting that in his medical judgment, a specific covered brand is medically necessary for a particular patient. In such instances, reimbursement shall be based on the lower of the EAC plus a professional dispensing fee or the provider's usual and customary charge to the public for the drug.]

Section 2. [3.] Dispensing Fees. (1) [Effective July 1, 1984,] The dispensing fee shall be [no more than] three (3) dollars and twenty-five (25) cents per prescription for drugs reimbursed through the outpatient drug program to all eligible recipients except those in nursing facilities. [, as shown in Section 1(1) of this regulation, where the covered drugs are limited to those contained on the Kentucky Medical Assistance Program Outpatient Drug List. The allowable dispensing fee shall be no more than three (3) dollars and twenty-five (25) cents (except for the additional amount for unit dose packaging as shown in Section 1(2)(c) of this regulation) for drugs reimbursed as part of

the covered services of skilled nursing and intermediate care facilities, as shown in Section 1(2) of this regulation.]

(2) For eligible recipients in nursing facilities, an addition to the usual dispensing fee of three (3) dollars and twenty-five (25) cents shall be made for drugs dispensed through the pharmacy outpatient drug program in the amount of four (4) cents per unit dose for unit dose drugs packaged in unit dose form by the manufacturer and six (6) cents per unit dose for unit dose drugs packaged in unit dose form by the pharmacist.

Section 3. [4.] Reimbursement to Dispensing Physicians. Participating dispensing physicians who practice in counties where no pharmacies are located are reimbursed for the cost of the drug only, with the cost computed as the maximum allowable cost or estimated acquisition cost as shown in Section 1(1) of this regulation, or the physician's usual and customary charge to the general public for the drug if less, or in accordance with 907 KAR 1:010 for drugs purchased on the open mrket for specified immunizations shown in 907 KAR 1:009.

Section 4. Effective Date. The amendments to this regulation, except as otherwise provided, shall be effective with regard to services provided on and after October 1, 1990.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: December 13, 1990
FILED WITH LRC: December 13, 1990 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1991, five days prior to 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 unelss 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 pharmacies and nursing facilities.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $3.7 million (savings)
2. Continuing costs or savings: $3.7 million (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:
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 and intermediate care facility for the mentally retarded 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 and intermediate care facility for the mentally retarded services for which payment shall be made by the medical assistance program in behalf of both the categorically needy and medically needy.

Section 1. Definitions. The following definitions shall be applicable:
(1) "Patient status" means that the individual has care needs meeting the criteria set forth in this regulation for treatment in the institutional setting.
(2) "Intermittent high intensity services" means the individual requires high intensity nursing services at regular or irregular intervals, but not on a twenty-four (24) hour per day basis.
(3) "Stable medical condition" means one which is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in the patient's condition or treatment regimen.
(4) "Nursing facility" (NF) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as

meeting nursing facility standards. A facility which is certified to the department as meeting skilled nursing facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility until the first survey agency survey of the facility which occurs on or after October 1, 1990. Hospital swing beds providing services in accordance with 42 USC 1395tt and 42 USC 1396l shall also be considered nursing facilities so long as the swing beds are certified to the department as meeting requirements for the provision of swing bed services under federal laws and regulations. Nursing facilities shall meet Medicare participation requirements.

(5) "Nursing facility with waiver" (NF-W) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting all nursing facility requirements except for the nurse staffing requirement for which a waiver has been granted by the survey agency; nursing facilities with waiver do not meet Medicare participation requirements. A facility which is certified to the department as meeting intermediate care facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility with waiver until the first survey agency survey of the facility which occurs on or after October 1, 1990.

(6) "Intermediate care facility for the mentally retarded" (ICF-MR) means a licensed intermediate care facility for the mentally retarded certified to the Department for Medicaid Services as meeting all standards for intermediate care facilities for the mentally retarded.

(7) "High intensity nursing care services" means care provided to Medicaid eligible individuals who meet high intensity patient status criteria by nursing facilities (NFs) participating in the Medicaid program. High intensity nursing care patient status criteria shall be equivalent to skilled nursing care standards under Medicare.

(8) "Low intensity nursing care services" means care provided to Medicaid eligible individuals who meet low intensity patient status criteria by nursing facilities (NFs) or nursing facilities with waiver (NFs-W) participating in the Medicaid program. Low intensity nursing care patient status criteria shall be equivalent to the former intermediate care patient status standards.

(9) "Intermediate care for the mentally retarded and persons with related conditions services" means care provided to Medicaid eligible individuals who meet ICF-MR patient status criteria by ICF-MRs participating in the Medicaid program.

Section 2. [1.] Participation Requirements. Each facility desiring to participate as a [skilled] nursing facility, nursing facility with waiver, or ICF-MR shall 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 Medicaid [Title XIX] shall be deemed met.

(3) Each [skilled] nursing facility and nursing facility with waiver shall be required to comply with the preadmission screening and annual resident review requirements specified in 42 USC 1396r [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.

(4) A facility shall be required to be certified by the state survey agency as meeting NF, NF-W, or ICF-MR status; a facility not appropriately certified shall not participate in the Medicaid program except for appropriately certified SNFs or ICFs during the grandfathered period which ends upon the facility's first survey by the state survey agency on or after October 1, 1990.

Section 3. [2.] Provision of Service. (1) Payment for high intensity, low intensity and ICF-MR services shall be limited to those services meeting the care definitions shown in Section 1 of this regulation. A nursing facility may provide and receive payments for high intensity and low intensity services; a nursing facility with waiver may provide and receive payments for low intensity services only; and an ICF-MR may provide and receive payments for ICF-MR services only. [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 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 4. [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.

(1) 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 42 USC 1396r [Section 1919 of the Social

Security Act] with regard to admissions and resident stays occurring on or after January 1, 1989.

(2) Patients qualify for high intensity [skilled] nursing care when their needs mandate high intensity [skilled] nursing or high intensity [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 that it can be safely or effectively performed only by or under the supervision of technical or professional personnel, the patient would qualify for high intensity [skilled] nursing care. A patient with an unstable medical condition manifesting a combination of care needs in the following areas shall [may] qualify for high intensity [skilled] nursing care:

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

(b) [(2)] Nasogastric or gastrostomy tube feedings;

(c) [(3)] Nasopharyngeal and tracheotomy aspiration;

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

(e) [(5)] In-dwelling catheter for therapeutic management of a urinary tract condition;

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

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

(h) [(8)] Sterile dressings;

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

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

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

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

(m) [(13)] Receiving services which would qualify as high intensity [skilled] rehabilitation services when provided by or under the supervision of a qualified therapist(s), for example: 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.

(3) An individual shall be determined to meet low intensity patient status when the individual requires intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting. In making the decision a to patient status, the following criteria shall be applicable:

(a) An individual with a stable medical condition requiring intermittent high intensity services not provided in a personal care home shall be considered to meet patient status.

(b) An individual with a stable medical condition, who has a complicating problem which prevents the individual from caring for himself in an ordinary manner outside the institution shall be considered to meet patient status. For example, ambulatory cardiac and hypertensive patients may be reasonably stable on appropriate medication, but have intellectual deficiencies preventing safe use of self-medication, or other problems requiring frequent nursing appraisal, and thus be considered to meet patient status.

(c) An individual with a stable medical condition manifesting a significant combination of the following care needs shall be determined to meet low intensity patient status when the professional staff determines that such combination of needs can be met satisfactorily only by provision of intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting:

1. Assistance with wheelchair;

2. Physical or environmental management for confusion and mild agitation;

3. Must be fed;

4. Assistance with going to bathroom or using bedpan for elimination;

5. Old colostomy care;

6. In-dwelling catheter for dry care;

7. Changes in bed position;

8. Administration of stabilized dosages of medication;

9. Restorative and supportive nursing care to maintain the patient and prevent deterioration of his condition;

10. Administration of injections during time licensed personnel is available.

11. Services that could ordinarily be provided or administered by the individual but due to physical or mental condition is not capable of such self-care.

12. Routine administration of medical gases after a regimen of therapy has been established.

(d) An individual shall not generally be considered to meet patient status criteria when care needs are limited to the following:

1. Minimal assistance with activities of daily living;

2. Independent use of mechanical devices, for example, assistance in mobility by means of a wheelchair, walker, crutch(es) or cane;

3. Limited diets such as low salt, low residue, reducing and other minor restrictive diets;

4. Medications that can be self-administered or the individual requires minimal supervision.

(4) 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 subsections (2) and (3) of this section shall generally be considered to meet patient status. However, these individuals

shall be specifically excluded from coverage in the following situations:

(a) When the cabinet determines that in the individual case the combination of care needs are beyond the capability of the facility, and that placement in the 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

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

(c) When the patient does not meet the preadmission screening and annual resident review criteria specified in 42 USC 1396r for entering or remaining in a facility.

(5) An individual shall be determined to meet patient status for an intermediate care facility for the mentally retarded and persons with related conditions when the individual requires physical or environmental management or rehabilitation for moderate to severe retardation. In making the decision as to patient status the following criteria shall be applicable:

(a) An individual with significant developmental disabilities and significantly subaverage intellectual functioning who requires a planned program of active treatment to attain or maintain the individual's optimal level of functioning, but does not necessarily require nursing facility or nursing facility with waiver services, shall be considered to meet patient status.

(b) An individual requiring a protected environment while overcoming the effects of developmental disabilities and subaverage intellectual functioning shall be considered to meet patient status while:

1. Learning fundamental living skills;

2. Learning to live happily and safely within his own limitations;

3. Obtaining educational experiences that will be useful in self-supporting activities;

4. Increasing his awareness of his environment.

(c) An individual with a psychiatric primary diagnosis or needs shall be considered to meet patient status criteria only when the individual also has care needs as shown in paragraph (a) or (b) of this subsection, the mental care needs are adequately handled in a supportive environment (i.e., the intermediate care facility for the mentally retarded), the individual does not require psychiatric inpatient treatment.

(d) An individual that does not require a planned program of active treatment to attain or maintain the individual's optimal level of functioning shall not be considered to meet patient status.

(e) It shall be the policy of the cabinet that no individual shall be denied patient status soley due to advanced age, or length of stay in an institution, or history of previous institutionalization, so long as the individual qualifies for patient status on the basis of all other factors.

(f) With regard to an individual with a "related condition" (not mental retardation) the illness or ailment shall have manifested itself prior to the individual's 22nd birthday.

Section 5. [4.] Reevaluation of Need for Service. [Skilled] Nursing facility, nursing facility with waiver, and ICF-MR services 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 and 4 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 high intensity, low intensity, or intermediate care for the mentally retarded services and payment is no longer appropriate in the facility [skilled care], payment shall continue for ten (10) days to permit orderly discharge or transfer to an appropriate [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 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 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 high intensity [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 shall [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 shall [must] be granted prior to exhaustion of those benefits.

(1) Injuries within the scope of benefits shall be [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 shall be [are] as follows:
(a) The individual sustained a traumatic brain injury with structural, nondegenerative brain damage and is medically stable;
(b) The individual shall [is] not be 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, encephalitis, or cardiovascular accident with rehabilitation potential.
(3) The determination as to whether preauthorization is appropriate shall [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 shall be [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. Reserved Bed Days. The cabinet shall [will] cover reserved bed days [(effective December 1, 1984)] in accordance with the following specified upper limits and criteria.
(1) Reserved bed days for nursing facilities and nursing facilities with wavier shall [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 shall [will] be covered for a maximum of fifteen (15) days per provider during the calendar year for leaves of absence other than for hospitalization.
(2) For intermediate facilities for the mentally retarded and persons with related conditions, reserved bed days shall be covered for a maximum of forty-five (45) days per provider within a calendar quarter. Reserved bed days for hospital stays shall not exceed fifteen (15) days per stay. No more than thirty (30) consecutive reserved bed days (for hospital stay(s) plus leave(s) of absence, or leave of absence only) shall be approved for coverage.
(3) Coverage during a recipient's absence for hospitalization or leave of absence shall be [is] contingent on the following conditions being met:
(a) The person shall be [is] in Medicaid [Title XIX] payment status in the level of care he/she is authorized to receive and shall have [has] been a resident of the facility at least overnight. Persons for whom Medicaid [Title XIX] is making Medicare [Title XVIII] coinsurance payments shall [are] not be considered to be in Medicaid [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 shall be [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 October 1, 1990 [July 1, 1989].

Section 9. 907 KAR 1:024, Intermediate care facility services, is hereby repealed.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: December 7, 1990
FILED WITH LRC: December 13, 1990 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1991, five days prior to 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 nursing facilities and intermediate care facilities for the mentally retarded.

(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:*
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: 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 is shown in the companion regulation, 907 KAR 1:025
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 1:095. Payments for nurse-midwife services.

RELATES TO: KRS 205.520, 205.560
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, shall [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 nurse-midwife services.

Section 1. General Requirements Relating to Payments. Participating nurse-midwife providers shall be paid only for covered services rendered to eligible recipients, and services provided shall [must] be within the scope of practice of the nurse-midwife.

Section 2. [Outpatient] Reimbursement. [(1)] For services provided on or after July 1, 1990, payments to nurse-midwives shall be at usual and customary actual billed charges on a procedure-by-procedure basis, with reimbursement for each [a] procedure to be the lesser of the actual billed charge or at seventy-five (75) percent of the fixed upper limit per procedure for physicians. [not to exceed 75 percent of the amount reimbursable to general practice physicians (nonspecialists) at the 75th percentile for the procedure.]
[(2) All procedures shall have the upper limits recomputed at the same time the 75th percentile is recomputed for physicians.]

[Section 3. Inpatient Reimbursement. Reimbursement for nurse-midwife services provided to inpatients of hospitals is made on the basis of 100 percent reimbursement per procedure for the first twenty (20) dollars of allowable reimbursement and on the basis of a percentage of the nurse-midwife's usual, customary and reasonable charge in excess of twenty (20) dollars per procedure, after the appropriate prevailing fee screen is applied. The "prevailing fee screen" means, in this instance, application of the limitation shown in Section 2(1) of this regulation. The percentage rate applied to otherwise allowable reimbursement in excess of twenty (20) dollars per procedure is established at thirty-five (35) percent. The percentage rate will be reviewed periodically and adjusted according to the availability of funds.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: December 7, 1990
FILED WITH LRC: December 13, 1990 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1991, five days prior to 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 nurse-midwife providers 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:
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 1:430. Incorporation by reference of the Home Health Services Manual.

RELATES TO: KRS 205.520[, Title XIX of the Social Security Act]
STATUTORY AUTHORITY: KRS 194.050, 447.325, 42 USC 1396a, b, c, d; 42 CFR 440.70
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 home health 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 Home Health Services Manual, revised November [February] 1, 1990, 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 shall [will] not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: November 19, 1990
FILED WITH LRC: November 28, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1991, five days prior to 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 home health 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 BY FILING DEADLINE

REVENUE CABINET
Department of Administrative Services

103 KAR 17:081. Repeal of 103 KAR 17:080.

RELATES TO: KRS 6.525, 21.470, 61.690, 141.021, 1642.871
STATUTORY AUTHORITY: KRS Chapter 13A, 131.130
NECESSITY AND FUNCTION: This regulation repeals 103 KAR 17:080 which describes exemptions from Kentucky individual income tax for certain retirement income. These income tax exemptions are found in various KRS chapters. 103 KAR 17:080 is incorrect after passage of Senate Bill 4 by the 1990 General Assembly. Since correction of 103 KAR 17:080 by amendment appears barred by KRS Chapter 13A, its repeal becomes necessary.

Section 1. 103 KAR 17:080 is repealed.

C. EMMETT CALVERT, Secretary
APPROVED BY AGENCY: December 10, 1990
FILED WITH LRC: December 13, 1990 at 3 p.m.
PUBLIC HEARING: A public hearing on this regulation will be held on January 23, 1991 at 10 a.m. at Room 406, Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Scott Akers, Revenue Cabinet, Division of Tax Policy and Research, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers
(1) Type and number of entities affected: All taxpayers receiving retirement income from federal government, Kentucky state government (including teacher's retirement) and local government.
(a) Direct and indirect costs or savings to those affected:
1. First year: None. The retirement exemptions remain in the various chapters of the Kentucky Revised Statutes.
2. Continuing costs or savings: None
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: Repeal of this regulation will increase requests for information from taxpayers and tax practitioners.
(a) Direct and indirect costs or savings:
1. First year: Additional costs from responding to added correspondence and phone calls is estimated at $1,000 annually.
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: See 2 above. This subject will require added emphasis in return instructions and may result in development of informational circulars with related preparation and printing costs.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to repealing 103 KAR 17:080 is amending to conform to 1990 General Session legislation (SB 4) which exempted federal military and civilian retirement income. An amendment to do this was filed and appears on page 2012 of the December Administrative Register. Following promulgation of that amendment, the Revenue Cabinet was advised that an amendment to conform the regulation to 1990 General Session legislation was a violation of KRS Chapter 13A and the cabinet withdrew the amendment.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The current regulation is incorrect. It cannot be corrected by amendment although 103 KAR 17:080 was amended without objection in 1986 to reflect statutory change. Thus, there is no alternative to repeal.
(a) Necessity of proposed regulation if in conflict: Not in conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not in conflict.
(6) Any additional information or comments: 103 KAR 17:080 was promulgated in 1971 to provide guidance to taxpayers, tax practitioners, and to cabinet personnel. The different retirement income tax exemptions were - and continue to be - scattered through various chapters of the Kentucky Revised Statutes and are not readily available for reference. It was amended in the past to reflect statutory change but such amendment now appears to be in conflict with KRS Chapter 13A. Its repeal eliminates a convenient source of taxpayer information.
TIERING: Was tiering applied? No. This appeal applies to all persons with an interest in the subject.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy

201 KAR 2:111. Repeal of 201 KAR 2:110.

RELATES TO: KRS Chapter 217
STATUTORY AUTHORITY: KRS 217.814(7), (8), 217.819(1)
NECESSITY AND FUNCTION: 201 KAR 2:110 is no longer required because there are now drug products that FDA considers to be therapeutically equivalent to other pharmaceutically equivalent products, and the adoption of an amendment to an existing regulation will address those products which FDA considers to be therapeutically nonequivalent.

Section 1. 201 KAR 2:110 is hereby repealed.

RALPH G. DEITEMEYER, President
APPROVED BY AGENCY: November 30, 1990
FILED WITH LRC: December 6, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 1991 at 10 a.m. (EST), at the office of the Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 20, 1991, 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: Richard L. Ross, Executive Director, Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Richard L. Ross
(1) Type and number of entities affected: Potentially all legend drug product prescription users in the Commonwealth.
(a) Direct and indirect costs or savings to those affected: Savings to consumers due to lowest priced drug product dispensed which is therapeutically equivalent.
1. First year: $5,000.
2. Continuing costs or savings: $4,000.
3. Additional factors increasing or decreasing costs (note any effects upon competition): Competition would require more pharmacies to stock lower priced drug products for consumer to make or have available a choice.
(b) Reporting and paperwork requirements: Identification on prescription the brand name or name of manufacturer or supplier of the drug.
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: As identified in (1)(b) which is maintained in pharmacy record only.
(3) Assessment of anticipated effect on state and local revenues: Saving on prescription price to consumer which should not effect state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative method does not allow substitution of lower priced drug.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: When original regulation proposed the necessary information to dispense a lower priced drug product was not available from FDA. This information is now provided.
TIERING: Was tiering applied? No. Substitution would be required of all pharmacies who have a lower priced drug in stock which is therapeutically equivalent to the one prescribed. Those pharmacies who do not have a lower priced generic in stock would not be affected by this change in repealing this regulation.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission

201 KAR 11:011. Definitions.

RELATES TO: KRS Chapter 324
STATUTORY AUTHORITY: KRS Chapter 13A, 304.281(5), 324.282
NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. "Regular employee" shall mean an employee whose compensation is fixed in advance in writing, who does not receive commission who works exclusively for the owner, and whose total compensation is subject to withholding and FICA taxes.

Section 2. As used in KRS 324.010(1)(a), the term "broker" shall not include office or clerical employees of a broker, so long as such employees are limited to the duties normally attributed to such positions, and such employees do not solicit or accept listings or offers, do not show property, do not negotiate real estate transactions, do not disclose information which is available only to the broker and not to the public, and do not otherwise hold themselves out to the public as engaged in the business of brokering real estate.

Section 3. As used in KRS 324.160(1)(j), the term "prizes" shall mean any thing of value which is offered to a prospective purchaser on a condition set forth in the offer to said prospective purchaser. However, this section, KRS 324(1)(j) shall not prohibit a licensee from giving or offering complimentary refreshments, i.e., snacks, sodas, etc., to the general public or giving a complimentary gift whose value is less than fifty (50) dollars to a purchaser at or after a closing where the purchaser's purchase of real estate is consumated and where said gift was not offered at any time prior to said closing.

Section 4. As used in KRS 324.046 and in these regulations, the term "academic credit hour" shall mean one (1) college semester hour or sixteen (16), fifty (50) minute hours of actual classroom attendance.

Section 5. "Contract deposits" means money delivered to a licensed agent as part of an offer to enter a contract for the sale of real property, once the offer or any counteroffer is accepted and an executory contract exists.

Section 6. "Without unreasonable delay" as used in KRS 324.111(1) means within two (2) working days of the creation of the executory contract for the sale of real property.

GEORGE G. SIRK, JR., Chairman
APPROVED BY AGENCY: December 11, 1990
FILED WITH LRC: December 12, 1990 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1991 at 10 a.m. at the Kentucky Real Estate Commission Office, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: John L. Ackman, Jr., Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Daniels
(1) Type and number of entities affected: There are 15,461 actively licensed real estate brokers and sales associates who will be governed by this regulation.
(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. There will be no effect on competition.
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: The only effects will be in educating licensees about this regulation.
(a) Direct and indirect costs or savings: There will be no costs or savings because the education concerning this regulation will be done through the agency's existing newsletter and educational seminars.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.
(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: No conflict exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.
(6) Any additional information or comments: This regulation clarifies language in KRS Chapter 324.
TIERING: Was tiering applied? No. Tiering is not applicable to this regulation.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission

201 KAR 11:121. Improper conduct.

RELATES TO: KRS Chapter 324
STATUTORY AUTHORITY: KRS Chapter 13A, 304.281(5), 324.282
NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. The following shall be improper for any licensed agent:
(1) To accept or agree to accept, without written disclosure to the seller and buyer, a referral fee from any person in return for directing a client or customer to such person, or another, who provides or agrees to provide any goods, service insurance or financing related to a transaction involving real estate. This provision shall not affect paying or receiving referral fees between licensed agents for brokerage services.
(2) To negotiate or attempt to negotiate, concerning real estate listed with a licensed agent, with the owner of said real estate, or with anyone other than the listing agent or agents in the listing agent's company, without the consent of the listing agent and the owner.
(3) To offer, either through advertising, direct contact or by others, to the general public, any prize, money, free gift, rebate or any other thing of value, as an inducement. It shall not be improper conduct to disseminate information:
(a) About the fee or other compensation the licensed agent agrees to charge for his services; or
(b) About inducements offered by the licensed agent's client.
(4) To refuse or prohibit any prospective purchaser from viewing or inspecting real estate listed for sale or lease with the agent, or with the agent's company, without the written and signed direction of the owner.
(5) To fail to act in accordance with a fiduciary standard toward his client. Client in this regulation means the person or persons the agent has agreed to represent, either expressly or by implication.
(6) For any licensee who publicly advertises for listings that "if we cannot sell your home, we will buy your home" or words of similar effect, without disclosing in said advertising the exact conditions under which said licensee will agree to buy said home and the manner in which the purchase price the licensee will agree to pay will be calculated. The disclosure required by this regulation shall be in letters which are at least one-half (1/2) the size of the letters used in making the offer "if we cannot sell your home, we will buy your home" or words of similar effect.

GEORGE G. SIRK, JR., Chairman
APPROVED BY AGENCY: December 11, 1990
FILED WITH LRC: December 12, 1990 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1991 at 10 a.m. at the Kentucky Real Estate Commission Office, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: John L. Ackman, Jr., Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Daniels

(1) Type and number of entities affected: There are 15,461 actively licensed real estate brokers and sales associates who will be governed by this regulation, as of November 30, 1990.

(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. There will be no effect on competition.

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: The only effects will be in educating licensees about this reregulation.

(a) Direct and indirect costs or savings: There will be no costs or savings because the education concerning this regulation will be done through the agency's existing newsletter and educational seminars.

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.

(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: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: This regulation specifies some types of improper conduct prohibited in KRS 324.160(1)(r).

TIERING: Was tiering applied? No. Tiering is not applicable to this regulation.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission

201 KAR 11:175. Instructor approval procedures and guidelines.

RELATES TO: KRS Chapter 324

STATUTORY AUTHORITY: KRS Chapter 13A, 304.281(5), 324.282

NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. The following provisions set forth the qualifications and rules governing instructors approved by the commission:

(1) To be approved by the commission the instructor must submit an application on forms available from the commission, and have one (1) of the following qualifications:

(a) A bachelors, masters or doctorate degree from a college or university duly accredited by a nationally recognized rating or accrediting organization, in a field reasonably related to real estate.

(b) An associate degree from a college or university duly accredited by a nationally recognized rating or accrediting organization, in real estate.

(c) Five (5) consecutive years full-time experience (averaging at least twenty (20) hours per week for each of the five (5) years).

(d) A valid current teachers certificate authorizing the holder to teach in the field of real estate.

(e) Any combination of teaching in secondary education and full-time experience in real estate totaling five (5) years (averaging at least twenty (20) hours per week for each year of experience).

(2) Approval of an instructor may be withdrawn by the commission for any of the following:

(a) Any violation of any provision of KRS Chapter 324 or any regulation promulgated under it.

(b) Falsification of any material submitted to the commission to become an approved instructor.

(c) Failure to provide to the commission requested material.

(d) Engaging in any brokerage activity while acting as an instructor in the educational facility with any of the enrolled students.

(e) Soliciting investments from any student the instructor becomes acquainted with as an instructor.

(f) Attempting to recruit any student to a real estate company while acting as an instructor.

(3) Only approved instructors shall teach any of the following:

(a) Prelicense courses offered by an approved real estate school.

(b) Prelicense courses offered by an accredited real estate school which receives any funding under the real estate education, research and recovery fund (KRS 324.400 et seq.).

(c) Mandatory continuing education courses.

GEORGE G. SIRK, JR., Chairman

APPROVED BY AGENCY: December 11, 1990

FILED WITH LRC: December 12, 1990 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1991 at 10 a.m. at the Kentucky Real Estate Commission Office, 10200 Linn Station

Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: John L. Ackman, Jr., Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Daniels
(1) Type and number of entities affected: There are 120 instructors teaching in 20 accredited and 11 approved schools.
(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. There will be no effect on competition.
(b) Reporting and paperwork requirements: The schools will need to provide instructor material presently required by this agency.
(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. There will be no effect on competition.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.
(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 gives this agency oversight of the instructors used for required education.
TIERING: Was tiering applied? No. Tiering does not apply to this regulation.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission

201 KAR 11:230. Mandatory continuing education.

RELATES TO: KRS Chapter 324
STATUTORY AUTHORITY: KRS Chapter 13A, 304.281(5), 324.282
NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. The following regulations shall apply to mandatory continuing education for all real estate licensees.
(1) All actively licensed agents must attend six (6) hours of continuing education courses sponsored or approved by the commission each year. Year shall mean, for purposes of this regulation, a calendar year, ending December 31. This regulation shall be effective beginning the calendar year 1992. Of this six (6) hours, two (2) hours must be in courses on real estate law.
(2) In order for an education course to be approved by the commission, the sponsor of the course must provide an outline of the course in such detail that all the pertinent material to be taught is disclosed and must provide the commission with the work experience, credentials and educational background of the instructors of the course.
(3) To receive approval:
(a) The courses must be on topics which will enable the student to better understand the brokerage business and to better service the public, and courses which are self-motivational in nature will not be approved; and
(b) The instructor of the course must be reasonably competent by educational background or work experience to have adequate knowledge of the course material, and must be an "approved instructor" under this commission's prelicense education requirements (201 KAR 11:___); and
(c) The course must be sponsored by an accredited real estate school (see KRS 324.010(1)(g)) or by a school that has been given a certificate of approval by the Kentucky Board of Proprietary Education or other appropriate governmental regulatory body or by an approved real estate school (see KRS 324.010(1)(f)).
(4) The sponsor must agree:
(a) To provide attendance records to the commission to ensure that those students he certifies have attended have in fact been present in the course during all of the instruction;
(b) To provide accurate records to the commission of all persons so attending;
(c) To provide course evaluation forms to all students for comments to the commission;
(d) To allow the commission to monitor and inspect any aspect of the sponsor's requirements under this regulation;
(e) To enter a written agreement with the commission to ensure compliance with all aspects of the sponsor's obligations to the students and the commission on forms prescribed by the commission; and
(f) To make the course available to all licensed agents, subject only to space limitations of the facility where the course is taught.
(5) One (1) hour of continuing education

credit will be allowed for each fifty (50) minutes of actual attendance. The minimum number of hours for each course shall be two (2) hours.

(6) Escrowed licensees will not be required to attend continuing education courses under this regulation. Each licensee shall, before changing their license from escrow to active, document compliance with this mandatory continuing education regulation to the commission for the year when they so change the license.

(7) Licensees who first receive their sales associate licenses during the license year (ending March 31) will not be required to attend continuing education courses under this regulation for the license year of first licensure.

(8) No active license will be renewed unless this regulation has been complied with, beginning with the license year ending March 31, 1992.

(9) If any licensee fails to comply with the mandatory continuing education requirements of this regulation, the executive director shall as soon as practicable on or after January 31 of each year notify those licensees who have so failed, of their delinquency in credit hours. If by the 15th day of the following February, the licensee has not submitted to the commission proof of his compliance by the preceding December 31, the licensee's license shall be cancelled. The license will not be so cancelled if the licensee places his license in escrow, or if the licensee enters an approved delinquency plan with the commission as set forth in subsection (10) of this regulation.

(10) A licensee who fails to complete the mandatory continuing education requirements of this regulation for any education year may submit a delinquency plan for making up his delinquency, provided the commission has not approved such a delinquency plan for the licensee for either of the two (2) preceding education years. The plan will only be approved by the commission if the licensee pays a fee of $200 and the plan lists approved or sponsored courses the licensee agrees to attend which would provide, by the 15th day of the following June, the credit hours needed to make up the deficiency. Failure to complete an approved delinquency plan shall result in automatic suspension of license for two (2) years.

(11) The time requirements of this regulation may be extended by the commission in case of true hardships or other good cause clearly warranting relief, but only if requested in writing on or before January 31 following the education year ending December 31 of deficiency.

(12) A licensee who teaches an approved mandatory education course shall be entitled to one (1) hour of credit for each hour of instruction he teaches plus two (2) hours credit for preparation for each course he teaches.

(13) A licensee who receives instruction in education courses which qualify for prelicense education shall receive credit for those hours as mandatory continuing education hours.

(14) A licensee who receives an excess number of hours of mandatory continuing education in any one (1) year shall not be allowed to carry those excess hours forward to the next year.

(15) The commission shall make available at no charge to the licensed agents each year approved education courses with hours sufficient to comply with this regulation.

GEORGE G. SIRK, JR., Chairman

APPROVED BY AGENCY: December 11, 1990

FILED WITH LRC: December 12, 1990 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1991 at 10 a.m. at the Kentucky Real Estate Commission Office, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: John L. Ackman, Jr., Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Daniels

(1) Type and number of entities affected: There are 15,461 active licensees as of November 30, 1990.

(a) Direct and indirect costs or savings to those affected: This agency will offer free education to the licensed agents; the education can also be obtained from schools and other sponsors approved by this agency at the cost of the agents.

1. First year: This agency will offer free education to the licensed agents; the education can also be obtained from schools and other sponsors approved by this agency at the cost of the agents.

2. Continuing costs or savings: This agency will offer free education to the licensed agents; the education can also be obtained from schools and other sponsors approved by this agency at the cost of the agents.

3. Additional factors increasing or decreasing costs (note any effects upon competition): This agency will offer free education to the licensed agents; the education can also be obtained from schools and other sponsors approved by this agency at the cost of the agents.

(b) Reporting and paperwork requirements: Sponsors of education must apply to this agency for approval and must document student compliance and attendance.

(2) Effects on the promulgating administrative body: This regulation will increase the cost of educational seminars.

(a) Direct and indirect costs or savings: The additional cost will be from $22,000 per year to $60,000 per year.

1. First year: The additional cost will apply the first year.

2. Continuing costs or savings: The additional cost will be continuing.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Sponsors of education must apply to this agency

for approval, this agency must document student compliance and attendance for licensure.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No other methods were considered.
(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 are in conflict.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None are in conflict.
(6) Any additional information or comments: This regulation mandates that active licensees engage in continuing education courses approved by this agency.
TIERING: Was tiering applied? No. Tiering is not applicable to this regulation.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission

201 KAR 11:245. Property management procedures and guidelines.

RELATES TO: KRS Chapter 324
STATUTORY AUTHORITY: KRS Chapter 13A, 304.281(5), 324.282
NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. The following regulations must be observed by all licensed agents who engage in property management:
(1) No licensed agent shall engage in property management without a current written property management agreement, which complies with this regulation.
(2) All property management agreements must contain:
(a) The business name and address of the licensed agent's company.
(b) The name and address of the owner.
(c) The address of the real estate being managed and the number of units.
(d) The date when the agreement begins and ends, and a provision stating whether the owner agrees or not to automatic annual renewal.
(e) A provision stating the method for early termination.
(f) The amount of, or the method for computing the amount of compensation to the licensed agent.
(g) The amount of or the method of determining the minimum security deposit to be collected from tenants for each unit managed; the name and address of the bank where the agent's escrow account is kept where the security deposit will be held together with the account number. This information must also be contained in the lease.
(h) A provision which is in accord with the Landlord Tenant Act (KRS 383.500 et seq.) setting forth the procedures governing returning or retaining the security deposit, and which also must be contained in the lease.
(i) A provision setting forth the conditions under which the agent is authorized to pay expenses related to the real estate being managed.
(j) A statement setting forth the date(s) when the agent will send the owner an accounting of the transactions related to the real estate being managed.
(k) A copy of the form of the lease document which the licensee will have the tenant sign must be attached to the agreement.
(l) A provision whereby the owner certifies that he has received a duplicate copy of the agreement and the attached lease form(s).
(m) The signature and date of signature of the owner and the agent.
(3) The following accounting rules shall be followed by all licensed agents who engage in property management:
(a) A separate electronic or written ledger must be maintained for each owner of real estate being managed (hereafter referred as "owner ledger").
(b) A separate electronic or written ledger must be maintained for each tenant renting real estate being managed (hereafter referred to as "tenant ledger").
(c) All rents and security deposits and other money received must be receipted for, must be deposited into the escrow or management account of the agent without undue delay, and must be entered on both the owner ledger, by unit, and on the tenant ledger.
(d) All expenses paid by the agent shall be properly documented by invoice or receipt by unit, and this documentation shall be retained with the agent's records.
(e) All adjustments to the security deposit must be made in accordance with the Landlord Tenant Act (KRS 383.500 et seq.) and must be entered on both the owner ledger by unit and on the tenant ledger.
(f) The agent must send to the owner each month a monthly accounting which sets forth fairly and accurately all transactions related to the real estate being managed, by unit, and which must include all transactions entered on the owner ledger by unit and on the tenant ledger(s).
(g) Upon termination of a management agreement, the agent must send to the owner within sixty (60) days of the termination, a final accounting setting forth those transactions required in the monthly accounting, which occurred after the last monthly accounting.
(h) Agents who own the real estate being managed need only comply with the accounting rules set forth herein as they relate to tenant's security deposits, their receipt, deposit and adjustment.
(4) Brokers shall preserve for four (4) years all property management agreements, leases, monthly statements, owner and tenant ledgers, and bank statements relating to property management.
(5) All tenant security deposits shall be deposited and maintained in an escrow account such as is required in KRS 324.111. Withdrawals from said account shall be in accord with the Landlord Tenant Act (KRS 383.500 et seq.).

GEORGE G. SIRK, JR., Chairman
APPROVED BY AGENCY: December 11, 1990
FILED WITH LRC: December 12, 1990 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1991 at 10 a.m. at the Kentucky Real Estate Commission Office, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this

hearing shall notify this agency in writing by January 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: John L. Ackman, Jr., Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Daniels
(1) Type and number of entities affected: There are 400 licensed agents who engage in property management, based upon results of a survey made by this agency in March 1990.
(a) Direct and indirect costs or savings to those affected: This regulation governs operating standards and should not affect cost.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None. There will be no effect on competition.
(b) Reporting and paperwork requirements: This regulation has no reporting requirement. There will be an effect on paperwork because this regulation sets down recordkeeping requirements for property managers.
(2) Effects on the promulgating administrative body: The only effects will be in educating licensees about this regulation.
(a) Direct and indirect costs or savings: There will be no costs or savings because the education concerning this regulation will be done through the agency's existing newsletter and educational seminars.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.
(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: No conflict exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.
(6) Any additional information or comments: This regulation sets down requirements for property managers for contracts and recordkeeping.
TIERING: Was tiering applied? No. Tiering is not applicable to this regulation.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission

201 KAR 11:250. Listing and purchase contracts - provisions required.

RELATES TO: KRS Chapter 324
STATUTORY AUTHORITY: KRS Chapter 13A, 304.281(5), 324.282
NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. Listing contracts shall include the following:
(1) The listing price of the property, unless the sale is to be by auction.
(2) The date of the signing of the listing contract for all parties who sign.
(3) The date and time of expiration of the listing contract.
(4) The fee or commission agreed upon.
(5) The street, address or location of the real estate listed for sale.
(6) The signatures of all owners.
(7) Special directions of the owner concerning limitations on showings and subagency restrictions.

Section 2. All offers to purchase and all counteroffers prepared by or at the direction of a licensed agent shall include the following:
(1) The purchase price, the amount of contract deposit given and who is to hold the deposit.
(2) The date and time of signing of the offer or counteroffer for all parties who sign.
(3) The date and time when the offer or counteroffer expires.
(4) The street, address or a general description of the real estate sufficient to identify the parcel.
(5) The names of the offering party and the agent who prepared the offer or counteroffer.
(6) A provision setting forth the date by which the closing must occur and when possession is to be given to the buyer.

Section 3. It shall be the duty of all licensed agents to cause to be inserted as a contractual provision in any back-up contract, that is a contract which is made after an executory contract of sale of real estate which has not lapsed according to its terms, the following provision: "This contract is contingent upon the nonperformance of a certain contract of sale and any signed extension thereof, wherein (purchasers) agreed to purchase the real estate which is the subject of this contract to purchase." The provision must be inserted by the agent who prepares the offer to purchase if said agent knows of the existing contract, and must be made by the listing agent as a counteroffer.

GEORGE G. SIRK, JR., Chairman
APPROVED BY AGENCY: December 11, 1990
FILED WITH LRC: December 12, 1990 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1991 at 10 a.m. at the Kentucky Real Estate Commission Office, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1991, five days prior to the

hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: John L. Ackman, Jr., Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Daniels
(1) Type and number of entities affected: There are 15,461 actively licensed real estate agents, brokers and sales associates who will be governed by this regulation, as of November 30, 1990.
(a) Direct and indirect costs or savings to those affected: This regulation governs operating standards and should not affect cost.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None. There will be no effect on competition.
(b) Reporting and paperwork requirements: This regulation has no reporting requirement. There will be an effect on paperwork, because this regulation sets down minimum contract provisions.
(2) Effects on the promulgating administrative body: The only effects will be in educating licensees about this regulation.
(a) Direct and indirect costs or savings: There will be no costs or savings because the education concerning this regulation will be done through the agency's existing newsletter and educational seminars.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.
(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: No conflict exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.
(6) Any additional information or comments: This regulation sets forth minimum requirements for listing contracts and offers to purchase.
TIERING: Was tiering applied? No. Tiering is not applicable to this regulation.

GENERAL GOVERNMENT CABINET
Kentucky Real Estate Commission

201 KAR 11:300. Use of facsimilite transmissions.

RELATES TO: KRS Chapter 324
STATUTORY AUTHORITY: KRS Chapter 13A, 304.281(5), 324.282
NECESSITY AND FUNCTION: To inform and set certain standards for the licensees and to protect the public.

Section 1. The following shall apply to the use of facsimile transmissions by licensed agents:
(1) A licensee may use facsimile (FAX) devices to transmit and receive documents according to the rules set out in this regulation.
(2) A copy of any document transmitted by FAX device shall be immediately mailed by regular mail, postage prepaid and properly addressed, to the person to whom the FAX transmission was transmitted.
(3) Any document received by FAX device shall be immediately reproduced on nonthermographic paper and placed in the licensee's file which is required under 201 KAR 11:062.
(4) When this regulation has been followed, the time of transmission of a document by FAX device shall be considered the time of delivery of the document, and for documents required to be submitted under 201 KAR 11:045, shall be considered the time of submission of the document.

GEORGE G. SIRK, JR., Chairman
APPROVED BY AGENCY: December 11, 1990
FILED WITH LRC: December 12, 1990 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1991 at 10 a.m. at the Kentucky Real Estate Commission Office, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: John L. Ackman, Jr., Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Daniels
(1) Type and number of entities affected: There are 15,461 actively licensed real estate brokers and sales associates who will be governed by this regulation, as of November 30, 1990.
(a) Direct and indirect costs or savings to those affected: There should be direct savings

to those affected. This amendment recognizes the general practice among licensees of obtaining a closing statement from the lender or attorney involved in real estate closings. It eliminates the possible duplication of this effort contained in the old regulation which required the licensee to furnish the closing statement.

1. First year: The same savings effect noted in (1)(a) above should be continuing in nature.

2. Continuing costs or savings: The same savings effect noted in (1)(a) above should be continuing in nature.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The same savings effect noted in (1)(a) above are the only known effects. There will be no effect on competition.

(b) Reporting and paperwork requirements: The paperwork requirement will be decreased among most licensees because they will not be required to furnish their own independent closing statement in those transactions where a lender or attorney prepares one for the closing. There is no reporting requirement.

(2) Effects on the promulgating administrative body: The only effects will be in educating licensees about this regulation.

(a) Direct and indirect costs or savings: There will be no costs or savings because the education concerning this regulation will be done through the agency's existing newsletter and educational seminars.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.

(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: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: This regulation sets down standards for using FAX transmissions.

TIERING: Was tiering applied? No. Tiering is not applicable to this regulation.

GENERAL GOVERNMENT CABINET
Department of Agriculture

302 KAR 16:070. Amusement rides.

RELATES TO: KRS 247.232

STATUTORY AUTHORITY: KRS 247.234

NECESSITY AND FUNCTION: KRS 247.234 requires the department to conduct mandatory initial safety inspections of amusement rides and amusement attractions and to conduct subsequent inspections at any time to determine if a particular amusement ride or attraction complies with accepted standards of safety. It is necessary for the department to receive reports of amusement ride accidents causing death or injury in a timely manner to insure that a particular amusement ride or attraction complies with accepted standards of safety and to adequately inform the public of the presence of a safety violation.

Section 1. Definitions. The terms "amusement ride", "amusement attraction", "owner" shall have the meanings defined in KRS 247.232. For purposes of this regulation the term "serious injury" means an injury for which treatment by a licensed physician is required.

Section 2. Accident Report. A written report shall be filed by the owner of an amusement ride or attraction when one (1) or more of the following occurs as a result of an accident, incident or other casualty involving an amusement ride or amusement attraction equipment or an amusement ride or amusement attraction operating site:

(1) The death of any person from any cause.

(2) The injury of any person for which he receives medical treatment.

(3) The involvement of any person in an occurrence requiring the intervention or action of emergency response or rescue personnel.

(4) Damage or casualty of or to a person or property which does not require treatment by a licensed physician.

Section 3. Serious Injury Report. (1) When death or serious injury has resulted, or may result from an amusement ride or attraction accident, a written report shall be submitted to the Division of Weights and Measures, Department of Agriculture, 106 West Second Street, Frankfort, Kentucky 40601, within twenty-four (24) hours after the accident has occurred.

(2) The owner of an amusement ride or attraction shall report a death or serious injury resulting from the operation of an amusement ride or attraction by telephone to the Division of Weights and Measures, Department of Agriculture, phone (502) 564-4870 at the earliest possible time after the owner has notice of a death or serious injury.

(3) For every other reportable accident, incident or other casualty involving the operation of an amusement ride or attraction, a written report shall be submitted within five (5) days.

Section 4. A written report of an amusement ride accident shall contain the following information:

(1) The name, address and operating permit number of the operator.

(2) The location at which the accident occurred.

(3) The date and time of the accident.

(4) The identification and maker of the amusement equipment.

(5) Whether the accident was reported by telephone; the time reported by telephone and name of the person reported to.

(6) The name and address of the person or persons injured.

(7) The name and address of the operator or operators.

(8) The name and address of all persons killed or injured.

(9) The nature and extent of the injury.

(10) A description of the accident.

(11) The identity of persons or agencies providing medical or emergency treatment.

(12) A written report may include a duplicate

accident or incident report submitted to a liability insurance carrier or investigative authority.

(13) A written report of an amusement ride accident or fatality may be made on a form provided by the department. The accident or fatality form is incorporated by reference. The form is effective April 1, 1991, and may be obtained at the Division of Weights and Measures, Amusement Ride and Attraction Inspection Section, 106 West Second Street, Frankfort, Kentucky 40601.

Section 5. Safety Inspection. (1) When a report of a death resulting from the operation of an amusement ride or attraction has been received by the department, the department shall initiate an investigation and safety inspection within twenty-four (24) hours of the initial notification.

(2) Pending the completion of a safety inspection, the amusement ride or attraction shall not be moved or repaired without written approval of the department.

WARD "BUTCH" BURNETTE, Commissioner

APPROVED BY AGENCY: November 19, 1990

FILED WITH LRC: November 20, 1990 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 25, 1991, at 9:00 a.m. at Department of Agriculture Conference Room, 7th Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 21, 1991, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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: J. Michael Noyes, General Counsel, Department of Agriculture, Capital Plaza Tower, 500 Mero Street, Floor 7, Frankfort, Kentucky 40601. Phone: (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Carl Dills

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: The department has issued 128 amusement ride licenses for calendar year 1990. (63 permanent; 65 mobile units.) This includes 661 amusement attractions or devices. In addition to licensing, safety inspection and proof of financial responsibility, each amusement ride license holder is required by this regulation to report the occurrence of an accident to the division.

1. First year: Minimum costs are associated with filing an accident report, and amusement ride safety will be enhanced by the reporting of accidents. Actual cost will depend upon the number or frequency of accidents.

2. Continuing costs or savings: Minimal reporting costs and enhanced amusement ride safety will continue beyond the first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Actual minimal costs will depend upon the frequency or number of accidents occurring at each amusement ride site.

(b) Reporting and paperwork requirements: Immediate report of death or serious injury and a written report for any amusement ride accident.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No significant first year costs or savings are implicated by this regulation. However, public safety is enhanced by the report of a possible unsafe condition.

2. Continuing costs or savings: No additional costs or savings continue after the first year.

3. Additional factors increasing or decreasing costs: Actual costs may be minimally increased or decreased by the number of accidents reported.

(b) Reporting and paperwork requirements: Processing of accident reports and inspection reports required by a safety inspection.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method, accident report by the amusement ride operator is the only method to provide timely notice of an accident.

(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:

TIERING: Was tiering applied? No. Pursuant to KRS 247.232 this regulation requiring a report of an accident must be applied to all amusement ride or attraction license holders.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None. KRS 247.232 to 247.236 is a state licensing and safety inspection program, there is no similar federal program or federal mandate.

2. State compliance standards. See above.

3. Minimum or uniform standards contained in the federal mandate. See above.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

JUSTICE CABINET
Office of the Secretary

500 KAR 9:015. Model policy for forfeiture of assets by law enforcement agencies.

RELATES TO: KRS 218A.435(9)

STATUTORY AUTHORITY: KRS 218A.435(4)

NECESSITY AND FUNCTION: This regulation sets forth the model policy as mandated by KRS 218A.435(9).

Section 1. Policy Statement. The Kentucky Controlled Substance Act, KRS 218A.405 to 218A.460, authorizes law enforcement agencies to seize and forfeit any personal property or contraband article which has been used, is being used, or was intended to be used in violation of any provision of KRS Chapter 218A, or real property for a felony violation of KRS Chapter 218A. It is the policy of the law enforcement agencies in this state to utilize the forfeiture provisions to the fullest extent possible in order to impact upon crime, yet protect innocent owners, while providing law enforcement agencies with the maximum amount of economic benefit for the continued enforcement of the laws of Kentucky.

Section 2. Purpose. The purpose of this regulation is to standardize the law enforcement policies and procedures used in seizing, maintaining and forfeiting assets pursuant to the provisions of KRS 218A.405 to 218A.460, and to ensure that seized property is seized and maintained in an efficient and lawful manner. The provisions contained in this regulation are intended to serve as guidelines for law enforcement agencies involved in the seizure and forfeiture of property. Substantial compliance will further the goal of uniform practice throughout the state.

Section 3. Procedures. (1) Seizure of vessels, vehicles, aircraft, currency, or other personal property or contraband articles.

(a) The seizing agency may seize property for forfeiture without process if it determines that:

1. The seizure is incident to an arrest or a search under a search warrant; or

2. The property subject to seizure has been the subject of a prior final order of forfeiture; or

3. The agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

4. The agency has probable cause to believe the property is subject to forfeiture pursuant to KRS 218A.410.

(b) Probable cause seizures taking place at the time of violations may be made without prior judicial approval.

(c) Property not seized at the time of violations presently located on private premises shall be seized pursuant to a court order authorizing entry onto the private premises, unless otherwise authorized by law.

(d) As soon as practicable following seizure, the agency shall make a diligent effort to determine ownership of the seized property, including the identification of the registered owner, title holder, and bona fide lienholder, if any.

(e) The seizing agency shall give notice of the seizure to the owner and bona fide lienholder, if any, once identified, within thirty (30) days after the identification is made. Such notice may be made by certified mail, return receipt requested.

(f) Following an agency's determination not to proceed with a forfeiture based upon innocent-owner considerations, the agency shall release the seized property to the lawful owner or his legally authorized designee.

(g) As soon as practicable after the seizure, the seizing officer, deputy, or agent shall complete an offense or seizure report, particularly describing the circumstances attendant to the seizure and forward same to the Commonwealth Attorney who will be handling the forfeiture action.

(2) Seized vessels, vehicles and aircraft storage and maintenance.

(a) At the time of seizure, the agency shall have vessels, vehicles and aircraft transported or towed to a secure storage facility or other appropriate storage location as may be authorized by the agency. If the law enforcement agency has its own towing service, it shall be used whenever possible to minimize costs.

(b) A complete inventory of the seized property and all containers, open or closed, found therein shall be completed at the time of the seizure. As soon as practicable after seizure, a seizing agency shall make a good faith attempt to release to the lawful owner all personal property (e.g., clothing) seized with items impounded and not being retained as evidence or for forfeiture. If the owner is unknown, has been arrested, or is otherwise unavailable to take possession of the property, the property shall be placed in a secure location to be released to the owner at a later date.

(c) Any personal property seized as evidence shall be packaged and stored separately and handled in accordance with established procedures for the processing of evidence.

(d) Reasonable attempts shall be made to maintain the property in time-of-seizure condition. Although all rights, interest in and title to seized assets vest immediately in the seizing agency upon seizure, seized items shall not be used for any purpose until the rights, interest in and title to the seized property are perfected by final order of forfeiture. This section does not prohibit use or operation necessary for reasonable maintenance of seized property.

(e) If special maintenance is required to maintain seized property in time-of-seizure condition as may be necessary with aircraft and vessels, the seizing agency shall ensure that such maintenance is provided within a reasonable time after seizure, with such care continuing through the pendency of the forfeiture action. Appropriate agency forms shall be maintained with seized property to document special or required maintenance.

(f) Agency personnel shall make periodic inspections of all property which has been seized subject to forfeiture to insure continuation of time-of-seizure condition of the property is being maintained. Such inspections shall be documented appropriately.

(3) Seizure and forfeiture of real property.

(a) The agency may seize real property as set forth in KRS 218A.410 only with process:

1. Real property subject to forfeiture may be seized pursuant to final judgment and order of forfeiture by the court with jurisdiction over the forfeiture action; or

2. Real property may be seized prior to final judgment by the agency if it obtains a seizure order from the court following a hearing. Seizure prior to judgment is only permissible on a showing by the Commonwealth that seizure is necessary to preserve the property pending final judgment.

(b) Real property which is seized prior to final judgment must be maintained at time-of-seizure condition. Ongoing businesses,

including agricultural enterprises, must be continued. For this reason, seizure of real property prior to final judgment of forfeiture is not recommended.

(c) Agencies with probable cause to believe that real property is subject to forfeiture will as soon as practicable consult with the appropriate Connomwealth Attorney to perfect the lien created in KRS 218A.450. A lien is preferred over prejudgment seizure of real property.

(4) Release of seized property.

(a) If at the conclusion of the judicial process the claimant prevails, the seized property shall be released to the lawful owner immediately. Under these circumstances, the seizing agency shall not assess any towing charges, storage fees, administrative costs, maintenance costs, etc. against the claimant, unless so authorized by the appropriate court.

(b) In all other instances, if a seized vessel, vehicle, aircraft, etc. is to be released to the lawful owner, the seizing agency may assess against the owner the actual costs of towing, storage, and maintenance of the seized property. Absent settlement, administrative costs which do not reflect actual expenses shall not be assessed.

(c) Property which has been seized as having evidentiary value shall be treated accordingly, and shall not be released pursuant to this policy.

Section 4. Retention for Official Use, Sale, and Distribution. (1) Retention of vehicles.

(a) Any vehicle seized and subsequently forfeited to a law enforcement agency may be retained by that agency for official use.

(b) Any vehicle retained may be sold by the agency. Funds from such sale shall not be considered as funds to be distributed.

(c) Proceeds from sale of retained vehicles shall be spent on a direct law enforcement purpose.

(d) The recipient agency must pay any bona fide perfected security interest on any forfeited vehicle retained for official use.

(2) Sale of forfeited property.

(a) All sales of property forfeited pursuant to the Controlled Substances Act shall be advertised, public sales.

(b) The Commonwealth or other recipient agency may transfer any forfeited real property sold by deed of general warranty.

(c) All bona fide, perfected security interests on forfeited property shall be paid from proceeds of sale of such property.

(d) Controlled substances which have been forfeited but which have a lawful purpose may be sold to a proper buyer as determined by the regulations of the Cabinet for Human Resources.

(3) Distribution of sale proceeds.

(a) Following deduction of any direct expenses related to the sale of forfeited assets, the agency retains the first $50,000 from sale of assets itemized in any final order of forfeiture. Of that, ten (10) percent is paid to the office of the Commonwealth Attorney or county attorney which handled the forfeiture action.

(b) The seizing agency retains forty-five (45) percent of all sale proceeds in excess of direct sale expenses and $50,000. No portion of these proceeds is required to be shared with a prosecutorial office.

(c) All proceeds from sale of forfeited property shall be expended for direct law enforcement purposes.

(d) All sale proceeds in excess of the above proscribed amounts shall be paid into the Asset Forfeiture Trust Fund as managed by the Office for Investment and Debt Management of the Commonwealth of Kentucky.

(e) When money or property is seized in a joint operation involving more than one (1) law enforcement agency, the apportionment of funds shall be made among the agencies in such a manner as to reflect the degree of participation of each agency in the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which the forfeiture is based. The trial court shall determine the proper division and include the determination in the final order of forfeiture.

Section 5. Reporting Requirements. (1) Seizure reports.

(a) Any agency which seizes property subject to forfeiture without court order shall immediately prepare a report completely describing and inventorying the property so seized. The original of the report shall be included in the criminal case file. Duplicates of the report shall be forwarded to the appropriate prosecutorial office and the Kentucky Justice Cabinet.

(b) Any agency which wishes to obtain a court order to seize property shall submit a "Request for Forfeiture" form to the appropriate prosectorial office. Property seized pursuant to such order should be reported in the same manner as property seized without order. A copy of the court order shall be attached to the seizure report.

(c) Any agency which wishes to place a lien against forfeitable real property shall submit a "Request for Forfeiture Lien" to the appropriate Commonwealth Attorney. A copy of the forfeiture lien notice shall be maintained in the criminal case file and a copy shall be forwarded to the Kentucky Justice Cabinet.

(d) A copy of all final orders of forfeiture shall be forwarded to the Kentucky Justice Cabinet by the appropriate Commonwealth's Attorney.

(e) Fiscal reports itemizing costs of sale, proceeds retained by a law enforcement agency, proceeds paid to a local prosecutor, and proceeds paid into the Asset Forfeiture Trust Fund, shall be sent to the Kentucky Justice Cabinet within thirty (30) days after each sale of forfeited property.

(f) Agencies shall notify the Kentucky Justice Cabinet of each forfeited vehicle retained for official use or sold for the benefit of the agency.

W. MICHAEL TROOP, Secretary

APPROVED BY AGENCY: December 4, 1990

FILED WITH LRC: December 5, 1990 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, January 22, 1991, at the Justice Cabinet, Bush Building, Second Floor, 403 Wapping Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by Thursday, January 17, 1991, 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: Christopher W. Johnson, Justice Cabinet, Bush Building, Second Floor, 403 Wapping Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Chris Johnson
(1) Type and number of entities affected: All state and local law enforcement agencies, approximately 500 of them.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: Minimal reporting to cabinet of seizures and forfeitures.
(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: Minimal tracking of received reports on seizures and forfeitures.
(3) Assessment of anticipated effect on state and local revenues: This regulation has no fiscal 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: KRS 218A.405 to 218A.460.
(a) Necessity of proposed regulation if in conflict: This regulation is mandated by KRS 218A.435(9).
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Overlaps; does not conflict.
(6) Any additional information or comments: The model policy set forth in this regulation is permissive; KRS 218A.435(9) only requires substantial compliance.
TIERING: Was tiering applied? No. The statutes apply equally to all law enforcement agencies.

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___ (If yes, complete questions 2-4)
2. State what unit, part or division of local government this administrative regulation will affect. Any local law enforcement agency.
3. State the aspect or service of local government to which this administrative regulation relates. Law enforcement.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation: Unknown. By following the model policy set forth in this regulation, the local entity may be eligible for grant funds pursuant to KRS 218A.435(7).

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers

601 KAR 1:170. Transportation of financial documents, information, or materials.

RELATES TO: KRS 281.605
STATUTORY AUTHORITY: KRS 281.600
NECESSITY AND FUNCTION: KRS 281.605(12) was amended by the 1990 General Assembly (RS). This section had previously exempted from the general motor carrier statutes and regulations motor vehicles owned by banks and which transported financial and data processing documents between banks. The amendment was made to allow these financial items to be transported regardless of who owned the vehicle and to allow the transportation between facilities other than banks. For example, the data processing material can now be transported between a bank and a data processing facility in a motor vehicle owned by the data processor without the data processor having to be a certified motor carrier or affiliated with a bank. This administrative regulation is needed because of some ambiguity in KRS 281.605(12). It is necessary that all parties involved understand that the exemption relates only to motor vehicles transporting cash letters, financial data processing materials, financial instruments and financial documents.

Section 1. The exemption to most of the provisions of KRS Chapter 281 provided by KRS 281.605(12) shall only be applicable to motor vehicles used to transport cash letters, financial data processing material, financial instruments or financial documents.

JEROME LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: November 5, 1990
FILED WITH LRC: November 19, 1990 at 9 a.m.
PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on January 22, 1991, at 9 a.m., local prevailing time in the 4th floor hearing room of the State Office Building. The State Office Building is located on the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this meeting must in writing by January 17, 1991, so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the

opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then at the requestor's expense. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will only be accepted until January 17, 1991. Send written notification for intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40622. (502) 564-4890.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: All transporters of cash letters, financial data processing material, financial instruments or financial documents.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative was rejected to ensure that the confusion over the applicability of KRS 281.605(12) is settled.
(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. The administrative regulation is promulgated only to clarify KRS 281.605(12).

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing

601 KAR 9:145. Fraternal Order of Police special license plates.

RELATES TO: KRS 186.1723
STATUTORY AUTHORITY: KRS 186.1723
NECESSITY AND FUNCTION: KRS 186.1723 specifies that Fraternal Order of Police special license plates be issued only to members of the National Fraternal Order of Police. This administrative regulation sets forth the language which shall be included on the current membership card to distinguish a local lodge member of the Fraternal Order of Police from a member of the National Fraternal Order of Police.

Section 1. In order to be eligible to apply for a Fraternal Order of Police special license plate, a member of the Fraternal Order of Police shall submit a current membership card to the county clerk. The reverse side of the membership card shall be signed by the National Secretary of the Grand Lodge, Fraternal Order of Police.

JEROME LENTZ, Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: November 12, 1990
FILED WITH LRC: December 3, 1990 at 10 a.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on January 22, 1991 at 9:30 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 January 17, 1991 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 January 17, 1991. 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: 5,000 Kentucky members of the National Fraternal Order of Police.
(a) Direct and indirect costs or savings to those affected: None as a result of the administrative regulation. However, KRS 186.1723 sets the additional fee for the application for a Fraternal Order of Police five-year special license plate at $25.
1. First year: Anticipate 2,000 applications for the special license plate at a cost of $50,000.
2. Continuing costs or savings: It is possible that a portion of the remaining 3,000 eligible persons will apply for the special license plate at a cost of $25 each.
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: No cost to the Transportation Cabinet as a result of the administrative regulation, but implementation of KRS 186.1723 (HB 474 passed in the 1990 Regular Session) will cost about $50,000.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not adopting an administrative regulation was rejected because there are persons who are only members of the Kentucky or a local chapter of the Fraternal Order of Police. KRS 186.1723 specifies membership in the National Fraternal Order of Police to be eligible for this special license plate. Therefore, public notification needed to be given on the way to distinguish the various memberships and what was acceptable proof of current membership.

(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 eligible applicants for this special license plate have been issued the identified membership card. Therefore, all are required to present the same type of proof.

TRANSPORTATION CABINET
Motor Vehicle Commission

605 KAR 1:180. Limited motor vehicle brokers.

RELATES TO: KRS 190.010 through 190.990

STATUTORY AUTHORITY: KRS 190.015, 190.020, 190.030, 190.058, 190.073

NECESSITY AND FUNCTION: KRS 190.010(2) defines a motor vehicle dealer as "any person...engaged in the business of selling, offering to sell, soliciting, or advertising the same, of new or used motor vehicles, or possessing motor vehicles for the purpose of resale..." KRS 190.015 states that it is necessary to regulate and license vehicle brokers. KRS 190.030 provides that "No motor vehicle...broker...shall engage in business as such in this state without a license therefor as provided in KRS 190.010 to 190.080." However, no provision for such a license was made in KRS 190.010 to 190.080. KRS 190.030 authorizes the Motor Vehicle Commission to "provide by regulation for other licensee activities and an appropriate fee therefor." An industry is centered around the limited brokering or matching of a vehicle owner or lessee with a third party willing to assume payment of the lease or loan agreement on the motor vehicle in exchange for use and possession of the motor vehicle which is the subject of that lease or loan. This is not the function of any dealer license currently issued by the Motor Vehicle Commission. The purpose of this regulation is to provide a means whereby limited motor vehicle brokers may qualify for a license as such and otherwise conduct necessary business functions in accordance with applicable state regulations.

Section 1. Definitions. In this section:

(1) "Limited motor vehicle broker" means any person who through solicitations or referrals engages in the business of acting on the behalf of any person in a transaction directed at transferring to a third party the economic responsibilities of a used motor vehicle loan or lease without a concurrent transfer of title to said motor vehicle to the third party.

(2) "Transfer" means to transfer possession, whether or not another right is also transferred, by means of sale, lease, sublease, lease assignment, or other property transfer.

(3) "Third party" means a person other than the limited broker or the owner of the motor vehicle which is the subject of the transfer, or any person who is not a party to the original lease contract, conditional sale contract or security agreement pertaining to said motor vehicle.

Section 2. No limited motor vehicle broker shall sell, transfer, assign or lease or purport to sell, transfer, assign or lease, or cause, assist or arrange the actual or purported sale, transfer, assignment or lease of a motor vehicle which is the subject of a lease contract, conditional sale contract or security agreement, to a third party without first providing written notification of the proposed action to the secured creditor, lessor or lienholder, who shall be deemed to have assented to the proposed action unless the licensee receives from the secured creditor, lessor or lienholder in written notice of objection to the proposed action within ten (10) days from the date of notification to the secured creditor, lessor or lienholder.

Section 3. No limited motor vehicle broker licensed hereunder shall refuse to disclose the location of the motor vehicle upon the request of the licensor, or the vehicle's owner, secured creditor, lessor or lienholder.

Section 4. No limited motor vehicle broker licensed hereunder shall fail to take reasonable steps to determine whether or not the third party is financially able to pay for the vehicle.

Section 5. No transfer involving a limited motor vehicle broker to a third party shall be without continuing proof of statutorily required automobile liability insurance.

Section 6. For the purpose of compliance with KRS 186.070, a limited motor vehicle broker shall be required to register with the county clerk of the county of his principal place of business, but upon such registration no motor vehicle broker shall receive or otherwise make use of any dealer plates or temporary tags.

Section 7. The license fee for a limited motor vehicle broker shall be $100 dollars per calendar year or part thereof.

Section 8. The following statutes and regulations shall apply to a licensee or applicant hereunder: KRS 190.020, 190.030, 190.033, 190.035, 190.040, 190.053, 190.057, 190.058, 190.059, 190.062, 190.063, 190.073, 190.075, 605 KAR 1:030, 605 KAR 1:050, 605 KAR 1:070, 605 KAR 1:090, 605 KAR 1:130, except that

the commission may waive the lot requirement of 605 KAR 1:030.

Section 9. A limited motor vehicle broker licensed hereunder shall be prohibited from otherwise engaging in the business of a motor vehicle manufacturer or dealer.

RAYMOND COTTRELL, SR., Chairman
APPROVED BY AGENCY: November 9, 1990
FILED WITH LRC: December 14, 1990 at 10 a.m.
PUBLIC HEARING: A public hearing on this proposed new administrative regulation shall be held at 10 a.m. on Wednesday, January 30, 1991, at the office of the Kentucky Motor Vehicle Commission, 114 West Clinton Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 25, 1991, five days prior to 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: David Garnett, Executive Director, Kentucky Motor Vehicle Commission, 114 West Clinton Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Garnett
(1) Type and number of entities affected: At present, the agency has identified one business in operation within this state which offers the type of service which would be licensed pursuant to this proposed regulation. Any other business established in the future which qualifies for such a license would be affected.

Because of the nature of the service sought to be licensed, those members of the banking industry which offer motor vehicle purchase loans or which hold motor vehicle leases would be affected as follows: a limited motor vehicle broker arranges an agreement between a person who leases a motor vehicle or who purchases a motor vehicle with borrowed funds, and a third party. The agreement calls for the third party to take possession and use of the motor vehicle in return for making payments to the original purchaser/lessee. The payments are then passed on to the lender/lessor in the name of the purchaser/lessee. (The reason the purchaser/lessee enters into an agreement with a third party is that the purchaser/lessee may not be able to afford either to sell the vehicle or to continue to make the monthly lease or loan payments.) In most, if not all cases, the agreement between the financial institution and the original purchaser/lessee requires approval by that financial institution for any assignment of the collateral (i.e., vehicle). The proposed regulation requires prior notice of the contemplated agreement to the lender/lessor and provides that the lender/lessor shall be deemed to have assented to the agreement unless the licensee receives from the lender/lessor notice of objection to the agreement within ten (10) days.

The original purchaser/lessee retains title to the vehicle and would continue to be held primarily responsible for compliance with the terms contained in the original purchase/lease agreement. In addition, it remains the statutorily required duty of the original purchaser/lessee to maintain liability insurance on the vehicle in the required amounts.

Another entity affected would be that class of people who purchase motor vehicles with borrowed funds, or who enter into long-term leases for motor vehicles, who, for whatever reason, are not able to continue to make the monthly payments. Often they are not able to sell the vehicle because the amount owed on the loan is greater than the value of that vehicle, nor are they able to unilaterally terminate the lease because it is for a specified term. The service provided by the type of business sought to be licensed offers to this class of persons an alternative to default and repossession.

(a) Direct and indirect costs or savings to those affected: For the prospective licensees, the required costs would be $100 per calendar year (or any part thereof) for the business license, as required by KRS 190.030. In addition, a motor vehicle dealer is required by KRS 189.070 to register with his county clerk and pay an annual fee of $25 for this registration. Each business entity which seeks to qualify for a limited motor vehicle broker license will be required to pay those fees.

Because of what is anticipated to be a very limited market, the agency does not expect that there would be more than very few of these licenses issued in any one year.

For the affected financial institutions, a direct or indirect savings would be reflected by what a prospective licensee believes would be a lower default rate on motor vehicle loans and leases by original purchasers/lessees who have an opportunity to transfer to someone else the monthly payment which they have found burdensome. On the other side of the coin, a direct or indirect cost would be the extra effort and expense which may be required to locate a vehicle subject to forfeiture because of the involvement of a third party.

For the original purchasers/lessees, the direct or indirect savings would be reflected in being offered an alternative to default and repossession. A direct or indirect cost would be incurred on the part of an original purchaser/lessee in the case of a default by the third party which involves any degree of difficulty in obtaining the return of the subject vehicle. In this event, the original purchaser/lessee would be held responsible for the balance of the amount owed.

1. First year: Because of the nature of the business, a specific estimate of first year direct and indirect cost or savings to those affected is not determinable, other than as stated above.

2. Continuing costs or savings: Because of the nature of the business, a specific estimate of continuing direct and indirect cost or savings to those affected is not determinable, other than as stated above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The proposed administrative regulation was drafted in such a manner that it applies only to a very

limited business venture. It is not expected to have any appreciable effect on competition with Kentucky motor vehicle dealers who have been licensed under existing statutes and regulations.

(b) Reporting and paperwork requirements: Pursuant to the terms of the proposed regulation, the proposed licensee would be required to provide written notification to a lender/lessor of a pending agreement between the purchaser/lessee and a third party; the lender/lessor would then have 10 days from the date of notification to object to the proposed agreement. If it does not object, assent is deemed to have been given to that agreement.

The proposed licensee would be required to take "reasonable steps" to determine whether or not a third party is "financially able" to pay for the subject vehicle; this entails some sort of background check or information gathering on a third party, which the licensee would be expected to do in any event.

The proposed licensee must maintain "continuing proof" of statutorily required liability insurance.

The proposed licensee would be required to disclose upon request the location of a subject vehicle, which means that the licensee would have to maintain such records on a third party, again, as it would normally do in any event.

(2) Effects on the promulgating administrative body: Adding a new class of licensee necessarily entails some added degree of effort and concurrent expense on the part of the agency. The licensees would be required to submit an application; the proposed facility must then be physically inspected by agency employees to insure compliance with agency requirements. The application would then be reviewed by the Motor Vehicle Commission which would decide whether the qualifications have been met. As stated earlier, applications from very few such businesses are expected.

(a) Direct and indirect costs or savings: Direct or indirect costs to the agency would be those incurred in providing applications, performing inspections of proposed facilities, commission review and record or file maintenance. Direct or indirect savings would be in the form of revenue generated from licensee fees from approved applicants.

1. First year: No additional staff will be required to insure compliance with the proposed regulation, and other than routine administrative costs as specified in (2)(a) above, no additional agency expenditures will be incurred. Direct and indirect factors affecting agency revenues are: a) Other business entities who seek to engage in the business of a limited motor vehicle broker but who are not licensed as such may be persuaded to qualify for and obtain a dealer license, with a resulting increase in license fees collected by the agency; b) Inspection of the records of an affected licensee after implementation of the proposed regulation to insure compliance with the recordkeeping requirements of the regulation would have a minimal effect on allocation of agency resources (the word "minimal" is used advisedly because of the very low number of these licenses which would be issued); c) If improper transfers are identified, the agency will impose appropriate sanctions, including the imposition of monetary fines, on offending licensees through a hearing process.

2. Continuing costs or savings: See (2)(a)1 above.

3. Additional factors increasing or decreasing costs: If improper transfers are identified and hearings result, the agency will incur increased costs associated with those hearings. However, if violations are found, penalties in the form of monetary fines may be assessed by the agency.

(b) Reporting and paperwork requirements: Agency field inspectors will have to make additional reports showing the results of their inspections to insure compliance with the regulation's recordkeeping requirements. It is anticipated that an agency inspector will spend very little time per week on this process because of the limited number of licensees. If improper transfers are identified, the agency will impose appropriate sanctions on offending licensees through a hearing process, which is initiated by the issuance of an administrative citation by the agency.

(3) Assessment of anticipated effect on state and local revenues: It may be expected that state and local revenues will be affected slightly as a result of the avoidance of a default and repossession, as the vehicle would not then be subject to another sale (which is a taxable event for usage tax purposes). The amount of the usage tax (6% of the retail value of the subject vehicle) lost is not determinable because of the unknown number of vehicle owners who will avoid default and repossession because of the licensed activity.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of refusing to promulgate this regulation in favor of simply filing criminal charges against any business offering such services for violation of KRS 190.030 was considered and rejected as possibly having a detrimental effect on the citizens and businesses of the Commonwealth, and as having the effect of depriving an entrepreneur from the opportunity of being able to determine if this venture can provide a needed service. If this type of business can be properly licensed and can then serve its clients with adequate safeguards, vehicle owners/lessees have an alternative to defaulting on their loans or leases, third parties who may not otherwise be able to qualify for the purchase or lease of a late-model motor vehicle have a means of obtaining the vehicle of their choice, and financial institutions will be served with a lower rate of loan defaults.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This proposed regulation does not conflict with, overlap or duplicate any statute, existing regulation or government policy.

(a) Necessity of proposed regulation if in conflict: The proposed regulation does not present any conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The proposed regulation does not present any conflict.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes, in that while the proposed regulation affects only those persons engaging in the described business (which is a very limited, specialized class) and it treats all members of that class on a uniform basis, it does not affect any other class of agency licensee, and it allows the issuance of a

license with a waiver of the regulatory vehicle display/storage lot requirement, and specifies that a licensee who qualifies for this type of license may not obtain dealer plates or temporary tags and may not otherwise engage in the business of a motor vehicle dealer. With respect to this type of license the latter two specifications significantly reduce or do away with the reporting and recordkeeping requirements which are imposed on all other types of licensees.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Chief State School Officer

701 KAR 5:080. Application for approval of alternative school-based decision making model.

RELATES TO: KRS 156.160, 160.345
STATUTORY AUTHORITY: KRS 156.070, 165.160
NECESSITY AND FUNCTION: KRS 160.345 establishes a statutory administrative structure for school-based decision making councils, but allows for schools to apply for exemption from the statutory model upon presentation of specified information and documentation; and KRS 156.160 mandates the State Board for Elementary and Secondary Education to prescribe uniform forms and blanks for use by local school districts. This regulation prescribes the application to be submitted for exemption from the statutory administrative structure for school councils.

Section 1. Schools requesting exemption from the administrative structure for school-based decision-making councils prescribed by KRS 160.345 shall submit the "Application for An Alternative Model for School-Based Decision-Making" to the chief state school officer and the State Board for Elementary and Secondary Education for approval. Said form is incorporated herein by reference and may be inspected, copied, and obtained at the Office of Research and Planning, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

Section 2. Such application shall be submitted to the chief state school officer by May 31st of each calendar year for implementation in the succeeding school year following approval.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).
JOHN H. BROCK, Superintendent

HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: November 14, 1990
FILED WITH LRC: December 14, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 23, 1991 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 18, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Dr. Dan H. Branham, Secretary, State Board for Elementary and Secondary Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

CONTACT PERSON: J. Gary Bale, General Counsel, Office of Legal Services, Department of Education, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. H.M. Snodgrass
(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:
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:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(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

PUBLIC PROTECTION & REGULATION CABINET
Department of Insurance

806 KAR 11:020. Multiple employer welfare arrangements.

RELATES TO: KRS 304.11-030, 304.11-045
STATUTORY AUTHORITY: KRS 304.2-110
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation requires multiple employer welfare arrangements to provide information to the Commissioner of Insurance so the Commissioner of Insurance can enforce applicable laws.

Section 1. Definitions. As used in this regulation:
(1) "Commissioner" means the Commissioner of the Kentucky Department of Insurance.
(2) "Doing business" has the meaning set forth in KRS 304.11-030(2).
(3) "MEWA" means a multiple employer welfare arrangement, which is any arrangement which is established or maintained for the purpose of offering or providing health care benefits (other than life insurance benefits) to the employees of two (2) or more employers, or to their beneficiaries. A "MEWA" does not mean an arrangement under which health care benefits are fully insured by an insurer authorized to do business in Kentucky.

Section 2. Information to be Provided to the Commissioner. (1) A MEWA now doing business in Kentucky shall, within twenty (20) days after the effective date of this regulation, file with the commissioner in writing the information set forth in Section 3 of this regulation. The commissioner will then decide which laws apply to the MEWA and direct the MEWA to comply. If the MEWA does not comply with applicable laws of Kentucky, the commissioner shall take appropriate enforcement action.
(2) A MEWA not now doing business in Kentucky shall, prior to doing business in Kentucky, file with the commissioner the written information set forth in Section 3 of this regulation. The commissioner will then decide which laws apply to the MEWA and direct the MEWA to comply. If the MEWA does not comply with the applicable laws of Kentucky, the commissioner shall take appropriate enforcement action.

Section 3. Written Information to be Filed with the Commissioner. The information required to be filed in writing with the commissioner pursuant to Section 2 of this regulation is as follows:
(1) The employer identification number assigned by the Internal Revenue Service to the MEWA;
(2) A copy of any trust document used by the MEWA;
(3) Copies of any health benefits or life benefits plan documents;
(4) Copies of all annual reports made by the MEWA to the Department of Labor (Form 5500);
(5) Copies of any audits conducted with respect to the MEWA;
(6) Copies of actuarial reports prepared for the MEWA;
(7) Copies of any summary annual reports published for participants in the MEWA;
(8) Copies of any contracts with agents or administrators;
(9) The names of insurers and policy numbers for bonds covering fiduciaries of the MEWA;
(10) Copies of any stop loss, excess, or reinsurance policies held by the MEWA;
(11) A list of all Kentucky employers participating in the MEWA, including full mailing addresses;
(12) A list of all officers and trustees of the MEWA;
(13) Copies of any marketing materials and rate manuals;
(14) The total number of employees, dependents, and beneficiaries participating in the MEWA.

Section 4. Effective Date. This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.

ELIZABETH P. WRIGHT, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: November 15, 1990
FILED WITH LRC: November 21, 1990 at 10 a.m.
PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for January 22, 1991, at 9 a.m. (ET), in the offices of the Kentucky Department of Insurance, Post Office Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 9 a.m. (ET), on January 22, 1991, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance in writing at least five days prior to the hearing that they will be in attendance at the hearing to comment.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Patrick Watts
Need for the Proposed Regulation: Kentucky has recently experienced severe problems with multiple employer welfare arrangements, which are, in essence, unauthorized insurers. MEWAs are typically set up as a trust arrangement under which health benefits are provided to employees of numerous employers. Federal law, 29 USC §1144(b)(6), permits states to regulate MEWAs. Recent opinions of the United States Department of Labor provide that state regulation may include licensing requirements. KRS 304.11-030 requires insurers doing business in Kentucky to have a certificate of authority. That this requirement extends to MEWAs is confirmed by KRS 304.11-045, which creates a presumption that any entity providing health benefits in Kentucky is subject to jurisdiction of the Commissioner of Insurance and authorizes the commissioner to conduct examinations into the activities of those providing health benefits to determine what laws apply to those entities. However, there is no requirement that MEWAs notify the commissioner of their activities in Kentucky. This means that a MEWA may be doing business in Kentucky before the commissioner has knowledge of it. This regulation requires MEWAs to provide information to the commissioner so that the commissioner can enforce applicable laws.
(1) Type and number of entities affected: The proposed regulation will affect MEWAs doing business in Kentucky. The number of MEWAs doing business in Kentucky is unknown, indeed, that is why the regulation is being adopted.
(a) Direct and indirect costs or savings to those affected:
1. First year: The proposed regulation merely requires the production of information in writing to the commissioner. Therefore, first year costs will be minimal.
2. Continuing costs or savings: Savings should be realized in that the commissioner will be able to determine in advance whether a MEWA will be allowed to operate in Kentucky.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: The proposed regulation requires filing of written information with the commissioner. This

information will be used by the commissioner to determine what laws of Kentucky apply to a MEWA.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The regulation will result in savings in that the commissioner will be able to determine in advance whether a multiple employer welfare arrangement should be allowed to do business in Kentucky, and if so, on what basis.

2. Continuing costs or savings: Continuing savings will be realized by allowing the commissioner to determine in advance whether a MEWA should be allowed to do business in Kentucky, and if so, on what basis.

3. Additional factors increasing or decreasing costs: None

(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: There is currently no system requiring MEWAs to notify the commissioner that they are doing business in Kentucky. The Department of Insurance requested the United States Department of Labor to identify all MEWAs doing business in Kentucky, but has received no response.

(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? Tiering is recognized in the proposed regulation by noting that there may be some MEWAs now doing business in Kentucky and requiring them to comply within a certain number of days. However, it is also recognized that MEWAs not now doing business in Kentucky should be prohibited from doing business in Kentucky until they have provided complete information to the commissioner and the commissioner has determined the laws which apply to the MEWA.

PUBLIC PROTECTION & REGULATION CABINET
Department of Insurance

806 KAR 18:040. Health insurance for students of institutions of higher education.

RELATES TO: KRS 304.18-115

STATUTORY AUTHORITY: KRS 304.2-110, 304.18-115

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.18-115 requires the Department of Insurance, with the advice and consent of the Council on Higher Education, to issue regulations to define qualifying student health insurance programs for institutions of higher education, to establish procedures to monitor compliance, and to implement the provisions of KRS 304.18-115.

Section 1. Definitions. As used in this regulation:

(1) "Accident" means accidental bodily injury sustained by the insured person which is the direct result of the accident, independent of disease or bodily infirmity or any other cause, and occurs while the insurance is in force.

(2) "Hospital" means an institution operated pursuant to law which is primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic, and major surgical facilities for the medical care and treatment of sick or injured persons on an inpatient basis for which a charge is made, and provides twenty-four (24) hour nursing service by or under the supervision of registered graduate professional nurses (RNs). However, "hospital" does not include convalescent homes, convalescent, rest, or nursing facilities, facilities primarily affording custodial, educational, or rehabilitory care, facilities for the aged, drug addicts, or alcoholics, or any military or veterans hospital or soldiers home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed services, except for services rendered on an emergency basis where a legal liability exists for charges made to the individual for such services.

(3) "Mental or nervous disorders" mean neurosis, psychosis, or mental or emotional disease or disorder of any kind.

(4) "Nurse" means a registered graduate professional nurse (RN), a licensed practical nurse (LPN), or a licensed vocational nurse (LVN).

(5) "Physician" means a duly qualified and licensed physician, that is, a doctor of medicine (MD), a doctor of osteopathy (DO), a doctor of dentistry (DMD or DDS), a doctor of chiropractic, or a doctor of optometry (OD), licensed to practice as such by the governmental authority having jurisdiction over licensing of the classification of doctor in the state where the service is rendered.

(6) "Preexisting condition" means a health condition for which medical advice was given or treatment was recommended by or received from a physician within twelve (12) months before the effective date of coverage.

(7) "Sickness" means sickness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force, but excludes sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employers' liability, or similar law.

Section 2. Scope and Purpose of this Regulation. (1) This regulation establishes minimum standards for health insurance which institutions of higher education require of their students pursuant to KRS 304.18-115.

(2) Every health insurance policy used for the health insurance requirement of KRS 304.18-115 shall meet the minimum standards established by this regulation.

(3) Every institution of higher education shall offer a health insurance policy pursuant to KRS 304.18-115 which meets the minimum standards established in this regulation. However, this regulation does not prohibit institutions of higher education from offering health insurance policies which contain benefits

greater than, or provisions which are consistent with, this regulation.

Section 3. Minimum Standards. All health insurance policies used to satisfy the requirements of KRS 304.18-115 shall meet the following minimum standards:

(1) Definitions. Health insurance policies shall not use definitions of terms defined in Section 1 of this regulation which are more restrictive than the definitions contained in Section 1 of this regulation.

(2) Eligibility requirements. Every health insurance policy shall contain a definition of students eligible for coverage. The eligibility criteria shall not be more restrictive than those set forth in KRS 304.18-115(1).

(3) Duration of coverage. A health insurance policy shall contain a provision describing the duration of coverage and the right to continue or convert coverage as described in KRS 304.18-110 and 304.18-120 or other applicable laws.

(4) Hospital inpatient services and related physician services. All health insurance policies shall include at least coverage for basic inpatient hospital services and emergency medical services as follows:

(a) Inpatient hospital care for fourteen (14) days to include room and board, general nursing care, and miscellaneous hospital charges for the use of an operating room, anesthesia, x-ray examination for diagnostic purposes, laboratory tests, drugs or medicines, therapeutic services, and supplies associated with the hospital confinement and while hospital confined.

(b) Fifty (50) percent of physician charges related to any physical illness or injury which results in admission to a hospital as an inpatient.

(c) Emergency care expenses including ambulance service and emergency room use when the emergency condition results in admission to the hospital as an inpatient.

(5) Maternity shall be treated the same as any other sickness under the policy. Complications of pregnancy, such as spontaneous or nonelective abortions, shall also be treated as any other sickness under the policy.

(6) Termination of coverage under the policy shall be without prejudice to any continuous loss which commenced while the policy was in force, but this extension of benefits may be conditioned upon continuous total disability of the insured or payment of the maximum benefits.

(7) Usual, customary, and reasonable charges. A health insurance policy which provides for the payment of benefits based on standards described as "usual, customary, and reasonable," or similar wording, shall include a definition of these terms.

(8) Disclosure required to students. Every insurer issuing a health insurance policy will furnish to the institution of higher education for delivery to each student insured a statement in summary form of the essential features of the insurance coverage and to whom benefits are payable. If dependents are included in the coverage, one (1) statement may be issued for each family unit.

(9) The benefits required by this section may be limited to maximum dollar amounts which are consistent with the premium charged.

Section 4. Prohibited Policy Provisions. (1) A health insurance policy used to meet the requirements of KRS 304.18-115 shall not include a probationary period.

(2) A health insurance policy used to meet the requirements of KRS 304.18-115 shall not exclude coverage by type of sickness, accident, or treatment, except as follows:

(a) Services rendered by health care providers retained or employed by the institution of higher education specifically for the purpose of providing such services to enrolled students or for the use of facilities of the institution of higher education which are designed primarily for the provision of health services to students. The prohibition does not apply to institutional employees who provide in the course of their private practice health services to students or to university teaching hospitals or specialty clinics;

(b) Foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain, or symptomatic complaints of the feet;

(c) Illness, treatment or medical condition arising out of:

1. War or act of war (whether declared or undeclared), participation in a felony, riot, or insurrection, service in the armed forces or units auxiliary thereto; or

2. Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury;

(d) Cosmetic surgery, except that "cosmetic surgery" shall not include reconstructive surgery when the treatment is incidental to or follows surgery resulting from trauma, infection, or other diseases of the involved body part;

(e) Care in connection with the detection and correction by manual or mechanical means of structural imbalance, distortion, or subluxation of the human body for purposes of removing nerve interference and the effects thereof, where such interference is the result of or related to distortion, misalignment, or subluxation of, or in the vertebral column, except to the extent that coverage for these services is required by law;

(f) Treatment provided in a government hospital other than university teaching hospitals, benefits provided under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability, or occupational disease law, services rendered by employees of hospitals, laboratories, or other health care providers, services performed by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance;

(g) Dental care or treatment except that made necessary by injury to sound natural teeth;

(h) Eyeglasses, hearing aids, and examination for the prescription or fitting thereof;

(i) Rest cures, custodial care, transportation, and routine physical examination;

(j) Territorial limitations, except that coverage must be provided for losses incurred in any state of the United States, any territory or possession of the United States, and Canada;

(k) Preventive treatment, except when coverage is required by law; and

(l) Health conditions arising from practicing for, participating in, or traveling to or from

interscholastic, intercollegiate, professional, or semiprofessional sports.

Section 5. Waiver for Students Certifying Participation in Health Insurance with Comparable Coverage. An institution of higher education may waive the required participation in its student health insurance program, or any portion thereof, if the student seeking waiver certifies in writing that he/she is covered by a health benefit plan having coverages comparable to those required by this regulation. The institution of higher education shall require any student applying for a waiver to provide the following information as part of the certification:

(1) Name of the insurer or other entity providing benefits;

(2) The name of the policyholder or certificate holder and their relation to the student;

(3) Certificate or policy number.

Section 6. Severability. If any provision of this regulation or the application of this regulation to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of the provision to other persons or circumstances shall not be affected thereby.

Section 7. Effective Date. This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.

ELIZABETH P. WRIGHT, Commissioner
THEODORE T. COLLEY, Secretary

APPROVED BY AGENCY: December 10, 1990

FILED WITH LRC: December 12, 1990 at 2 p.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for January 22, 1991, at 9 a.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Elizabeth P. Wright, Commissioner, Kentucky Department of Insurance, P.O. Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 9 a.m. (ET), on January 22, 1991, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance in writing at least five (5) days prior to the hearing that they will be in attendance at the hearing to comment.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Patrick Watts

Need for the Proposed Regulation: The 1990 General Assembly adopted KRS 304.18-115, requiring full and part-time students enrolled in public or independent institutions of higher education located in Kentucky to participate in a qualifying student health insurance program meeting certain minimum levels of benefits. The Department of Insurance, with the advice and consent of the Council on Higher Education, is required to issue regulations to define qualifying student health insurance programs, to establish procedures to monitor compliance, and to implement the provisions of KRS 304.18-115.

Only a few states now require college or university students to have health insurance. In Kentucky, only a few institutions of higher education require students to have health insurance.

There is great concern among institutions of higher education and their students concerning the cost of health insurance. Many institutions of higher education currently arrange for health insurance which students may purchase on an optional basis. The regulation has been written in a manner which should not cause substantial changes in those existing programs. Section 2 of the regulation makes it clear that the regulation sets minimum standards and that institutions of higher education are free to have health insurance programs which have higher benefits. Section 3 establishes certain minimum standards for coverage and disclosure.

Section 4 prohibits certain policy provisions and exclusions. Most health insurance policies purchased by institutions of higher education in Kentucky are established so that the student pays a health fee to the institution of higher education and utilizes the health service provided by the institution of higher education. If the student must be hospitalized or referred to outside specialists, health insurance is then available to cover the cost. The policy provisions prohibited by the regulation are written to recognize this type of arrangement.

KRS 304.18-115(1) allows institutions of higher education to waive participation in their health insurance programs for students certifying in writing that they are participating in a health insurance program having comparable coverages. Section 5 of the regulation implements that provision by requiring students seeking a waiver to certify in writing the name of the insurer or other entity providing benefits, the name of the policyholder or certificate holder and their relation to the student, and the certificate or policy number. This is the minimum amount of information which an institution of higher education would need to give to a health care provider if a student needed emergency treatment.

(1) Type and number of entities affected: The regulation will affect 170,000 students at institutions of higher education in Kentucky.

(a) Direct and indirect costs or savings to those affected:

1. First year: This compulsory insurance requirement is imposed by statute, not the proposed regulation. The proposed regulation is written in such a way as to minimize disruption in the current student health insurance market. A review of current health insurance plans used by institutions of higher education shows that costs range from as little as $25 per semester to several hundred dollars per semester.

2. Continuing costs or savings: KRS 304.18-115 will require students to have health insurance in subsequent years.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The proposed regulation specifies what must be included in the written certification required by KRS 304.18-115(1) for waiver of the health insurance requirement.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing

costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives to adoption of the proposed regulation were not considered since KRS 304.18-115 requires the Department of Insurance to adopt a 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? Tiering is recognized in that institutions of higher education are required to have health insurance programs containing certain minimum standards. However, they are not prohibited from having health insurance programs which exceed those standards, thereby allowing institutions of higher education to structure their health insurance programs the way they see fit, as long as they meet the minimum standards.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 13:120. Emergency medical technician automatic and semiautomatic defibrillation training program.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)
STATUTORY AUTHORITY: KRS 211.964
NECESSITY AND FUNCTION: KRS 211.964 directs the Cabinet for Human Resources to adopt rules and regulations relating to emergency medical technicians. The function of this regulation is to establish a new emergency medical technician (EMT) procedure, automatic and semiautomatic cardiac defibrillation, and to establish requirements for training, examinations and authorization. This will be a restrictive procedure while the EMT is employed with an approved ambulance service provider.

Section 1. Training Course Requirements. The automatic and semiautomatic defibrillation training course, utilizing automatic external or semiautomatic external defibrillation (AED/SAED) equipment, shall:
(1) Be coordinated by a licensed ambulance service that has filed an appropriate application to and has been approved by the cabinet for coordinating the training, and the ambulance service shall assume all responsibilities required for conducting the AED/SAED training course;
(2) Include the curriculum developed by the Kentucky Emergency Medical Services Advisory Committee and approved by the Emergency Medical Services Branch of the cabinet. A copy of this publication, included by reference as if fully incorporated herein, shall be on file in the office of the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, and shall be available for public inspection between 8 a.m. and 4:30 p.m., Monday through Friday. An equivalent curriculum developed by an outside source, but meeting the course criteria established by the cabinet, may be submitted to and be considered for approval by the cabinet;
(3) Be a minimum of seven (7) hours in duration, presented in two (2) sessions over at least two (2) days;
(4) Utilize equipment, tests, and other materials approved by the cabinet;
(5) Not be started until all equipment and other materials specified are available, in proper quantities, in proper working condition, and placed in secure storage;
(6) Not share equipment between courses unless such equipment is available equally to all defibrillation classes;
(7) Be taught by an instructor, at a ratio of one (1) instructor per six (6) students, approved by the cabinet pursuant to Section 2 of this regulation;
(8) Have a medical director under written contract with the ambulance service provider, who shall review and approve all instruction curriculum and instructors, and who shall be present and participate as appropriate during the training program course;
(9) Have an appropriate number of assistant instructors available for practice sessions so that there are no more than six (6) additional students per assistant. A person meeting the specifications described in Section 2 of this regulation, or an EMT who has completed the AED/SAED training program and is currently authorized and active in performing AED/SAED procedures, may be used as an assistant for practice sessions;
(10) Have a class certification number assigned by the cabinet;
(11) Not permit any absenteeism, or the student shall repeat the entire course;
(12) Not permit any student to be on call during training sessions; and
(13) Require the instructor at the end of each course to submit the following to the ambulance service provider and to the EMS Branch of the cabinet:
(a) A list of names, including EMT certification numbers, of those students who have successfully completed the course requirements for authorization to perform automatic and semiautomatic cardiac defibrillation; and
(b) The name of the ambulance service with which these EMTs will be working.

Section 2. Automatic and Semiautomatic Cardiac Defibrillation Instructors. No person shall hold himself out as an instructor for EMTs in automatic and semiautomatic cardiac defibrillation unless he has been approved by the cabinet to teach the course. One (1) of the following shall be eligible for such approval upon submission of appropriate documentation to the cabinet:
(1) An EMT who is a certified EMT-instructor and who is authorized and is currently active in performing AED/SAED procedures;
(2) A paramedic, registered nurse or physician, each of whom is a currently certified advanced cardiac life support (ACLS) instructor.

Section 3. Requirements for Each Eligible Trainee Applicant. Each EMT who is employed (full time, part time, paid or volunteer) with an ambulance service and responds on an

ambulance, shall provide to the AED/SAED lead class instructor:

(1) Proof of current EMT certification. If EMT certification expires, the eligibility as an applicant for AED/SAED training also lapses until the EMT is recertified;

(2) Proof of current cardiac life support skills, (e.g., a current American Heart Association or American Red Cross CPR certification card). Included shall be the provision of an acceptable cardiopulmonary resuscitation (CPR) strip, that is signed by an EMT-instructor to verify that the strip was produced by the student applicant within thirty (30) days prior to the commencement date of the class; and

(3) Approval to enroll from the student's emergency medical (ambulance) service provider director and the emergency medical (ambulance) service medical director (EMS-MD).

Section 4. EMT Automatic and Semiautomatic Cardiac Defibrillation Training Program Examination. The cabinet shall prescribe the format and content of the authorization examination, which shall consist of two (2) parts:

(1) Written test. At the end of this course, the student shall demonstrate competency with a written test scoring eighty (80) percent or better that includes the following four (4) enabling objectives:

(a) The student shall identify the function, operation, and proper maintenance of the automatic external devices/shock advisory (semiautomatic) devices, hereafter referred to as AED/SAED.

(b) The student shall define patient assessment, and care and treatment of the sudden death victim.

(c) The student shall list safety measures when using an AED/SAED.

(d) The student shall repeat standing orders and state automatic and semiautomatic cardiac defibrillation training program requirements.

(2) Practical test. At the end of this course, the student shall pass a practical examination managing a simulated cardiac arrest patient using defibrillation that includes the following five (5) enabling objectives:

(a) The student shall demonstrate control of the simulated emergency scene and shall direct the resuscitation efforts.

(b) The student shall demonstrate correct use of standing orders in a simulated cardiac arrest by correctly defibrillating a manikin within ninety (90) seconds of arrival at the manikin's side.

(c) The student shall demonstrate safe use of the AED/SAED and answer questions about the controls, disposable supplies, maintenance, and device "trouble shooting" techniques.

(d) The student shall give an appropriate voice documentation of events at the scene.

(e) The student shall demonstrate appropriate assessment and care of the patient before, during and after defibrillation.

(3) Examiners. AED/SAED instructors approved by the cabinet pursuant to Section 2 of this regulation shall be used as examiners for AED/SAED course practical examinations. An instructor who is employed by the ambulance service for whom the AED/SAED course is conducted shall not be used as an examiner in the practical examination of the course.

(4) Failure of examination and eligibility for retesting.

(a) A student who fails one (1) component of the final examination, written or practical, may be allowed one (1) retest upon recommendation by the instructor and with the approval of the ambulance service medical director.

(b) Failure to successfully pass one (1) retest shall require that the student retake the entire training program course before becoming authorized to perform AED/SAED procedures.

Section 5. Authorization and Continuation of Authorization. (1) The EMT is authorized to perform AED/SAED procedures by the medical director of the approved ambulance service.

(2) Besides having the approval of the ambulance service medical director, in order to continue the authorization for performance of AED/SAED procedures, the EMT shall during his period of authorization, provide proof to include:

(a) Current certification as an emergency medical technical;

(b) Continued employment and response as an ambulance attendant with an approved AED/SAED ambulance service provider;

(c) A practical skills review every ninety (90) days to be documented by the EMS-medical director or the EMS-MD designee. This practical skills review shall address defibrillation as well as basic life support skills.

(3) The continuing medical education classes shall include, but are not limited to:

(a) Equipment drills with their specific auto or semiautomatic defibrillater; and

(b) Knowledge of current standing orders.

(4) The following are not eligible for credit as in-service training or continuing education:

(a) Ambulance runs, rescues, firefighting, emergency responses, or similar actual emergency activities;

(b) Instruction in material, techniques or procedures not approved to be performed by an EMT authorized to perform automatic and semiautomatic cardiac defibrillation.

(5) Evidence of AED/SAED continuing education shall be submitted to and maintained on file at the ambulance service with which the EMT is employed, subject to inspection by a representative of the Emergency Medical Services Branch of the cabinet.

(6) Each subject or training course claimed shall be signed by the instructor of the subject or course.

(7) The qualifications for instructors who may provide in-service and continuing education for the EMT authorized to perform automatic and semiautomatic defibrillation are the same as those identified under Section 2 of this regulation.

Section 6. Denial of Authorization for the EMT to Perform Automatic and Semiautomatic Defibrillation Procedures. The denial of authorization for the EMT to perform AED/SAED procedures may be put into effect by the EMS-MD or the cabinet for any of the following reasons:

(1) The medical director has removed permission for the EMT to perform AED/SAED procedures and has made it known to the ambulance service provider, with subsequent notice having been made by the ambulance service provider to the EMS Branch of the cabinet, due to any reason that has been substantiated to be

detrimental to patient care or to other emergency medical service personnel;
(2) The expiration of the individual's EMT certification;
(3) The individual has discontinued employment with an approved automatic or semiautomatic defibrillation ambulance service provider;
(4) The previously approved ambulance service provider with whom the EMT works has been denied approval to provide automatic or semiautomatic defibrillation services by either having had its ambulance service license revoked, or it no longer has a medical director under written contract; or
(5) The EMT has had his EMT certification revoked, due to having committed an infraction as specified under 902 KAR 13:090, Section 1, disciplinary actions.

Section 7. Hearing Process for an EMT Denied Authorization. When an EMT has been denied authorization to perform AED/SAED procedures:
(1) At the local level by the EMS-MD, a hearing process shall be assured for the EMT in the EMS-MD/ambulance service provider contract; or
(2) At the state level due to the EMT certification being revoked by the EMS Branch of the cabinet, a hearing process for the EMT shall be in accordance with the requirements of 902 KAR 13:090, Section 2.

Section 8. Utilization of Services. No ambulance service provider shall employ, utilize, permit the operation of, or advertise that said provider employs an EMT authorized to perform AED/SAED procedures, unless the provider is approved by the cabinet to provide AED/SAED services. An approved AED/SAED ambulance service provider shall:
(1) Have a written agreement with a medical director to provide medical supervision and control of the AED/SAED authorized EMT who is in the employ of the provider, and the medical director shall:
(a) Be a licensed physician in the Commonwealth of Kentucky;
(b) Be familiar with ACLS standards, and by January 1, 1995 become ACLS certified;
(c) Review and approve all AED/SAED instruction curriculum, and the instructors for the training program;
(d) Participate in the AED/SAED training program, including presentation of lectures and assisting in student practice sessions as appropriate;
(e) Approve each EMT who is to be a student trainee in the AED/SAED training program;
(f) Supply written authorization to the EMTs for standing orders relating to performance of AED/SAED procedures;
(g) Supervise the continuing education and quarterly evaluations of each EMT authorized to perform AED/SAED procedures;
(h) Review patient case records as established by a quality assessment plan, to include review of written documentation and use of electronic voice and electrocardiogram (ECG) recordings of treatment (only when defibrillation machine used) performed by the authorized EMTs in the field;
(i) Exercise authority as appropriate to remove permission for EMT to perform AED/SAED procedures as referenced in Section 6(1) of this regulation, including the provision of written notice to the EMT and ambulance service involved; and
(j) Assure the provision of a hearing process in accordance with Section 7(1) of this regulation.
(2) Be licensed minimally as a basic life support ambulance service in the Commonwealth of Kentucky; and
(3) Submit required information to the EMS Branch of the cabinet prior to the commencement of any AED/SAED training program for EMTs employed by the emergency medical services provider, and at least annually thereafter.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: December 5, 1990
FILED WITH LRC: December 13, 1990 at 9 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 22, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 17, 1991, 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: Robert Calhoun
(1) Type and number of entities affected: Only those ambulance services that apply for and meet the criteria for coordinating the training, and providing the services thereafter, will be affected.
(a) Direct and indirect costs or savings to those affected: This is not a mandatory requirement, therefore, ambulance services will voluntarily assume cost for providing the service.
1. First year: Ambulance services will be responsible for training, purchase of equipment and staffing each ambulance. Increased cost will probably amount to approximately $6-10,000 per ambulance the first year.
2. Continuing costs or savings: Likely to experience increased cost.
3. Additional factors increasing or decreasing costs (note any effects upon competition): 1) The equipment, one per ambulance costs approximately $6,000; 2) Might need to increase staff salaries (approximately 2-5%). However, will provide greater lifesaving skills for heart failure victims.
(b) Reporting and paperwork requirements: Service provides reports 1) at end of training; 2) quarterly; and 3) annually.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: Will cause increase to staff with a greater increase to central office rather than regional office staff the first year.
1. First year: Approximately 5% increase to staff time. Central office to prepare for implementation, review applications, and maintain service data files. However, expect only 10 to 20 ambulance services to apply the first year.
2. Continuing costs or savings: Will increase as more services participate.

3. Additional factors increasing or decreasing costs: Regional staff will monitor follow-up activities of ambulance services. Their responsibilities will likely begin to increase the second year.

(b) Reporting and paperwork requirements: Will 1) review training applications and report results to ambulance service; 2) maintain ambulance service data files, and provide status reports to Division of Licensing and Regulation.

(3) Assessment of anticipated effect on state and local revenues: No change. There will be no separate certification of skill.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This skill allows use of an automatic machine to deliver treatment, whereas use of a manual operated machine requires training to paramedic level, a more time consuming and expensive training program.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy conflicts with, overlaps or duplicates this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes_X_ No___ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. Only if the ambulance service that voluntarily provides service is partially or fully financed by a local government. Only as an optional decision. This is not a mandatory requirement.

3. State the aspect or service of local government to which this administrative regulation relates. The ambulance service, if they voluntarily decide to offer this new procedure.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Will increase cost to provide service. However, may charge an increased fee to consumer to offset the increased cost.

CABINET FOR HUMAN RESOURCES
Office of Inspector General

902 KAR 20:300. Operation and services; nursing facilities.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990
STATUTORY AUTHORITY: KRS 216B.042 and 216B.105
NECESSITY AND FUNCTION: KRS 216B.042 and 216B.105 mandate that the Kentucky Cabinet for Human Resources regulate health facilities and health services. This regulation provides licensure standards for the operation and services of a nursing facility.

Section 1. Definitions. (1) "Facility" means a nursing facility licensed pursuant to this regulation and 902 KAR 20:008.

(2) "Nurse aide" means any individual providing nursing or nursing related services, employed by the facility, to residents in a facility except unpaid volunteers.

(3) "Licensure agency" means the Division for Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources.

Section 2. Scope of Operations. (1) A nursing facility shall be subject to the provisions of Kentucky's nursing home reform laws, KRS Chapter 216.

(2) A nursing facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the cabinet pursuant to KRS Chapters 209 and 620.

(3 Tuberculosis testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long-term care facilities.

Section 3. Resident Rights. The resident has a right to a dignified existence, self-determination and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident, including each of the following rights:

(1) Exercise of rights.

(a) The resident shall have the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

(b) The resident shall have the right to be free of interference, coercion, discrimination, or reprisal from the facility in exercising his or her rights.

(c) In the case of a resident adjudged incompetent under the laws of a state by a court of competent jurisdiction, the rights of the resident shall be exercised by the person appointed under state law to act on the resident's behalf.

(2) Notice of rights and services.

(a) The facility shall inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. Such notification shall be made prior to or upon admission and during the resident's stay. Receipt of such information, and any amendments to it, shall be documented in writing.

(b) The resident shall have the right to inspect and purchase photocopies of all records pertaining to the resident, upon written request and forty-eight (48) hours notice to the facility;

(c) The resident shall have the right to be fully informed in language that he or she can understand of his or her total health status, including but not limited to, his or her medical condition;

(d) The resident shall have the right to refuse treatment, and to refuse to participate in experimental research; and

(e) The facility shall inform each resident before, or at the time of admission, and periodically during the resident's stay, of services available in the facility and of charges for those services, including any charges for services not covered by third party payors or the facility's per diem rate.

(f) The facility shall furnish a written description of legal rights which includes:

1. A description of the manner of protecting personal funds, under paragraph (3) of this section; and

2. A statement that the resident may file a complaint with the licensure agency concerning resident abuse, neglect, and misappropriation of resident property in the facility.

(g) The facility shall inform each resident of the name, specialty and way of contacting the physician responsible for his or her care.

(h) The facility shall prominently display in the facility written information, and provide to residents and potential residents oral and written information about how to apply for and use third party benefits, and how to receive refunds for previous payments covered by such benefits.

(i) Notification of changes.

1. Except in a medical emergency or when a resident is incompetent, a facility shall consult with the resident immediately and notify the resident's physician, and if known, the resident's legal representative or interested family member within twenty-four (24) hours when there is:

a. An accident involving the resident which results in injury;

b. A significant change in the resident's physical, mental, or psychosocial status;

c. A need to alter treatment significantly; or

d. A decision to transfer or discharge the resident from the facility as specified in Section 4(1) of this regulation.

2. The facility shall also promptly notify the resident and, if known, the resident's legal representative or interested family member when there is:

a. A change in room or roommate assignment as specified in Section 6(5)(b) of this regulation; or

b. A change in resident rights under federal or state law or regulations as specified in subsection (2)(a) of this section.

3. The facility shall record and periodically update the address and phone number of the resident's legal representative or interested family member.

(3) Protection of resident funds.

(a) The resident shall have the right to manage his or her financial affairs and the facility shall not require residents to deposit their personal funds with the facility.

(b) Management of personal funds. Upon written authorization of a resident, the facility shall hold, safeguard, manage and account for the personal funds of the resident deposited with the facility, as specified in paragraphs (c) through (g) of this subsection.

(c) Deposit of funds.

1. Funds in excess of fifty (50) dollars. The facility shall deposit any resident's personal funds in excess of fifty (50) dollars in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on the resident's account to his or her account.

2. Funds less than fifty (50) dollars. The facility shall maintain a resident's personal funds that do not exceed fifty (50) dollars in a noninterest bearing account or petty cash fund.

(d) Accounting and records. The facility shall establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

1. The system shall preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

2. The individual financial record shall be available on request to the resident or his or her legal representative.

(e) Conveyance upon death. Upon the death of a resident with a personal fund deposited with the facility, the facility shall convey promptly the resident's funds, and a final accounting of those funds, to the individual administering the resident's estate.

(f) Assurance of financial security. The facility shall purchase a surety bond, or provide self-insurance to assure the security of all personal funds of residents deposited with the facility.

(g) Limitation on charges to personal funds. The facility shall not impose a charge against the personal funds of a resident for any item or service for which payment is made by a third party payor.

(4) Free choice. The resident shall have the right to:

(a) Choose a personal attending physician;

(b) Be fully informed in advance about care and treatment of any changes in that care or treatment that may affect the resident's well-being; and

(c) Unless adjudged incompetent or otherwise found to be incapacitated under the laws of the state, participate in planning care and treatment or changes in care and treatment.

(5) Privacy and confidentiality of personal and clinical records. The resident shall have the right to personal privacy and confidentiality of his personal and clinical records.

(a) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room;

(b) Except as provided in paragraph (c) of this subsection, the resident may approve or refuse the release of personal and clinical records to any individual outside the facility;

(c) The resident's right to refuse release of personal and clinical records shall not apply when:

1. The resident is transferred to another health care institution; or

2. Record release is required by law or third-party payment contract.

(6) Grievances. A resident shall have the right to:

a. Voice grievances with respect to treatment or care that is, or fails to be furnished, without discrimination or reprisal for voicing

the grievances; and

b. Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(7) Examination of survey results. A resident shall have the right to:

(a) Examine the results of the most recent survey of the facility conducted by federal or state surveyors and any plan of correction in effect with respect to the facility. The results shall be posted by the facility in a place readily accessible to residents; and

(b) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

(8) Work. The resident shall have the right to:

(a) Refuse to perform services for the facility;

(b) Perform services for the facility, if he or she chooses, when:

1. The facility documents the need or desire for work in the plan of care;

2. The plan specifies the nature of the services performed and whether the services are voluntary or paid;

3. Compensation for paid services is at or above prevailing rates; and

4. The resident agrees to the work arrangements described in the plan of care.

(9) The resident shall have the right to privacy in written communications, including the right to:

(a) Send and receive mail promptly that is unopened; and

(b) Have access to stationery, postage and writing implements at the resident's own expense.

(10) Access and visitation rights.

(a) The resident shall have the right and the facility shall provide immediate access to any resident by the following:

1. Any representative of the federal government;

2. Any representative of the state;

3. The resident's individual physician;

4. Any representative of the Kentucky long-term care ombudsman program;

5. The Kentucky Department for Public Advocacy;

6. Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

7. Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(b) The facility shall provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(c) The facility shall allow representatives of the ombudsman, described in paragraph (a)4 of this subsection, to examine a resident's clinical records with the permission of the resident or the resident's legal representative, and consistent with state law.

(11) Telephone. The resident shall have the right to have regular access to the private use of a telephone.

(12) Personal property. The resident shall have the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(13) Married couples. The resident shall have the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement.

Section 4. Admission, Transfer and Discharge Rights. (1) Transfer and discharge.

(a) Transfer and discharge requirements. The facility shall permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

1. The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

2. The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

3. The safety of individuals in the facility is endangered;

4. The health of individuals in the facility would otherwise be endangered;

5. The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility; or

6. The facility ceases to operate.

(b) Documentation. When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (a)1 through 5 of this subsection, the resident's clinical record must be documented. The documentation must be made by:

1. The resident's physician when transfer or discharge is necessary under paragraph (a)1 or 2 of this subsection; and

2. A physician when transfer or discharge is necessary under paragraph (a)4 of this subsection.

(c) Notice before transfer. Before a facility transfers or discharges a resident, the facility shall:

1. Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons;

2. Record the reasons in the resident's clinical record; and

3. Include in the notice the items described in paragraph (e) of this subsection.

(d) Timing of the notice. Except when specified in paragraph (d)2 of this subsection, the notice of transfer or discharge required under paragraph (c) of this subsection must be made by the facility at least thirty (30) days before the resident is transferred or discharged.

2. Notice may be made as soon as practicable before transfer or discharge when:

a. The safety of individuals in the facility would be endangered, under paragraph (a)3 of this subsection;

b. The health of individuals in the facility would be endangered, under paragraph (a)4 of this subsection;

c. The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (a)2 of this subsection;

d. An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph (a)1 of this subsection;

e. A resident has not resided in the facility for thirty (30) days.

(e) Contents of the notice. For nursing facilities, the written notice specified in paragraph (c) of this subsection shall include the following:

1. A statement that the resident has the right to appeal the action to the state agency designated by the state for such appeals.
2. The name, address and telephone number of the state long-term care ombudsman;
3. For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals;
4. For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals;
5. The reason for the transfer or discharge;
6. The effective date of transfer or discharge; and
7. The location to which the resident is transferred or discharged.

(f) Orientation for transfer or discharge. A facility shall provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(2) Notice of bed-hold policy and readmission.

(a) Notice before transfer. Before a facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility shall provide written information to the resident and family member or legal representative that specifies the duration of the bed-hold policy if any, during which the resident is permitted to return and resume residence in the facility; and

(b) Notice upon transfer. At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility shall provide written notice to the resident and a family member or legal representative, which specifies the duration of the bed-hold policy described in paragraph (a) of this subsection.

(c) Permitting resident to return to facility. A nursing facility shall establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed hold period, is readmitted to the facility immediately upon the first availability of a bed in a semiprivate room if the resident:

1. Requires the services provided by the facility; and
2. Is eligible for nursing facility services.

(3) Equal access to quality care. A facility shall establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services for all individuals regardless of source of payment;

(4) Admissions policy.

(a) The facility shall:

1. Not require a third party guarantee of payment to the facility as a condition of admission, or expedited admission, or continued stay in the facility;
2. Not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid for services, any gift, money, donation or other consideration as a precondition of admission, expedited admission or continued stay in the facility.

(b) A facility shall:

1. Not require residents or potential residents to waive their rights to Medicare or Medicaid;
2. Not require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare or Medicaid benefits.

(c) A facility may require an individual who has legal access to a resident's income or resources available to pay for facility care, to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.

(d) A nursing facility may charge a resident for items and services the resident has requested and received, and that are not covered in the facility's basic per diem rate.

(e) A nursing facility may solicit, accept or receive a charitable, religious or philanthropic contribution from an organization or from a person unrelated to the resident, or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the facility.

Section 5. Resident Behavior and Facility Practices. (1) Restraints. The resident shall have the right to be free from any physical restraints imposed or psychoactive drug administered for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

(2) Abuse. The resident shall have the right to be free from verbal sexual, physical or mental abuse, corporal punishment, and involuntary seclusion.

(3) Staff treatment of residents. The facility shall develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of residents.

(a) The facility shall:

1. Not use verbal, mental, sexual, or physical abuse, including corporal punishment, or involuntary seclusion; and
2. Not employ individuals who have been convicted of abusing, neglecting or mistreating individuals.

(b) The facility shall have evidence that all alleged violations are thoroughly investigated, and shall prevent further potential abuse while the investigation is in progress.

(c) The results of all investigations shall be reported to the administrator or his designated representative within five (5) working days or to other officials in accordance with applicable provisions of KRS Chapter 209 or 620, if the alleged violation is verified appropriate corrective action is taken.

(d) The facility shall document alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, are reported immediately to the administrator of the facility or to other officials in accordance with KRS Chapters 209 and 620.

(e) The facility shall have evidence that all alleged violations are thoroughly investigated, and shall prevent further potential abuse while the investigation is in progress.

Section 6. Quality of Life. A facility shall care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

(1) Dignity. The facility shall promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

(2) Self-determination and participation. The resident shall have the right to:

(a) Choose activities, schedules, and health care consistent with his or her interests, assessments and plans of care:

(b) Interact with members of the community both inside and outside the facility; and

(c) Make choices about aspects of his or her life in the facility that are significant to the resident.

(3) Participation in resident and family groups.

(a) A resident shall have the right to organize and participate in resident groups in the facility;

(b) A resident's family shall have the right to meet in the facility with the families of other residents in the facility;

(c) The facility shall provide a resident or family group, if one exists, with private space;

(d) Staff or visitors may attend meetings at the group's invitation;

(e) The facility shall provide a designated staff person responsible for providing assistance and responding to written requests that result from group meetings;

(f) When a resident or family group exists, the facility shall listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(4) Accommodation of needs. A resident shall have the right to:

(a) Reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and

(b) Receive notice before the resident's room or roommate in the facility is changed.

(5) Activities.

(a) The facility shall provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental and psychosocial well-being of each resident.

(b) The activities program shall be directed by a qualified therapeutic recreation specialist who is:

1. Eligible for certification as a therapeutic recreation specialist by a recognized accrediting body; or

2. Has two (2) years of experience in a social or recreational program within the last five (5) years, one (1) of which was full time in a patient activities program in a health care setting; or

3. Is a qualified occupational therapist or occupational therapy assistant; or

4. Has completed a training course approved by the state.

(6) Social services.

(a) The facility shall provide medically-related social services to attain or maintain the highest practicable physical, mental or psychosocial well-being of each resident.

(b) A facility with more than 120 beds shall employ a full-time qualified social worker, or an individual with a bachelor's degree in a related field.

(c) Qualifications of social worker. A qualified social worker is an individual who is licensed pursuant to KRS 335.090, or has two (2) years experience in social work or a degree in a related field.

(7) Environment.

(a) The facility shall provide:

1. A safe, clean, comfortable and homelike environment, allowing the resident to use his or her personal belongings to the extent possible;

2. Housekeeping and maintenance services necessary to maintain a sanitary, orderly and comfortable interior;

3. Clean bed and bath linens that are in good condition;

4. Private closet space in each resident room.

5. Adequate and comfortable lighting levels in all areas; comfortable and safe temperature levels.

6. For the maintenance of comfortable sound levels.

(b) Infection control and communicable diseases.

1. The facility shall establish policies which are consistent with the Center for Disease Control guidelines, and address the prevention of disease transmission to and from patients, visitors and employees, including:

a. Universal blood and body fluid precautions;

b. Precautions for infections which can be transmitted by the airborne route; and

c. Work restrictions for employees with infectious diseases.

d. The cleaning, disinfection, and sterilization methods used for equipment and the environment.

2. The facility shall establish an infection control program which:

a. Investigates, controls and prevents infections in the facility;

b. Decides what procedures, such as isolation, should be applied to an individual resident; and

c. Maintains a record of incidents and corrective actions related to infections.

d. Addresses the prevention of the spread of infection.

(i) When the infection control program determines that a resident needs isolation to prevent the spread of infection, the facility shall isolate the resident.

(ii)The facility shall prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food, if direct contact will transmit the disease.

(iii) The facility shall require staff to wash their hands after each direct resident contact for which handwashing is indicated by accepted professional practice.

3. The facility shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections for all personnel responsible for direct patient care.

4. Sharp wastes.

a. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

b. Needles shall not be recapped by hand, purposely bent or broken, or otherwise manipulated by hand.

c. The containers of sharp wastes shall either be incinerated on or off site, or be 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.

5. Disposable waste.

a. All disposable waste shall be placed in

suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

b. The facility shall establish specific written policies regarding handling and disposal of all wastes.

c. The following wastes shall be disposed of by incineration, autoclaved before disposal, or carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

d. Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9.

6. Patients infected with the following diseases shall not be admitted to the facility: anthrax, campylobacteriosis, cholera, diphtheria, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rubella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus.

7. A facility may admit a (noninfectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

8. Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet.

9. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients, the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(8) Participation in other activities. A resident shall have the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

Section 7. Resident Assessment. The facility shall conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity.

(1) Admission orders. At the time each resident is admitted, the facility shall have physician orders for the resident's immediate care.

(2) Comprehensive assessments.

(a) The facility shall make a comprehensive assessment of a resident's needs, which describes the resident's capability to perform daily life functions and significant impairments in functional capacity.

(b) The comprehensive assessment shall include at least the following information:

1. Medically defined conditions and prior medical history;
2. Medical status measurement;
3. Functional status;
4. Sensory and physical impairments;
5. Nutritional status and requirements;
6. Special treatments or procedures;
7. Psychosocial status;
8. Discharge potential;
9. Dental condition;
10. Activities potential;
11. Rehabilitation potential;
12. Cognitive status; and
13. Drug therapy.

(c) Frequency. Assessments shall be conducted:

1. No later than fourteen (14) days after the date of admission;
2. For current residents of a facility, not later than October 1, 1991;
3. Promptly after a significant change in the resident's physical or mental condition; and
4. In no case less often than once every twelve (12) months.

(d) Review of assessments. The nursing facility shall examine each resident no less than once every three (3) months, and as appropriate, revise the resident's assessment to assure the continued accuracy of the assessment.

(e) Use. The results of the assessment are used to develop, review, and revise the resident's comprehensive plan of care, under subsection (4) of this section.

(f) Coordination. The facility shall coordinate assessments with the Kentucky required preadmission screening and annual review program to the maximum extent practicable to avoid duplicative testing and effort.

(3) Accuracy of assessments.

(a) Coordination. Each assessment shall be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment with the appropriate participation of health professionals.

(b) Certification. Each individual who completes a portion of the assessment shall sign and certify the accuracy of that portion of the assessment.

(4) Comprehensive care plans.

(a) The facility shall develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing and psychosocial needs that are identified in the comprehensive assessment.

(b) A comprehensive care plan shall be:

1. Developed within seven (7) days after completion of the comprehensive assessment;
2. Prepared by an interdisciplinary team, that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs, and with the participation of the resident, the resident's family or legal representative, to the extent practicable; and
3. Periodically reviewed and revised by a team of qualified persons after each assessment.

(c) The services provided or arranged by the facility shall:

1. Meet professional standards of quality; and
2. Be provided by qualified persons in accordance with each resident's written plan of care.

(5) Discharge summary. When the facility anticipates discharge, a resident shall have a discharge summary that includes:

(a) A recapitulation of the resident's stay;

(b) A final summary of the resident's status to include items in subsection (2)(b) of this section, at the time of the discharge that shall be available for release to authorized persons and agencies, with the consent of the resident or legal representative; and

(c) A postdischarge plan of care that developed with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment.

(6) Preadmission screening for mentally ill individuals and individuals with mental retardation. A nursing facility shall not admit any new resident in conflict with the Kentucky preadmission screening and annual review program.

Section 8. Quality of Care. Each resident shall receive the necessary nursing, medical and psychosocial services to attain and maintain the highest possible mental and physical functional status, as defined by the comprehensive assessment and plan of care. Each resident shall receive services and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

(1) Activities of daily living. Based on the comprehensive assessment of a resident, the facility shall ensure:

(a) A resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that diminution was unavoidable. This includes the resident's ability to:

1. Bathe, dress and groom;
2. Transfer and ambulate;
3. Toilet;
4. Eat; and
5. To use speech, language or other functional communication systems.

(b) A resident is given the appropriate treatment and services to maintain or improve his or her abilities specified in paragraph (a) of this subsection; and

(c) A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(2) Vision and hearing. To ensure that residents receive proper treatment and assistive devices to maintain vision and hearing abilities, the facility shall, if necessary, assist the resident:

(a) In making appointments; and

(b) By arranging for transportation to and from the office of a medical practitioner specializing in the treatment of vision or hearing impairment of the office of a professional specializing in the provision of vision or hearing assistive devices.

(3) Pressure sores. Based on the comprehensive assessment of a resident, the facility shall ensure that:

(a) A resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable; and

(b) A resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

(4) Urinary incontinence. Based on the resident's comprehensive assessment, the facility shall ensure that:

(a) A resident who is incontinent of bladder receives the appropriate treatment and services to restore as much normal bladder functioning as possible;

(b) A resident who enters the facility without an in-dwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization was necessary; and

(c) A resident who is incontinent of bladder receives appropriate treatment and services to prevent urinary tract infections and to restore as much normal bladder function as possible.

(5) Range of motion. Based on the comprehensive assessment of a resident, the facility shall ensure that:

(a) A resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

(b) A resident with a limited range of motion and/or receives appropriate treatment and services to increase range of motion to prevent further decrease in range of motion.

(6) Psychosocial functioning. Based on the comprehensive assessment of a resident, the facility shall ensure that:

(a) A resident who displays psychosocial adjustment difficulty, receives appropriate treatment and services to achieve as much remotivation and reorientation as possible; and

(b) A resident whose assessment did not reveal a psychosocial adjustment difficulty does not display a pattern of decreased social interaction and/or increased withdrawn, angry, or depressive behaviors, unless the resident's clinical condition demonstrates that such a pattern was unavoidable.

(7) Accidents. The facility shall ensure that:

(a) The resident environment remains as free of accident hazards as is possible; and

(b) Each resident receives adequate supervision and assistive devices to prevent accidents.

(8) Nutrition. Based on a resident's comprehensive assessment, the facility shall ensure that a resident:

(a) Maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the resident's clinical condition demonstrates that this is not possible; and

(b) Receives a therapeutic diet when there is a nutritional problem.

(9) Special needs. The facility shall ensure that residents receive proper treatment and care for the following special services:

(a) Injections;
(b) Parenteral and enteral fluids;
(c) Colostomy, ureterostomy or ileostomy care;
(d) Tracheostomy care;
(e) Tracheal suctioning;
(f) Respiratory care;
(g) Podiatric care; and
(h) Prostheses.

(10) Drug therapy.

(a) Unnecessary drugs. Each resident's drug regimen shall be free from unnecessary drugs.

(b) Antipsychotic drugs. Based on a comprehensive assessment of a resident, the facility shall ensure that:

1. Residents who have not used antipsychotic drugs and are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition; and

2. Residents who use antipsychotic drugs receive gradual dose reductions, drug holidays or behavioral programming, unless clinically contraindicated in an effort to discontinue these drugs.

(11) Hydration. The facility shall provide

each resident with sufficient fluid intake to maintain proper hydration and health.

(12) Naso-gastric tubes. Based on the comprehensive assessment of a resident, the facility shall ensure that:

(a) A resident who has been able to eat enough alone or with assistance is not fed by naso-gastric tube unless the resident's clinical condition demonstrates that use of a naso-gastric tube was unavoidable; and

(b) A resident who is fed by a naso-gastric or gastrostomy tube receives the appropriate treatment and services to prevent aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasal-pharyngeal ulcers and to restore, if possible, normal feeding function.

(c) Medication errors. The facility shall ensure that:

1. It is free of significant medication error rates; and

2. Residents are free of any significant medication errors.

Section 9. Nursing Services. The facility shall have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.

(1) Sufficient staff.

(a) The facility shall provide services by sufficient numbers of each of the following types of personnel on a twenty-four (24) hour basis to provide nursing care to all residents in accordance with resident care plans:

1. Except when waived under subsection (3) of this section, licensed nurses; and

2. Other nursing personnel.

(b) Except when waived under subsection (3) of this section, the facility shall designate a licensed nurse to serve as a charge nurse on each tour of duty.

(2) Registered nurse.

(a) Except when waived under subsection (3) or (4) of this section, the facility shall use the services of a registered nurse for at least eight (8) consecutive hours a day, seven (7) days a week.

(b) Except when waived under subsection (3) or (4) of this section, the facility must designate a registered nurse to serve as the director of nursing on a full-time basis.

(c) The director of nursing may serve as a charge nurse only when the facility has an average daily occupancy of sixty (60) or fewer residents.

(3) Licensed nurse waiver. Waiver of requirement to provide licensed nurses on a twenty-four (24) hour basis. A facility may request a waiver from the requirement that a nursing facility provide a registered nurse for at least eight (8) consecutive hours a day, seven (7) days a week, as specified in subsection (2) of this section, and the requirement that a nursing facility provide licensed nurses on a twenty-four (24) hour basis, including a charge nurse as specified in subsection (1) of this section, if the following conditions are met:

(a) The facility demonstrates to the satisfaction of the cabinet that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel;

(b) The cabinet determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility;

(c) A waiver granted under the conditions listed in this subsection is subject to revocation if the cabinet finds that the health and safety of the residents is threatened.

(d) In granting or renewing a waiver, a facility may be required by the cabinet to use other qualified, licensed personnel.

(e) The facility shall have an on-call system which provides for an immediate response by a registered nurse or a physician for those times when licensed nursing services are not available.

(4) Registered nurse waiver. Wavier of the requirement to provide services of a registered nurse for more than forty (40) hours a week, including a director of nursing specified in subsection (2) of this section, may be granted if the cabinet finds that the facility:

(a) Is located in a rural area and the supply of skilled nursing facility services in the area is not sufficient to meet the needs of individuals residing in the area;

(b) Has one (1) full-time registered nurse who is regularly on duty at the facility forty (40) hours a week; and

(c) Either:

1. Has only patients whose physicians have indicated (through physicians' orders or admission notes) that they do not require the services of a registered nurse or a physician for a forty-eight (48) hour period; or

2. Has made arrangements for a registered nurse or a physician to spend time at the facility, as determined necessary by the physician, to provide necessary skilled nursing services on days when the regular full-time registered nurse is not on duty.

(d) A waiver of the registered nurse requirement under paragraph (a) of this subsection is subject to revocation if the cabinet finds that the health and safety of the residents is threatened.

(5) When a waiver is granted a facility shall inform the residents, their legal representatives, and members of their immediate family.

Section 10. Dietary service in the facility shall provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

(1) Staffing. The facility shall employ a qualified dietician either full time, part time, or on a consultant basis.

(a) If a qualified dietician is not employed full time, the facility shall designate a person to serve as the director of food service.

(b) Qualified dietician means a person who has:

1. Earned at least a baccalaureate degree from a college or university which is accredited by the Southern Association of Colleges and Universities, or an accrediting agency recognized by the Southern Association of Colleges and Universities or a successor to the powers of both; or

2. Successfully completed minimum academic requirements established by the Commission on Dietetic Registration, an affiliate of the National Commission for Health Certifying Agencies; and

3. Successfully completed one (1) of the accredited experience options established by the Commission on Dietitic Registration, which includes but is not limited to, completion of an accredited coordinated undergraduate program, an accredited dietetic internship, and approved three (3) preplanned work experience, or a master's degree in nutrition or a related area with six (6) months of full-time or equivalent qualifying experience.

(2) Sufficient staff. The facility shall employ sufficient support personnel competent to carry out the functions of the dietary service.

(3) Menus and nutritional adequacy. Menus shall:

(a) Meet the nutritional needs of residents in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

(b) Be prepared in advance;

(c) Be followed.

(4) Food. Each resident shall receive and the facility shall provide:

(a) Food prepared by methods that conserve nutritive value, flavor and appearances;

(b) Food that is palatable, attractive and at the proper temperature;

(c) Food prepared in a form designed to meet individual needs; and

(d) Substitutes offered of similar nutritive value to residents who refuse food served.

(5) Therapeutic diets. Therapeutic diets must be prescribed by the attending physician.

(6) Frequency of meals.

(a) Each resident shall receive and the facility shall provide at least three (3) meals daily, at regular times comparable to normal mealtimes in the community.

(b) There shall be no more than fourteen (14) hours between a substantial evening meal and breakfast the following day, except as provided in paragraph (d) of this subsection.

(c) The facility shall offer snacks at bedtime daily.

(d) When a nourishing snack is provided at bedtime, up to sixteen (16) hours may elapse between a substantial evening meal and breakfast the following day if a resident group agrees to this meal span and a nourishing snack is served.

(7) Assistive devices. The facility shall provide special eating equipment and utensils for residents who need them.

(8) Sanitary conditions. The facility shall:

(a) Procure food from sources approved or considered satisfactory by federal, state or local authorities;

(b) Store, prepare, distribute, and serve food under sanitary conditions; and

(c) Dispose of garbage and refuse properly.

Section 11. Physician Services. A physician shall personally approve a recommendation that an individual be admitted to a facility. Each resident shall remain under the care of a physician.

(1) Physician supervision. The facility shall ensure that:

(a) The medical care of each resident is supervised by a physician; and

(b) Another physician supervises the medical care of residents when their attending physician is unavailable.

(2) Physician visits. The physician shall:

(a) Review the resident's total program of care, including medications and treatments, at each visit required by subsection (3) of this section;

(b) Write, sign and date progress notes at each visit; and

(c) Sign all orders.

(3) Frequency of physician visits. The resident shall be seen by a physician at least once every thirty (30) days for the first ninety (90) days after admission, and at least once every ninety (90) days thereafter.

(a) A physician visit is considered timely if it occurs not later than ten (10) days after the date the visit was required.

(b) Except as provided in paragraph (e) of this subsection, all required physician visits shall be made by the physician personally.

(c) At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner in accordance with subsection (5) of this section.

(4) Availability of physicians for emergency care. The facility shall provide or arrange for the provision of physician services twenty-four (24) hours a day, in case of an emergency.

(5) Physician delegation of tasks.

(a) Except as specified in paragraph (b) of this subsection, a physician may delegate tasks to a physician assistant or nurse practitioner who is acting within the scope of practice as defined by state law, and is under the supervision of the physician.

(b) A physician shall not delegate a task when the regulations specify that the physician shall perform it personally, or when the delegation is prohibited under state law or by the facility's own policies.

Section 12. Specialized Rehabilitative Services. A facility shall provide or obtain rehabilitative services, such as physical therapy, speech-language pathology, and occupational therapy, to every resident it admits, as indicated by the resident's comprehensive assessment.

(1) Provision of services. If specialized rehabilitative services are required in the resident's comprehensive plan of care, the facility shall:

(a) Provide the required services; or

(b) Obtain the required services from an outside resource in accordance with Section 15(6)(a) and (b) of this regulation, from a provider of specialized rehabilitative services.

(2) Qualifications. Specialized rehabilitative services must be provided under the written order of a physician by qualified personnel.

Section 13. Dental Services. The facility shall assist residents in obtaining routine and twenty-four (24) hour emergency dental care. The facility shall provide or obtain from an outside resource, in accordance with Section 15(6)(a) and (b) of this regulation following dental services to meet the needs of each resident:

(1) Routine dental services; and

(2) Emergency dental services.

Section 14. Pharmacy Services. The facility shall provide routine and emergency drugs and biologicals to its residents, or obtain them under an agreement described in Section 15(6)(a) and (b) of this regulation.

(1) Procedures.

(a) A facility shall provide pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident.

(b) Administration of medications. All medications shall be administered by licensed medical or nursing personnel in accordance with the Medical Practice Act (KRS 311.530 to 311.620) and Nurse Practice Act (KRS Chapter 314) or by personnel who have completed a state approved training program from a state approved provider. The administration of oral and topical medicines by certified medicine technicians shall be under the supervision of licensed medical or nursing personnel. Intramuscular injections shall be administered by a licensed or registered nurse, or a physician. If intravenous injections are necessary they shall be administered by a licensed physician, registered nurse, or properly trained licensed nurse. Each dose administered shall be recorded in the medical record.

(2) Service consultation. The facility shall employ or obtain the services of a pharmacist licensed pursuant to KRS Chapter 315 who:

(a) Provides consultation on all aspects of the provision of pharmacy services in the facility;

(b) Establishes a system of records of receipt and disposition of all drugs in sufficient detail to enable an accurate reconciliation; and

(c) Determines that drug records are in order and that an account of all controlled drugs is maintained and periodically reconciled.

(3) Drug regimen review.

(a) The drug regimen of each resident shall be reviewed at least once a month by a licensed pharmacist.

(b) The pharmacist shall report any irregularities to the attending physician or the director of nursing, or both, and these reports shall be acted upon.

(4) Labeling of drugs and biologicals. The facility shall label drugs and biologicals in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration date.

(5) Storage of drugs and biologicals. In accordance with state and federal laws, the facility shall store all drugs and biologicals in locked compartments under proper temperature controls, and permit only authorized personnel to have access to the keys.

(6) The facility shall provide separately locked, permanently affixed compartments for storage of controlled drugs listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and other drugs subject to abuse, except when the facility uses single unit package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected.

Section 15. Administration. A facility shall be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

(1) Compliance with federal, state and local laws and professional standards. The facility shall operate and provide services in compliance with all applicable federal, state and local laws, regulations and codes, and with accepted professional standards and principles that apply to professionals providing services in a facility.

(2) Governing body.

(a) The facility shall have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility; and

(b) The governing body appoints the administrator who shall be:

1. Licensed as a nursing home administrator pursuant to KRS 216A.080; and

2. Responsible for management of the facility.

(3) Required training of nurse aides.

(a) General rules. A facility shall not use any individual working in the facility as a nurse aide for more than four (4) months, on a full-time, temporary, per diem, or other basis, unless:

1. That individual is listed on the Kentucky Nurse Aide Registry; and

2. That individual is competent to provide nursing and nursing related services.

(b) Competency. A facility shall permit an individual to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competence only when:

1. The individual is currently enrolled and participating in the Kentucky Medicaid Nurse Aide Training Program; or

2. The facility has asked and not yet received a reply from the Kentucky Nurse Aide Registry for information concerning the individual.

(c) Regular in-service education. The facility shall provide regular performance review and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides. In-service education must include training for individuals providing nursing and nursing related services to residents with cognitive impairments.

(4) Proficiency of nurse aides. The facility shall ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

(5) Staff qualifications.

(a) The facility shall employ on a full-time, part-time, or consultant basis those professionals necessary to carry out the provisions of this regulation.

(b) Professional staff shall be licensed, certified or registered in accordance with applicable state statutes.

(6) Use of outside resources.

(a) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility shall have that service furnished to residents by a person or agency outside the facility.

(b) Arrangements or agreements pertaining to services furnished by outside resources shall specify in writing that the facility assumes responsibility for:

1. Obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility; and

2. The timeliness of the services.

(7) Medical director.

(a) The facility shall designate a physician to serve as medical director.

(b) The medical director shall be responsible for:

1. Implementation of resident care policies; and

2. The coordination of medical care in the facility.

(8) Laboratory services.

(a) The facility shall provide or obtain clinical laboratory services to meet the needs of its residents. The facility shall be responsible for the quality and timeliness of the services.

1. If the facility provides its own laboratory services, the services shall meet the applicable state statutes and regulations pursuant to KRS Chapter 333, or laboratory requirements for hospitals for those distinct part units within licensed hospitals.

2. If the facility provides blood bank and transfusion services, it must meet the applicable conditions for:

a. Independent laboratories licensed pursuant to KRS Chapter 333; or

b. Hospitals licensed pursuant to 902 KAR 20:016;

3. If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be licensed in accordance with KRS Chapter 333, or meet the laboratory standards in 902 KAR 20:016 for hospitals.

4. If the facility does not provide laboratory services on site, it shall have an agreement to obtain these services only from a laboratory that is licensed pursuant to KRS Chapter 333 as an independent laboratory, or in accordance with 902 KAR 20:016 for hospital laboratories.

(b) The facility shall:

1. Provide or obtain laboratory services only when ordered by the attending physician;

2. Promptly notify the attending physician of the findings;

3. Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance.

4. File in the resident's clinical record signed and dated reports of clinical laboratory services.

(9) Radiology and other diagnostic services.

(a) The nursing facility shall provide or obtain radiology and other diagnostic services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

1. If the facility provides its own diagnostic services, the services must meet the standards established in 902 KAR 20:016, Section 4(6).

2. If the facility does not provide diagnostic services, it shall have an agreement to obtain these services from a provider or supplier that is licensed or registered pursuant to KRS 211.842 through KRS 211.852.

(b) The facility shall:

1. Provide or obtain radiology and other diagnostic services only when ordered by the attending physician;

2. Promptly notify the attending physician of the findings;

3. Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

4. File in the resident's clinical record signed and dated reports of x-ray and other diagnostic services.

(10) Clinical records.

(a) The facility shall maintain clinical records on each resident in accordance with accepted professional standards and practices that are:

1. Complete;

2. Accurately documented;

3. Readily accessible; and

4. Systematically organized.

(b) Retention of records. After resident's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(c) The facility shall safeguard clinical record information against loss, destruction, or unauthorized use;

(d) The facility shall keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by:

1. Transfer to another health care institution;

2. Law;

3. Third-party payment contract; or

4. The resident.

(e) The facility shall:

1. Permit each resident to inspect his or her records on request; and

2. Provide copies of the records to each resident no later than forty-eight (48) hours after a written request from a resident, at a photocopying cost not to exceed the amount customarily charged in the community.

(f) The clinical record shall contain:

1. Sufficient information to identify the resident;

2. A record of the resident's assessments;

3. The plan of care and services provided; and

4. The results of any preadmission screening conducted by the state; and

5. Progress notes.

(11) Disaster and emergency preparedness.

(a) The facility shall have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, and missing residents.

(b) The facility shall train all employees in emergency procedures when they begin to work in the facility, periodically review the procedures with existing staff, and carry out staff drills using those procedures.

(12) Transfer agreement.

(a) The facility shall have in effect a written transfer agreement with one (1) or more licensed hospitals that reasonably assures that:

1. Residents shall be transferred from the facility to the hospital, and ensured of timely admission to the hospital when transfer is medically appropriate as determined by the attending physician; and

2. Medical and other information needed for care and treatment of residents and when the transferring facility deems it appropriate, for determining whether such residents can be adequately cared for in a less expensive setting than either the facility or the hospital, will be exchanged between the institutions.

(b) The facility shall be considered to have a transfer agreement in effect if the facility has attempted in good faith to enter into an

agreement with a hospital sufficiently close to the facility to make transfer feasible.

(13) Quality assessment and assurance.

(a) A facility shall maintain a quality assessment and assurance committee consisting of:

1. The director of nursing services;

2. A physician designated by the facility; and

3. At least three (3) other members of the facility's staff.

(b) The quality assessment and assurance committee:

1. Meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary; and

2. Develops and implements appropriate plans of action to correct identified quality deficiencies.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: December 11, 1990

FILED WITH LRC: December 14, 1990 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 22, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 17, 1991, 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: Ralph Von Dereau/Eric Friedlander

(1) Type and number of entities affected: Approximately 300 long-term care facilities.

(a) Direct and indirect costs or savings to those affected: Due to the comprehensive nature of these changes, it is impossible to isolate an individual facility's costs associated with this regulation. Those facilities presently licensed and certified as intermediate care with over 120 beds will incur the greatest potential increase in costs due to increased staffing requirements relating to RN coverage and social services requirements.

1. First year: There will be costs associated with changing over to this new licensure category, however these costs would be incurred anyway since these standards mirror the federal certification standards that these facilities will have to meet.

2. Continuing costs or savings: There may be continuing costs associated with increased staffing levels.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There should be no additional factors affecting competition.

(b) Reporting and paperwork requirements: Some paperwork requirements have changed, some documentation will be increased while some will be decreased or consolidated.

(2) Effects on the promulgating administrative body: This regulation was drafted to mirror federal guidelines. This should assist this division and providers by streamlining the licensure and certification survey process.

(a) Direct and indirect costs or savings: This regulation will not affect costs in that this agency will already be surveying under similar guidelines.

1. First year: $500 for reprinting this regulation.

2. Continuing costs or savings: No additional costs should be associated with this amendment since reprinting of this regulation is a part of this agency's continuing budget.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This amendment poses no additional paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: There should be no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This licensure category was developed to mirror federal standards. This process should make the licensure program more consistent with the federal certification program, and therefore less confusing to providers.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict.

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exists.

(6) Any additional information or comments: No

TIERING: Was tiering applied? No. This is a licensure regulation and as such must apply to all regulated entities equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 CFR Part 483.

2. State compliance standards. 902 KAR 20:310, Facility specifications; nursing facilities; 902 KAR 20:300, Operation and services; nursing facilities.

3. Minimum or uniform standards contained in the federal mandate. Federal standards include: resident rights, admission and discharge rights, resident behavior and facility practices, quality of life, resident assessment, quality of care, nursing services, dietary services, physician services, specialized rehabilitation services, dental services, pharmacy services, infection control, physical environment, and administration.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. There are additional standards relating to tuberculosis testing, infection control.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. All long-term care facilities must meet state requirements for the above areas. Kentucky has a historically high tuberculosis rate which make the additional standards necessary. The infection control standards reflect the program put in place in hospitals and long-term care facilities in 1989.

CABINET FOR HUMAN RESOURCES
Office of Inspector General

902 KAR 20:310. Facility specifications; nursing facility.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)
STATUTORY AUTHORITY: KRS 216B.042, 216B.105
NECESSITY AND FUNCTION: KRS 216B.042 and 216B.105 mandate that the Kentucky Cabinet for Human Resources regulates health facilities and health services. This regulation provides licensure requirements for structural specifications for the construction, alteration and maintenance of nursing facilities.

Section 1. Definitions. (1) "Board" means the Commission for Health Economics Control in Kentucky.
(2) "License" means an authorization issued by the cabinet for the purpose of operating a nursing facility.
(3) "Licensure agency" means the Division for Licensing and Regulation in the Office of the Inspector General, Cabinet for Human Resources.

Section 2. Applicability. (1) Nursing homes, skilled or intermediate care facilities that were found to be in compliance on their last annual licensure survey will be considered to be in compliance with this licensure regulation, except for the requirements of Section 17(7)(d)3 of this regulation, or any alterations.
(2) Applications for certificate of need submitted prior to December 1, 1990 may choose to build to either these specifications or to the specifications in the licensure category requested on their certificate of need application.

Section 3. Preparation and Approval of Plans and Specifications for New Construction or Facility Alterations. (1) Before construction is begun for the erection of new buildings or alterations to existing buildings or any change in existing nursing facilities, the licensee or applicant shall submit plans to the licensure agency for approval.
(2) All architectural, mechanical and electrical drawings shall bear either the seal of an architect registered in the Commonwealth of Kentucky or the seal of a professional engineer registered in the Commonwealth of Kentucky, or both.
(3) Drawings shall not exceed thirty-six (36) by forty-six (46) inches when trimmed.
(4) All such plans and specifications must be approved by the licensure agency prior to commencement of construction of new buildings or alteration of existing buildings.
(5) Plans and specifications in specific detail as required by the Kentucky Building Code shall be submitted together with architectural and/or engineering stamps as required by KRS Chapters 322 and 323, to the Department of Housing, Buildings and Construction for determining compliance with the Kentucky Building Code. All such plans and specifications must be approved by the Department of Housing, Buildings and Construction and appropriate local building permits shall be obtained prior to commencement of any alteration.

Section 4. Submission of Plans and Specifications. (1) First stage, schematic plans.
(a) Single line drawings of each floor shall show the relationship of the various departments or services to each other and the room arrangement in each department. The name of each room shall be noted. Drawings shall include typical patient room layouts (scaled one-fourth (1/4) inch to one (1) foot) with dimensions noted. The proposed roads and walks, service and entrance courts, parking and orientation shall be shown in a plot plan.
(b) If the project is an addition or is otherwise related to existing buildings on the site, the plans shall show the facilities and general arrangements of those buildings.
(2) Second stage, preliminary plans. Preliminary sketch plans shall include the following:
(a) Architectural: plans of basement and floors.
(b) Outline specifications.
1. General description of the construction or alteration, including interior finishes, types and locations of acoustical material, and special floor covering;
2. Description of the air-conditioning, heating, and ventilation systems and their controls, duct and piping systems; and dietary, laundry, sterilizing, and other special equipment;
3. General description of electrical service including voltage, number of feeders, and whether feeders are overhead or underground.
(a) Working drawings. Working drawings shall be complete and adequate for bid, contract, and construction purposes. Drawings shall be prepared for each of the following branches of the work: architectural, structural, mechanical, and electrical. They shall include the following:
1. Architectural drawings.
a. Approach plan showing all new topography, newly established levels and grades, existing structures on the site (if any), new building structures, roadways, walks, and parking areas;
b. Plan of each basement, floor and roof;
c. Elevations of each facade;
d. Sections through building;
e. Required scale and full-size details;
f. Schedule of doors, windows, and room finishes;
g. Layout of typical and special rooms indicating all fixed equipment and major items of movable equipment. Equipment not included in contract shall be so indicated;
h. Conveying systems. Details of construction, machine and control space necessary, size and type of equipment, and utility requirements for the following: dumbwaiters-electric, hand, hydraulic; elevators-freight, passenger, patient; loading dock devices; pneumatic tube systems.
2. Structural drawings.
a. Plans for foundations, floors, roofs, and all intermediate levels with sizes, sections, and the relative location of the various structural members;
b. Dimensions of special openings;
c. Details of all special connections, assemblies, and expansion joints.
3. Mechanical drawings.
a. Heating, steam piping, and air-condition systems. Radiators and steam heated equipment, such as sterilizers, warmers, and steam tables; heating and steam mains and branches with pipe

sizes; sizes, types, and capacities of boilers, furnaces, hot water heater with stokers; oil burners, or gas burners; pumps, tanks, boiler breeching, and piping and boiler room accessories; air-conditioning systems with required equipment, water and refrigerant piping, and ducts; supply and exhaust ventilation systems with heating/cooling connections and piping; air quantities for all room supply and exhaust ventilating duct openings.

b. Plumbing, drainage, and standpipe systems. Size and elevation of: street sewer, house sewer, house drains, street water main, and water service into the building; location and size of soil, waste, and water service with connections to house drains, clean-outs, fixtures, and equipment; size and location of hot, cold and circulating branches, and risers from the service entrance, and tanks; riser diagram of all plumbing stacks with vents, water risers, and fixture connections; gas, oxygen, and vacuum systems; standpipe and sprinkler systems where required; all fixtures and equipment that require water and drain connections.

4. Electrical drawings.

a. Electric service entrance with switches and feeders to the public service feeders, characteristics of the light and power current, transformers and their connections if located in the building;

b. Location of main switchboard, power panels, light panels, and equipment. Diagram of feeders and conduits with schedule of feeder breakers or switches;

c. Light outlets, receptacles, switches, power outlets, and circuits;

d. Telephone layout showing service entrance, telephone switchboard, strip boxes, telephone outlets, and branch conduits;

e. Nurses' call systems with outlets for beds, duty stations, door signal light, annunciators, and wiring diagrams;

f. Emergency electrical system with outlets, transfer switch, sources of supply, feeders, and circuits;

g. All other electrically operated systems and equipment.

(b) Specifications. Specifications shall supplement the drawings to fully describe types, sizes, capacities, workmanship, finishes and other characteristics of all materials and equipment and shall include:

1. Cover or title sheet;

2. Index;

3. Sections describing materials and workmanship in detail for each class of work;

4. Access to the work. Representatives of the appropriate state agencies shall have access at all reasonable times to the work wherever it is in preparation or progress, and the contractor shall provide proper facilities for such access and inspection.

Section 5. Compliance with Building Codes, Ordinances and Regulations. (1) This section may be administered independently from other sections of this regulation.

(2) General. Nothing stated herein shall relieve the sponsor from compliance with building codes, ordinances, and regulations which are enforced by city, county, or state jurisdictions.

(3) The following requirements shall apply where applicable and as adopted by the respective agency authority:

(a) Requirements for safety pursuant to 815 KAR 10:020, as amended;

(b) Requirements for plumbing pursuant to 815 KAR 20:010 through 20:190, as amended;

(c) Requirements for air contaminants for incinerators pursuant to 401 KRS 59:020 and 401 KAR 61:010;

(d) Requirements for elevators pursuant to 815 KAR 4:010; and

(e) Requirements for making buildings and facilities accessible to and usable by the physically handicapped, pursuant to KRS 198B.260 and regulations promulgated thereunder.

(4) Prior to occupancy, facility must have final approval from appropriate agencies.

(5) All facilities shall be currently approved by the Fire Marshal's Office in accordance with the Life Safety Code, before relicensure is granted by the licensure agency.

Section 6. Facility Requirements and Special Conditions. (1) Independent facilities with a capacity of fifty (50) beds or less present special problems. The sizes of the various departments will depend upon the requirements of the facilities. Some functions allotted separate spaces or rooms in these general standards may be combined provided that the resulting plan will not compromise the standards of safety and of medical and nursing practices and the social needs of patients. In other respects, the general standards set forth herein, including the area requirements, shall apply.

(2) Facilities shall be available to the public, staff, and patients who may be physically handicapped with special attention given to ramps, drinking fountain height, mirrors, etc.

(3) The number of beds in a nursing unit shall not exceed sixty (60) unless additional services are provided, as deemed necessary by the licensure agency. At least two (2) rooms per nursing unit shall be designed for single person occupancy (one (1) bed) and shall have private toilet rooms with bath. At least sixty (60) percent of the beds shall be located in rooms designed for one (1) or two (2) beds.

Section 7. Nursing Unit. (1) Patient rooms. Each patient room shall meet the following requirements:

(a) Maximum room capacity: four (4) patients;

(b) Patient rooms shall be designed to permit no more than two (2) beds side by side parallel to the window wall. Not less than a four (4) foot space shall be provided between beds, and at least a three (3) foot space between the side of a bed and the nearest wall, fixed cabinet, or heating/cooling element. A minimum of four (4) feet is required between foot of bed and opposite wall, or foot of opposite bed in multibed rooms;

(c) Window. All patient rooms must have windows opening to the outside. Sill shall not be higher than three (3) feet above the floor and shall be above grade. Window area to be at least eight (8) percent of patient room floor area;

(d) Lavatory. In single and two (2) bed rooms with private toilet room, the lavatory may be located in the toilet room. Where two (2) patient rooms share a common toilet, a lavatory shall be provided in each patient room;

(e) Wardrobe or closet for each patient. Minimum clean dimensions: one (1) foot deep by one (1) foot and eight (8) inches wide with full length hanging space clothes rod and shelf;

(f) Cubicle curtains, or equivalent built-in devices for complete privacy for each patient in each multibed room and in tub, shower and toilet rooms;

(g) No patient room shall be located more than 120 feet from the nurses' station, the clean workroom, and the soiled workroom. No room shall be used as a patient room where the access is through another patient's room;

(2) Patient toilet rooms.

(a) A toilet room shall be directly accessible from each patient room and from each central bathing area without going through the general corridor. One (1) toilet room may serve two (2) patient rooms but not more than four (4) beds. The minimum dimensions of any room containing only a toilet shall be three (3) feet by five (5) feet;

(b) Toilets must be easily usable by wheelchair patients. Grab bars shall be provided at all toilets;

(c) At least one (1) toilet for each sex shall be provided for training purposes and access by wheelchairs. It shall be accessible from the nursing corridor, may be part of the bathing area and shall have a minimum size, of five (5) feet by six (6) feet;

(d) Doors to toilet rooms shall have a minimum width of two (2) feet and ten (10) inches to admit a wheelchair.

(3) Service areas in each nursing unit. The size of each service area will depend on the number and types of beds within the unit include:

(a) Nurses' station for nurses' charting, doctors' charting, communications, and storage for supplies and nurses' personal effects;

(b) Staff lounge area. The area shall have personal storage space and a toilet room for staff;

(c) Visitors toilet room. The facility shall provide a toilet room for visitors. The staff toilet room may serve as the visitors toilet room if marked and accessible;

(d) Clean workroom for storage and assembly of supplies for nursing procedures containing work counter, sink;

(e) Soiled workroom containing clinical sink, work counter with two (2) compartment sink, waste receptacles, and soiled linen receptacles;

(f) Medicine room adjacent to nurses' station with sink, refrigerator, locked storage, and facilities for preparation and dispensing of medication (may be designated area within clean workroom if a self-contained cabinet is provided). The controlled substances locker must be under double lock;

(g) Clean linen storage with enclosed storage space (may be a designated area within the clean workroom);

(h) Nourishment station with storage space, sink, hot plate and refrigerator for serving between-meal nourishments (may serve one (1) nursing unit on same floor);

(i) Equipment storage room for storage of IV stands, inhalators, air mattresses, walkers, and similar bulky equipment (may serve more than one (1) nursing unit on same floor);

(j) Patient baths. One (1) shower stall or one (1) bathtub required for each fifteen (15) beds not individually served. There shall be at least one (1) freestanding bathtub in each bathroom. Grab bars or patient lift with a safety device shall be provided at all bathing fixtures. Each bathtub or shower enclosure in central bathing facilities shall provide space for a wheelchair and attendant. Showers in central bathing facilities shall not be less than four (4) feet square, without curbs, and designed to permit use from a wheelchair. Soap dishes in showers and bathrooms shall be recessed;

(k) Stretcher and wheelchair parking area or alcove;

(l) Janitor's closet for storage of housekeeping supplies and equipment. Floor receptor or service sink;

(m) Bedpan washing facilities. Bedpan washing attachments are recommended for each patient room toilet. It will be acceptable, however, to have separate bedpan washing closets in each nursing unit, provided that they are so located that bedpans need not be carried through lobbies, dining and recreation areas, or day rooms.

(4) Patient's dining, TV viewing and recreation areas.

(a) The total areas set aside for these purposes shall be not less than thirty (30) square feet per bed for the first fifty (50) beds and twenty (20) square feet per bed for all beds in excess of fifty (50). Additional space shall be provided for outpatients if they participate in a day care program.

(b) Storage shall be provided for recreational equipment and supplies (e.g., wall cabinet and closets).

Section 8. Therapy Units. (1) If the facility has a physical therapy unit the following shall be provided (depending on the program):

(a) Office (may also serve for occupational therapy office);

(b) Exercise and treatment areas with sink or lavatory and cubicle curtains around treatment areas;

(c) Hydrotherapy areas with cubicle curtains around treatment areas;

(d) Storage for supplies and equipment; and

(e) Toilet rooms located for convenient access by physical therapy patient (may also serve occupational therapy patients).

(2) If the facility has an occupational therapy unit it shall include:

(a) Office space (may be shared with physical therapy office);

(b) Therapy area with sink or lavatory;

(c) Storage for supplies and equipment;

(d) Toilet room (not required if other toilet facilities are convenient).

(3) Personal care room with space for shampoo sink and barber chair (not required in facility of less than twenty-five (25) beds).

(4) If the facility has more than 120 beds, it shall provide the following:

(a) Office space for a social worker;

(b) Toilet room (not required if other toilet facilities are convenient).

Section 9. Dietary Department. If a commercial service will be used or meals will be provided by an adjacent hospital, dietary areas and equipment shall be designed to accommodate the requirements for sanitary storage, processing, and handling, otherwise the following shall be provided:

(1) Food preparation center with a lavatory but no mirror;

(2) Food serving facilities to accommodate patients and staff;
(3) Dishwashing room with commercial-type and a lavatory;
(4) Potwashing facilities;
(5) Refrigerated storage to accommodate three (3) day supply;
(6) Dry storage to accommodate three (3) day supply;
(7) Cart-cleaning facilities;
(8) Cart storage area;
(9) Waste disposal facilities;
(10) Can washing facilities;
(11) Staff dining facilities;
(12) Patient dining facilities;
(13) Janitor's closet with storage for housekeeping supplies and equipment, floor receptor or service sink; and
(14) Toilet room which is conveniently accessible to dietary staff with a two (2) door separation from food preparation area or dining area.

Section 10. Administration Department. The facility shall have adequate administrative, public, and staff facilities (e.g., offices, lobby, toilet facilities) to accommodate the needs of the public, patients, and staff without interfering with the provision of medical care services.

Section 11. Laundry. The following shall be included:
(1) Soiled linen room;
(2) Clean linen and mending room;
(3) Linen cart storage;
(4) Lavatories accessible from soiled, clean, and processing rooms;
(5) Laundry processing room with commercial type equipment sufficient to take care of seven (7) days' needs within the workweek;
(6) Janitor's closet with storage for housekeeping supplies and equipment, floor receptor or service sink; and
(7) Storage for laundry supplies.
(Subsections (5), (6) and (7) of this section need not be provided if laundry is processed outside the facility.)

Section 12. Storage and Service Areas. (1) Central storage room(s) with at least ten (10) square bed for first fifty (50) beds; and five (5) square feet per bed for eleven (11) beds over fifty (50), to be concentrated in one (1) area.
(2) Adequate secure storage space must be provided for staff and volunteer's personal belongings.
(3) Engineering service and equipment areas. The following shall be provided:
(a) Boiler room;
(b) Mechanical and electrical equipment room(s) (can be combined with boiler room);
(c) Adequate storage for building maintenance and engineering supplies;
(d) Storage room for housekeeping equipment (need not be provided if space is available in janitor's closets or elsewhere);
(e) Incinerator space. If the facility has an incinerator, it shall be in a separate room, in a designated area within the boiler room, or outdoors;
(f) Yard equipment storage room for yard maintenance equipment and supplies.

Section 13. Details and Finishes. The facility shall be designed for maximum safety for the occupants to minimize the incidence of accidents. Hazards such as sharp corners shall be avoided. All details and finishes shall meet the following requirements:
(1) Details.
(a) Doors to patient toilet rooms and other rooms needing access for wheelchairs shall have a minimum width of two (2) feet and ten (10) inches.
(b) Such items as drinking fountains, telephone booths and vending machines shall be located so that they do not project into the required width of exit corridors.
(c) Handrails shall be provided on both sides of corridors used by patients in facilities with a clean distance of one-half (1/2) inch between handrail and wall.
(d) All doors to patient-room toilet rooms and patient-room bathrooms shall swing outward or shall be equipped with hardware which will permit access in any emergency.
(e) All doors opening onto corridors shall be swing-type except elevator doors. Alcoves and similar spaces which generally do not require doors are excluded from this requirement.
(f) Thresholds and expansion joint covers, if used, shall be flush with the floor.
(g) Grab bars and accessories in patient toilet, shower, and bathrooms shall have sufficient strength and anchorage to sustain a load of 250 pounds for five (5) minutes.
(h) Lavatories intended for use by patients shall be installed to permit wheelchairs to slide under.
(i) The location and arrangement of lavatories and sinks with blade handles intended for handwashing purposes shall provide sixteen (16) inches clearance each side of center line of fixture.
(j) Mirrors shall be arranged for convenient use by patients in wheelchairs as well as by patients in standing position.
(k) Towel dispensers shall be provided at all lavatories and sinks used for handwashing.
(l) If linen and refuse chutes are used, they shall be designed as follows:
1. Minimum diameter of gravity-type chutes shall be two (2) feet;
2. Chutes shall extend at least four (4) feet above the roof and shall be covered by a metal skylight glazed with thin plain glass or plastic.
(m) Ceiling heights.
1. The boiler room ceiling shall not be less than two (2) feet six (6) inches above the main boiler header and connecting piping with nine (9) feet headroom under piping for maintenance and access;
2. Corridors, storage rooms, patients' toilet room, and other minor rooms shall not be less than seven (7) feet and six (6) inches.
3. Ceilings in all other rooms shall not be less than eight (8) feet.
(n) Boiler room, food preparation centers, and laundries shall be insulated and ventilated to prevent any floor surface above from exceeding a temperature of eighty-five (85) degrees Fahrenheit.
(o) Noise reduction criteria. Provision shall be made to minimize sound transmission in:
1. Corridors in patient areas;
2. Nurses' stations;
3. Utility rooms;
4. Floor pantries; and

5. Lobbies and recreation areas.

(p) Special attention shall be given to sound transmission from boiler rooms, mechanical rooms, and kitchen, to patient bedroom areas.

(2) Finishes.

(a) Floors generally shall be easily cleanable and shall have the wear resistance appropriate for the location involved. Floors in kitchen and related spaces shall be waterproof and grease-proof. In all areas where floors are subject to wetting, they shall have a nonslip finish. Carpeting is not permitted in the following areas: kitchen, dishwashing room, soiled utility room, janitor's closet, soiled linen rooms, storage room, bathrooms, public toilet rooms, patient toilet rooms, hydrotherapy rooms, treatment rooms, and any other room where the floor is subject to repeated wetting or soiling.

(b) Adjacent dissimilar floor materials shall be flush with each other to provide an unbroken surface.

(c) Walls generally shall be washable and in the immediate area of plumbing fixtures, the finish shall be moisture-proof. Wall bases in dietary areas shall be free of spaces that can harbor insects.

(d) Ceilings generally shall be washable or easily cleanable. This requirement does not apply to boiler rooms, mechanical and building equipment rooms, shops and similar spaces.

Section 14. Elevators. All facilities where either patient beds or inpatient facilities such as diagnostic, recreation, patient dining or therapy rooms are located on other than the first floor, shall have electric or electrohydraulic elevators as follows:

(1) Number of elevators. All facilities with patient beds or residential facilities located on any floor other than the first floor shall have at least one (1) hospital-type elevator and such additional elevators as determined by the licensure agency from a study of the facility plan and the estimated vertical transportation requirements.

(2) Cars and platforms. Elevator cars and platforms shall be constructed of noncombustible material, except that fire-retardant-treated material may be used if all exterior surfaces of the cars are covered with metal. Cars of hospital-type elevators shall have inside dimensions that will accommodate a patient's bed and attendants and shall be at least five (5) feet wide by seven (7) feet and six (6) inches deep. Car doors shall have a clear opening of not less than three (3) feet and eight (8) inches. Cars of all other required elevators shall have a clear opening of not less than three (3) feet.

(3) Leveling. Elevators shall have automatic leveling of the two (2) way automatic maintaining type with accuracy within plus or minus one-half (1/2) inch.

Section 15. Foundations. Foundations shall rest on natural solid ground if a satisfactory soil is available at reasonable depths. Proper soil bearing values shall be established in accordance with recognized standards. If solid ground is not encountered at practical depths, the structure shall be supported on driven piles or drilled piers designed to support the intended load without detrimental settlement.

Section 16. Mechanical Requirements. (1) General. Prior to completion of the contract and final acceptance of the facility, the architect and/or engineer shall obtain certification from the contractor that all mechanical systems have been tested and that the installation and performance of these systems conform to the requirements of the plans and specifications.

(2) Steam and hot water systems.

(a) Boilers. If boilers are used, a minimum of two (2) must be provided. The combined capacity of the boilers, based upon the published Steel Boiler Institute of Boiler and Radiator Manufacturer's net rating, must be able to supply 150 percent of the normal requirements of all systems and equipment.

(b) Covering. Boiler and smoke breeching, all steam supply piping and high pressure steam return piping, and hot water space heating supply and return piping shall be insulated.

(3) Temperatures and ventilating systems.

(a) Temperatures. A minimum temperature of seventy-one (71) degrees Fahrenheit, shall be provided for in all occupied areas in winter conditions. A maximum temperature of eighty-one (81) degrees Fahrenheit shall be provided for in occupied areas in summer conditions.

(b) Ventilation system details. All air-supply and air-exhaust systems shall be mechanically operated. All fans serving exhaust systems shall be located at the discharge end of the system. The ventilation rates shown in Section 17, Table 1 of this regulation, shall be considered as minimum acceptable rates and shall not be construed as precluding the use of higher ventilation rates if they are required to meet design conditions.

1. Outdoor ventilation air-intakes, other than for individual room units, shall be located as far away as practicable but not less than twenty-five (25) feet from the exhausts from any ventilating system or combustion equipment. The bottom of outdoor intakes serving central air systems shall be located as high as possible but not less than eight (8) feet above the ground level or, if installed through the roof, three (3) feet above roof level.

2. The ventilation systems shall be designed and balanced to provide the general pressure relationship to adjacent areas shown in Section 17, Table 1 of this regulation.

3. Room supply air inlets, recirculation, and exhaust air outlets installed in nonsensitive areas shall be located not less than than three (3) inches above the floor.

4. Corridors shall not be used to supply air to or exhaust air from any room, except that exhaust air from corridors may be used to ventilate bathrooms, toilet rooms, or janitor's closets opening directly into corridors.

5. Filters.

(a) Central systems that serve patient care areas shall be provided with filters rated at eighty (80) percent efficiency based upon the National Bureau of Standards Dust Spot Method with Atmospheric Dust.

(b) Central systems that serve only areas other than patient care areas shall be provided with filters rated at twenty-five (25) percent efficiency based upon the National Bureau of Standards Dust Spot Method with Atmospheric Dust.

6. Boiler rooms shall be provided with sufficient outdoor air to maintain combustion rates of equipment and required temperatures in the facility.

(4) Plumbing and other piping systems.

(a) Lavatories and sinks required in patient care areas shall have the water supply spout mounted so that its discharge point is a minimum distance of five (5) inches above the rim of the fixture. All fixtures used by medical and nursing staff, and all lavatories used by patients and food handlers shall be trimmed with valves which can be operated without the use of hands: Where blade handles are used for this purpose, they shall be at a distance from the center line of the sink to be operational.

(b) Clinical sinks shall have an integral trap in which the upper portion of a visible trap seal provides a water surface.

(5) Water supply system.

(a) Systems shall be designed to supply water to the fixtures and equipment on the upper floors at a minimum pressure of fifteen (15) pounds per square inch during maximum demand periods.

(b) Each water service main, branch main, riser and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.

(c) Hot, cold and chilled water piping and waste piping on which condensation may occur shall be insulated. Insulation of cold and chilled water lines shall include an exterior vapor barrier.

(d) Backflow preventers (vacuum breakers) shall be installed on hose bibbs and on all fixtures to which hoses or tubing can be attached such as janitor's sinks and bedpan flushing attachments.

(e) Bedpan flushing devices shall be provided.

(f) Hot water distribution systems shall be arranged to provide hot water at each fixture at all times.

(g) Plumbing fixtures which require hot water and which are intended for patient use shall be supplied with water which is controlled to provide a maximum water temperature of 110 degrees Fahrenheit at the fixture.

(h) Piping over food preparation centers, food serving facilities, food storage areas, and other critical areas shall be kept to a minimum and shall not be exposed. Special precautions shall be taken to protect these areas from possible leakage of, or condensation from, necessary overhead piping systems.

(6) Hot water heaters and tanks.

(a) The hot water heating equipment shall have sufficient capacity to supply the water at the temperature and amounts indicated below:

	Use		
	Clinical	Dietary	Laundry
Gal/hr/bed	6 1/2	4	4 1/2
Temp. F.	100-110	180*	140-180**

*Temperature may be reduced to 140 if chloritizer is used.
**If the temperature used is below 180, the facility shall utilize detergents and other additives to insure that the linens will be adequately cleaned.

(b) A hot water system which supplies fixtures utilized by patients shall be equipped with an antiscald mixing valve.

(c) Storage tank(s) shall be provided and shall be fabricated of corrosion-resistant metal, or have noncorrosive lining.

(7) Plumbing approval. Prior to final approval of the plans and specifications by the licensure agency, the plumbing plans and specifications must be approved by the Division of Plumbing, Department of Housing, Buildings and Construction.

Section 17. Electrical Requirements. (1) Electrical requirements of the Kentucky Building Code shall apply where applicable.

(2) The wiring in each facility shall be inspected by a certified electrical inspector and a certificate of approval shall be issued to the facility, prior to occupancy. However, the wiring in existing buildings shall be approved by a certified electrical inspector only when the building has not been previously so approved for health care occupancy or where the State Fire Marshal finds that a hazardous condition exists.

(3) Switchboard and power panels. All breakers and switches shall be indexed.

(4) Lighting.

(a) All spaces occupied by people, machinery, and equipment within buildings, and the approaches thereto, and parking lots shall have electric lighting.

(b) Patients' bedrooms shall have general lighting and night lighting. A reading light shall be provided for each patient. A fixed receptacle type night light mounted approximately sixteen (16) inches above the floor, shall be provided in each patient room. Patients' reading lights and other fixed lights not switched at the door shall have switch controls convenient for use at the luminaire. All switches for control of light in patient areas shall be of the quiet operating type.

(c) Lighting levels for the facility shall comply with the requirements of Section 17, Table 2 of this regulation.

(5) Receptacles. Convenience outlets.

(a) Bedroom. Each patient bedroom shall have duplex receptacles on each side of the head of each bed (for parallel adjacent beds, only one (1) receptacle is required between the beds), receptacles for luminairies television and motorized beds, if used, and one (1) receptacle on another wall.

(b) Corridors. Duplex receptacles for general use shall be installed approximately fifty (50) feet apart in all corridors and within twenty-five (25) feet of ends of corridors.

(6) Nurses' calling system. A nurses' calling station shall be installed at each patient bed and in each patient toilet, bath, and shower room. The nurses' call in toilet, bath, or shower rooms, shall be an emergency call. All calls shall register at the nurses' station and shall actuate a visible signal in the corridor at the patients' door, in the clean workroom, soiled workroom, and nourishment station of the nursing unit. Nurses' call systems which provide two (2) way voice communications shall be equipped with an indicating light at each calling station which lights and remains lighted as long as the voice circuit is operative.

(7) Emergency electric service.

(a) General. To provide electricity during an interruption of the normal electric supply that could affect the nursing care, treatment, or safety of the occupants, an emergency source of electricity shall be provided and connected to certain circuits for lighting and power.

(b) Sources. The source of this emergency

electric service shall be as follows:

1. An emergency generating set, when the normal service is supplied by one (1) or more central station transmission lines;

2. An emergency generating set or a central station transmission line, when the normal electric supply is generated on the premises.

(c) Emergency generating set.

1. The required emergency generating set, including the prime mover and generator, shall be located on the premises and shall be reserved exclusively for supplying the emergency electric system. The emergency generator set shall be sufficient kilowatt capacity to supply all electrical connections itemized in paragraph (d) of this subsection.

2. In facilities constructed prior to the effective date of this regulation which are supplied by at least two (2) dedicated and separate utility service feeders, an emergency generating set is not required.

(d) Emergency electrical connections. Emergency electric service shall be provided to circuits as follows:

1. Lighting.

a. Exitways and all necessary ways of approach thereto, including exit signs and exit direction signs, exterior of exits, exit doorways, stairways, and corridors;

b. Dining and recreation rooms;

c. Nursing station and medication preparation area;

d. Generator set location, switch-gear location, and boiler room;

e. Elevator; and

f. Night lights in patient rooms.

2. Equipment. Essential to life safety and for protection of important or vital materials:

a. Nurses' calling system;

b. Alarm system including fire alarm actuated at manual stations, water-flow alarm devices of sprinkler system if electrically operated, fire-detecting and smoke-detecting systems, paging or speaker systems if intended for issuing instructions during emergency conditions, and alarms required for nonflammable medical gas systems, if installed;

c. Fire pump, if installed;

d. Sewerage or sump-lift pump, if installed;

e. At least one (1) duplex receptacle located on the headwall in each patient room;

f. One (1) elevator, where elevators are used for vertical transportation of patients. Provide manual switch-over to operate other elevators.

g. Equipment such as burners and pumps necessary for operation of one (1) or more boilers and their necessary auxiliaries and controls, required for heating and sterilization; and

h. Equipment necessary for maintaining telephone service.

3. Emergency heating. By July 1, 1991 an emergency heating system for the patient rooms, or the corridors of the facility designed at 150 percent efficiency, shall be required. Emergency heating of patient rooms or corridors shall not be required in areas where the facility is supplied by at least two (2) utility service feeders, each supplied by separate generating sources or a network distribution system fed by two (2) or more generators, with the facility feeders so routed, connected, and protected that a fault any place between the generators and the facility will not likely cause an interruption of more than one (1) of the facility service feeders.

(e) Details. The emergency system shall be so controlled that after interruption of the normal electric power supply, the generator is brought to full voltage and frequency and connected within ten (10) seconds through one (1) or more primary automatic transfer switches to all emergency lighting, all alarms, nurses' call, equipment necessary for maintaining telephone service, and receptacles in patient corridors. All other lighting and equipment required to be connected to the emergency system shall either be connected through the above described primary automatic transfer switching or shall be subsequently connected through other automatic or manual transfer switching. Receptacles connected to the emergency system shall be distinctively marked for identification. Storage battery-powered lights shall not be used as a substitute for the requirement of a generator. Where fuel is normally stored on the site, the storage capacity shall be sufficient for twenty-four (24) hour operation of required emergency electric services. Where fuel is normally piped underground to the site from a utility distribution system, storage facilities on the site will not be required.

Section 18. Table 1 - Pressure Relationships and Ventilation of Certain Nursing Facility Areas. Table 2 - Lighting Levels for Nursing Facilities.

Table 1
Pressure Relationships and Ventilation
of Certain Nursing Facility Areas

Area Designation	Pressure Relationship to Adjacent Areas	Minimum Air Changes of Outdoor Air per Hour
Patient room	0	1
Patient room corridor	0	2
Treatment room	0	1
Physical and hydro-therapy; if applicable	N	2
Dining and recreation areas	0	2
Soiled workroom	N	2
Clean workroom	P	2
Toilet room	N	--
Bedpan room; if applicable	N	--
Bathroom	N	--
Janitor's closet	N	--
Linen and trash chute rooms	N	--
Food preparation center	0	2
Dishwashing area	N	--
Dietary dry storage	0	--
Laundry, general	0	2
Soiled linen sorting and storage	N	--
Clean linen storage	P	2

P = Positive N = Negative 0 = Equal -- = Optional

Table 1. Continued

Area Designation	Minimum Total Air Changes Per Hour	All Air Exhausted Directly to Outdoors
Patient room	4	--
Patient area corridor	4	--
Treatment room	6	Yes

Physical therapy and hydrotherapy; if applicable	6	--
Dining and recreation areas	4	--
Soiled workroom	4	Yes
Clean workroom	4	--
Toilet room	10	Yes
Bedpan room; if applicable	10	Yes
Bathroom	10	Yes
Janitor's closet	10	Yes
Linen and trash chute room	10	Yes
Food preparation center	10	Yes
Dishwashing area	10	Yes
Dietary dry storage	2	--
Laundry, general	10	Yes
Soiled linen sorting and storage	10	Yes
Clean linen storage	2	--

Table 2
Lighting Levels for Nursing Facilities

Area	Foot-candles*
Administrative and lobby areas, day	50
Administrative and lobby areas, night	20
Barber and beautician areas; if applicable	50
Corridors and interior ramps	20
Corridor night lighting	3
Dining area and kitchen	30
Doorways	10
Exit stairways and landings	5
Janitor's closet	15
Nurses' station, general, day	50
Nurses' station, general, night	20
Nurses' desk, for charts and records	70
Nurses' medicine cabinet	100
Patient care unit (or room), general	10
Patient care room, reading	30
Recreation area (floor level)	50
Stairways other than exits	30
Toilet and bathing facilities	30
Utility room, general	20
Utility room, work counter	50

*Minimum on task at anytime.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: December 12, 1990
FILED WITH LRC: December 14, 1990 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for January 22, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by January 17, 1991, 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: Ralph Von Dereau/Eric Friedlander
(1) Type and number of entities affected: Approximately 300 long-term care facilities.
(a) Direct and indirect costs or savings to those affected: There should be no additional costs due to this regulation for existing facilities.
1. First year: No additional costs.
2. Continuing costs or savings: No additional costs.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There should be no additional factors affecting competition.
(b) Reporting and paperwork requirements: No additional requirements.
(2) Effects on the promulgating administrative body: No additional affects, this division already surveys these facilities.
(a) Direct and indirect costs or savings: $500 for printing this regulation.
1. First year: $500 for printing this regulation.
2. Continuing costs or savings: No additional costs should be associated with this amendment since reprinting of regulation is a part of this agency's continuing budget.
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: This amendment poses no additional paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: There should be no effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: This licensure category was developed to mirror federal standards. This process should make the licensure program more consistent with the federal certification program, and therefore less confusing to providers.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict.
(a) Necessity of proposed regulation if in conflict: No conflict exists.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict exit.
(6) Any additional information or comments: No
TIERING: Was tiering applied? No. This is a licensure regulation and as such must apply to all regulated entities equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 CFR Part 483.
2. State compliance standards. 902 KAR 20:310, Facility specifications; nursing facilities; 902 KAR 20:300, Operation and services; nursing facilities.
3. Minimum or uniform standards contained in the federal mandate. Federal standards include: resident rights, admission and discharge rights, resident behavior and facility practices, quality of life, resident assessment, quality of care, nursing services, dietary services, physician services, specialized rehabilitation services, dental services, pharmacy services, infection control, physical environment, and administration.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The facility specifications are more specific under the state standards.
5. Justification for the imposition of the

stricter standard, or additional or different responsibilities or requirements. The increased specificity should serve to assist providers in understanding what type of facility to build.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 1:300. Standards for child-caring facilities.

RELATES TO: KRS 199.011, 199.640 to 199.670, 600.020, 615.010, 620.020
STATUTORY AUTHORITY: KRS 194.030,194.050, 199.640(3), 199.645, 615.050
NECESSITY AND FUNCTION: KRS 199.640 authorizes the Cabinet to issue administrative regulations relating to standards of care and service for child-caring facilities. This proposed administrative regulation consolidates the provisions of 905 KAR 1:065, 1:091, 1:110, 1:120, and 1:200.

Section 1. Definitions. (1) "Temporary shelter" means a facility which provides nonsecure, residential care on a temporary or emergency basis.
(2) "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and his social environment.
(3) "Community resources" means services and activities available in the community that supplement those provided by the child-caring facility or child-placing agency in the care and treatment of children.
(4) "Youth-treatment center" means a residential treatment facility as defined in KRS 600.020 providing intensive professional treatment oriented services.
(5) "Treatment" means individualized management and care of a child utilizing professional staff and components of the treatment environment to assist the child in resolving his emotional conflict or behavioral disorder.
(6) "Board of directors" means that group which is by law or charter delegated the responsibility for governing the facility.
(7) "Advisory board" means a group of citizens approved by the board of directors who lends advice, counsel, and support to an agency.
(8) "Executive director" means the person employed by the board of directors to be responsible for the administration and management of an agency.
(9) "Treatment director" means the person responsible for supervising the day-to-day operation of the program for children served by the agency or facility.
(10) "Treatment team" means a representative group of people who provide services to the child and the child's family.
(11) "Individual treatment plan (ITP)" means a plan of action developed and implemented to address the needs of an individual child.
(12) "Seclusion room" means a room in a youth treatment center for the temporary seclusion of a child in danger of harming self or others which may use a latching device to secure the door.
(13) "Latching device" means an instrument used to secure a seclusion room door that does not require the use of a key or combination.
(14) "Aftercare" means services provided to the child after discharge from a child-caring facility.
(15) "Safe physical restraint" means the use of the human body to safely control the actions of another.
(16) "Child-caring program" means the method of delivering child-caring services.
(17) "Division" means the Division of Licensing and Regulation, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.
(18) "Living unit" means a building or part thereof in which children reside, not exceeding sixteen (16) beds.
(19) "Direct child-care staff" means any employee providing face-to-face care and supervision of children.
(20) "Case coordinator" means the individual on the treatment team who has responsibility for the coordinated implementation of the child's ITP.
(21) "Time-out" means a treatment intervention utilized by child-caring staff to separate a child from others in a nonsecure area for a time limited period to permit the child to regain control over his behavior.
(22) "Indoor living areas" means those areas in the facility that are separate from hallways, bedrooms, kitchens, stairways, vestibules, bathrooms, closets, unfinished basements, and attics.
(23) "Independent living program" means a planned program designed to teach youth life skills that will enable them to become self-sufficient.

Section 2. Scope of Operations and Services. These standards pertain to the out-of-home care of children who may benefit by the experiences residential services can offer. Child-caring programs function within a continuum of care, providing an array of services to families and children. Types of child-caring programs covered by this regulation are temporary shelter, group homes, residential child care, and residential treatment services.

Section 3. Administration and Operation. (1) Licensing procedures.
(a) Initial licensure.
1. When applying for an initial license, the facility shall provide the following:
a. A complete application as determined by the cabinet;
b. A licensure fee of $155;
c. A copy of the Articles of Incorporation;
d. A mission statement of purposes, objectives, scope of services provided, and intake policy specifying kinds of children to be accepted for care;
e. A copy of the constitution and bylaws;
f. A list of officers, board members, and advisory board members, if any, including addresses and professions;
g. Names and titles of officers and terms of office;
h. A list of all staff including positions or title and qualifications; and
i. Applications for a child-caring facility license shall be in compliance with the applicable regulations or shall have submitted an acceptable plan for correction of violations relating to the particular child-caring facility. Compliance with licensure regulations

shall be ascertained through on-site inspections of the child-caring facility. Representatives of the division shall have access to the child-caring facility at any time. Regulatory violations identified during these inspections shall be transmitted in writing to the child-caring facility by the division. The child-caring facility shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting agency within ten (10) days. The plan shall specify the dates by which each of the violations shall be corrected. Following a review of the plan, the Division shall notify the child-caring facility in writing of the acceptability of the plan. When a portion or all of the plan is unacceptable, the division shall specify the reasons for the unacceptability. In these cases, the child-caring facility shall modify or amend the plan and resubmit it to the division within ten (10) days.

2. A license shall be issued by the Cabinet for Human Resources when:

a. The facility has been approved by the State Fire Marshal; and

b. The facility has been surveyed by the Cabinet for Human Resources and it is determined that the facility qualifies for licensure.

(b) Renewal licensure. Facilities shall be relicensed annually from the date of issuance of the original license. To be eligible for relicensure, the facility shall:

1. Submit a renewal application;

2. Submit a relicensure fee of eighty (80) dollars; and

3. Comply with the applicable portions of this regulation.

(c) Every child-caring facility shall provide the following information as part of the annual inspection:

1. A list of officers, board members, and advisory board members, if any, including addresses and professions;

2. Names and titles of officers and terms of office; and

3. A list of all staff including positions or title and qualifications.

(d) The facility shall have an annual audit completed by an independent accounting firm or certified public accountant.

(e) The facility shall comply with its mission statement, child-caring program narrative, and all applicable federal and state regulations in regard to child-caring program operations.

(f) Applications for renewal licenses shall, as a condition precedent to licensure or relicensure, be in compliance with the applicable regulations relating to the particular child-caring facility. Compliance with licensure regulations shall be ascertained through on-site inspections of the child-caring facility. The inspection procedures for relicensure shall be the same as set forth in Section 3 of this regulation.

(g) The license shall specify the types of care and service the facility is authorized to provide based upon the application and inspection.

(h) The facility shall provide only the types of care and services for which they are licensed.

(i) The licensed capacity of the facility shall not exceed the capacity specified by the State Fire Marshal's Office and the division.

(j) A license shall be issued for a specific physical location and for operation by a sponsoring organization.

(k) Licenses shall not be transferable.

(l) When a circumstance covered by the license changes, notification of the following shall be made to the division in advance to allow for approval before implementation:

1. Ownership or sponsorship;

2. Location;

3. Capacity; and

4. Services.

(m) The facility shall post its license in a place visible to the public.

(2) Board of directors.

(a) The facility shall have a board of directors consisting of a minimum of seven (7) members, the majority of whom shall be residents of Kentucky.

(b) The board of directors shall meet at least quarterly. Minutes of these meetings shall be taken and kept in written form.

(c) At least one (1) board meeting shall be held at each facility or agency in every calendar year. When a board of directors has responsibility for multiple facilities, a board committee:

1. May be appointed to meet at least once a year at each facility; and

2. Shall submit a written report of this meeting to the full board.

(d) The board of directors shall employ an executive director. The division shall be notified in writing of a change of the facility's executive director within seven (7) days.

(e) The board of directors shall be responsible for and have the authority to ensure the continuing compliance with the requirements of this regulation and all other relevant federal, state or local laws or regulations.

(f) The board of directors shall conduct and approve an annual evaluation of the performance of the executive director.

(g) The board of directors shall approve a written annual budget for the agency which ensures funding to meet all operating requirements.

(h) The board of directors shall in consultation with the executive director approve and annually review all written policies of the facility.

(i) The board of directors shall obtain a criminal records check of prior convictions or pleas of guilty of the executive director prior to employment.

(j) The board of directors shall approve a mission statement delineating:

1. The purposes;

2. Objectives;

3. Scope of services to be provided; and

(3) Executive director.

(a) The duties of the executive director shall be determined by the board of directors and shall include the following responsibilities:

1. Select, employ, and terminate staff;

2. Develop and implement facility policies as approved by the board of directors;

3. Provide professional help to the board of directors in:

a. Carrying out their responsibilities;

b. Interpreting the needs of the children and families served; and

c. Assisting in periodic evaluation of the facility's services;

4. Supervise the preparation of an annual budget for board consideration;

5. Keep the board informed of financial needs;
6. Provide financial statements on at least a quarterly basis;
7. Operate within the established budget;
8. Attend board meetings;
9. Ensure that orientation is provided for all new employees and continual training for all staff; and
10. Delegate appropriate duties to other staff.

(b) When the executive director is not on the premises, a designated staff person shall be responsible for the day-to-day operations of the child-caring program.

(4) Staff qualifications. Persons employed as executive director after the effective date of this regulation shall possess the following qualifications:

(a) An executive director shall possess a Master's degree in the human services field including:
1. Social work;
2. Sociology;
3. Psychology;
4. Guidance and counseling;
5. Education;
6. Religion;
7. Business administration;
8. Criminal justice;
9. Public administration; or
10. Child care administration;
11. Christian education;
12. Divinity;
13. Pastoral counseling;
14. Nursing;
15. Other human service field related to working with families and children; and

(b) Two (2) years of work experience in management of a human services program or a Bachelor's degree with a major in social work, sociology, psychology, criminal justice, guidance and counseling, education, Christian education, divinity, pastoral counseling, religion, business administration, public administration, or child care administration and four (4) years work experience in human services programs.

(c) Persons employed after the effective date of this regulation other than the executive director employed in positions responsible for supervising, evaluating, or monitoring social work or other treatment staff shall possess at least:
1. A Master's degree in the human services area including the areas of social work, sociology, psychology, guidance and counseling, pastoral counseling and religion; and
2. Two (2) years work experience in the human services field.

(d) Employees responsible for social work, counseling, or planning and coordinating these services to children shall have at least a Bachelor's degree in the human services field.

(e) Persons employed in positions responsible for supervising, evaluating, or monitoring the daily work of direct child-care staff shall possess at least two (2) years of college and two (2) years of work experience in a child-caring facility; or a high school diploma or an equivalence certificate and at least five (5) years work experience in a child-caring facility.

(f) Persons employed in positions responsible for the daily direct care or supervision of children after the effective date of this regulation shall possess a high school diploma or equivalency certificate.

(g) If an employee is responsible for varied job responsibilities and falls within more than one (1) of the categories specified, the employee shall meet those qualifications which are the most rigorous.

(5) Staffing requirements.

(a) The facility shall have a written policy describing a child-to-direct-child-care staff ratio. This policy shall explain the assignment of these staff to ensure the health and safety of children and to implement the child-caring program.

(b) There shall be at least one (1) staff member present in each facility building when children are present if the staff-to-child ratios specified in subsection (c) of this section are met.

(c) There shall be at least one (1) direct care staff member to provide supervision for each ten (10) children or fraction thereof when children are present. There shall be at least one (1) direct care staff member for each five (5) children or fraction thereof under age six (6) when children are present.

(d) The facility shall have a written work schedule and a policy providing for utilization of relief staff.

(e) The facility shall employ an individual who is responsible for the overall planning and coordinating of social services to families and children.

(f) If a staff member is required to work more than six (6) consecutive days he shall be granted at least twenty-four (24) consecutive hours off duty. If a staff member is required to work seven (7) consecutive days, he shall be granted at least forty-eight (48) consecutive hours off.

(g) Social services staff shall not carry a case load of more than fifteen (15) children and their families.

(6) Personnel policies.

(a) All employees shall be at least eighteen (18) years of age. This does not include children involved in the facility's work program.

(b) There shall be a written job description which shall be reviewed and revised when necessary for each position which describes:
1. The duties of the position;
2. The skills necessary to fill the position; and
3. Identifies the immediate supervisor of the position.

(c) Upon employment personnel shall receive written facility policies and procedures to include the following:
1. Salary plan;
2. Leave provisions;
3. Working conditions;
4. Fringe benefits;
5. Employment and termination;
6. Job descriptions;
7. Staff evaluation;
8. Provisions for staff development;
9. Employee grievance;
10. Disciplinary action; and
11. Child-caring program narrative.

(d) Personnel orientation. Within one (1) month of initial employment personnel shall receive an orientation to facility policies and procedures.

(e) Current personnel records shall be maintained for each employee which include the following:

1. Name, address, Social Security Number, date of employment, and date of birth;
2. Evidence of a current registration, certification, or licensure;
3. Records of participation of staff development;
4. Records of performance evaluation;
5. Criminal records check;
6. Records of physical exams related to employment as specified in the facility's policy;
7. Personnel actions;
8. Application for employment and resume or contract; and
9. Evidence of personnel orientation.

(f) If a criminal records check reveals a prior criminal conviction or plea of guilty pursuant to KRS Chapter 510 or a Class A felony, the applicant shall not be employed.

(g) The facility shall assure that at least one (1) staff person who is certified in first aid and CPR is on the premises when children are present.

(h) The facility shall have an ongoing staff development program for the administrative, professional, volunteer, and support personnel.

1. Records of attendance at workshops, conferences, and academic courses related to work responsibilities shall be kept on all employees.

2. The staff development program shall be under the supervision of a designated staff member.

3. All direct child care staff shall have at least forty (40) hours of annual training in the following:

a. Emergency and safety procedures;
b. Principles and practices of child care;
c. Behavior management; and
d. First aid.

(i) An employee under indictment or legally charged with felonious conduct shall be immediately removed from contact with children within the facility until the employee is cleared of the charge.

(j) Volunteers who perform similar functions as paid staff shall meet the same requirements and qualifications.

(7) Facility policies. There shall be written administrative policies which the facility follows covering all aspects of operation including:

(a) Administration;
(b) Personnel;
(c) Fiscal management;
(d) Physical plant;
(e) Case records;
(f) Child-caring program;
(g) Health and safety;
(h) Internal review and evaluation;
(i) Transportation of children;
(j) A description of organization structure, staffing, and allocation of responsibility and accountability;
(k) A child-caring program narrative describing in detail:

1. The services offered;
2. Methods and protocols for service delivery;
3. Goals of the services; and
4. Grievance procedures for children.

(8) Internal review and evaluation.

(a) Each facility shall provide and conduct a self-evaluation of its services at least every three (3) years from the effective date of this regulation.

(b) Specific written criteria and procedures for evaluating the facility performance and management shall be established. These shall be approved by the board of directors.

(c) The required evaluation shall examine the following factors:

1. Child-caring program content in relation to the stated role and purpose of the facility.
2. Child-caring program effectiveness based on stated and measurable goals.
3. Roles of the board of directors and management staff.
4. Personnel policies.
5. Staffing patterns and job responsibilities.
6. Staff effectiveness.
7. Staff turnover, causes, and effects.
8. Staff training program.
9. Budgeting and fiscal management.
10. Physical facility management.
11. Classification of children.
12. Admissions, planned and unplanned discharges, and length of stay of children in care.
13. Emergency and safety procedures.
14. Dietary and menu evaluation.
15. Content of the treatment program as related to the needs of the child and family based upon a random review of treatment plans.
16. The service continuum from intake through aftercare.
17. The caregiving program, including practices in regard to food, sleep, personal possessions, clothing, health, discipline, recreation, religion, and education.
18. Review of incident reports.

(d) A copy of each three (3) year evaluation shall be kept on file at the facility and a copy shall be given to each member of the board of directors.

(e) Accreditation by the Council on Accreditation sponsored by the Child Welfare League of America or the Joint Commission on Accreditation of Health Care Organizations shall substitute for the three (3) year evaluation.

(f) The facility shall ensure that the rights of children and their families, including that of confidentiality, are protected in all phases of evaluation. Services shall not be denied or restricted to any client based upon his participation or lack thereof in the evaluation process.

(9) Interstate placements.

(a) Prior to accepting a child from another state or prior to placing a child outside Kentucky, the facility shall comply with all applicable provisions of KRS 615.030 to 615.040, Interstate Compact on Placement on Children; and KRS 615.010, Interstate Compact on Juveniles.

(b) When a child committed to the cabinet makes a brief visit out of state, not accompanied by facility personnel, the facility shall obtain prior consent from the social worker in the Department for Social Services who has case responsibility.

(c) When an emergency placement of a child into a licensed child-caring facility is made, compliance with KRS 615.030 to 615.040 shall be the responsibility of the placing agency. When the receiving facility is aware of noncompliance by the placing agency, then compliance shall become the responsibility of the receiving facility.

Section 4. Physical Plant. (1) Facilities shall comply with applicable state and local laws and regulations relating to construction,

sanitation, and maintenance of buildings.

(2) The facility shall conform to the life safety code standards adopted by the State Fire Marshal's Office.

(3) A climate control system shall be provided. A minimum temperature of sixty-five (65) degrees Fahrenheit shall be maintained in occupied areas in cold weather conditions. In warm weather conditions and periods of extreme heat, the facility shall assure that occupied areas are properly ventilated. When a facility is not air-conditioned, the facility director shall assure that when the facility temperature in occupied areas exceeds eighty-five (85) degrees Fahrenheit that fans are utilized to circulate air, the facility is properly ventilated to outside air, that ice water is readily available and served to residents and that staff frequently monitor residents for signs and symptoms of heat related illness.

(4) The water supply shall be from an approved source and easily available from drinking fountains, the refrigerator, or cold water tap.

(5) Plumbing and waste disposal systems shall comply with state plumbing standards and applicable state laws and regulations regarding waste disposal systems.

(6) Housekeeping and maintenance services.

(a) Housekeeping. The buildings shall be maintained in a clean and safe condition.

(b) Maintenance. Requirements shall include:

1. Gas stoves, gas furnaces, gas heaters, and gas water heaters shall be ventilated to ensure the safety of the building's occupancy;

2. The facility shall ensure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair;

3. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures shall be in good repair. Windows and doors which may be opened for ventilation shall be screened;

4. 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; and

5. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The pest control compounds shall be stored in a locked area.

(7) Bedrooms.

(a) Bedrooms shall be of adequate size to permit at least three (3) linear feet between each bed or set of bunk beds. Newly constructed buildings after the effective date of this regulation shall have bedrooms housing not more than four (4) residents per room.

(b) Bedrooms sleeping children above age three (3) shall be equipped with individual beds for each child. Each bed shall not be less than thirty (30) inches wide nor less than five (5) feet in length and shall be long and wide enough to accommodate the child's size. Children under the age of three (3) shall be provided with a standard size crib or baby bed. Each bed shall be equipped with a support mechanism and a clean mattress.

(c) Beds occupied by children shall be placed so that a child shall not experience discomfort because of proximity to radiators, heat outlets, or exposure to drafts.

(d) There shall be separate sleeping quarters for boys and girls over the age of five (5), except for siblings when indicated by individualized treatment plans.

(e) Closet space and drawer space shall be provided for each child to accommodate personal belongings.

(f) Children shall not be housed in rooms, detached buildings, or other enclosures which have not been previously inspected and approved for resident use.

(g) Each child shall be provided with clean sheets, pillowcases, a pillow, and blankets. Sheets and pillowcases shall be changed and laundered at least weekly or more frequently when needed. Waterproof mattress coverings shall be provided.

(8) Indoor living areas.

(a) An indoor living area of at least thirty-five (35) square feet per child shall be provided by the facility.

(b) Indoor living areas shall be provided with comfortable furnishings for the number of children served.

(9) Bathrooms.

(a) Each living unit shall have a minimum of one (1) wash basin with hot and cold water, one (1) flush toilet, and one (1) bath or shower with hot and cold water for every six (6) children, or fraction thereof, residing within the living unit.

(b) Each bathroom shall be supplied with toilet paper, towels, soap, and wastebaskets.

(c) Bathtubs and showers shall have enclosures or screens for individual privacy. When more than one (1) toilet is located in the same bathroom, each toilet shall be partitioned and include a door capable of remaining closed.

(d) Each bathroom shall contain at least one (1) nondistorting mirror secured to the wall at a convenient height.

Section 5. Health, Safety, and Nutritional Requirements. (1) Health.

(a) Every facility shall have written policies and procedures for health and medical care including provisions for illness and emergency care.

(b) Services of a physician shall be made available to the children. When services of a licensed physician are not available in the community, the facility shall request the assistance of the county health department or the Cabinet's Division of Maternal and Child Health located in Frankfort, Kentucky.

(c) Staff shall follow licensed physician orders for medicines, prescriptions, and medical care.

(d) Within forty-eight (48) hours of admission to a facility excluding weekends and holidays, and annually thereafter, each child shall have a physical examination under the supervision of a licensed physician unless it has been documented that the child has received an examination during the past twelve (12) months. The examining physician shall report in writing observations and findings including:

1. The developmental history of the child, illnesses, operations, and immunizations if available to the physician;

2. Any limitations the child may have which may prevent participation in activities scheduled by the facility;

3. Visual and auditory examinations;

4. Recommendations and orders for future care, treatment, and examinations;
5. TB skin tests unless contraindicated by a physician; and
6. Any other tests for communicable disease as indicated by the medical and social history of the child.

(e) Upon admission, the facility shall consult with a physician when there is evidence that the child may require medical attention.

(f) The facility shall develop procedures for children requiring specific provisions for infectious medical conditions.

(g) A separate health record shall be maintained for each child. Health records shall be kept on the premises and be made available to physician, nurse, or designated staff. The health record shall contain the following:

1. Copy of annual physical examination, including any recommendations for treatment;
2. Previous and continuing health and medical history when available;
3. Records or reports of tests, immunizations, periodic reexaminations, and physicians' orders and instructions;
4. Reports and dates of dental examinations and treatments;
5. Authorization for regular and emergency medical, dental, and surgical care signed by the legal custody holder upon admission;
6. Documentation of all medication administered to the child; and
7. Documentation of all special provisions made for the child in accordance with physician orders.

(h) Each child's medical needs shall be provided for as recommended by a licensed physician.

(i) Each child cared for by the facility shall be immunized within thirty (30) days of admission and comply with the requirements of KRS 214.034 and all other statutes and regulations pertaining to immunizations.

(j) If a child dies while in the care of a facility or in any home operated or supervised by the facility:

1. The facility shall immediately notify the county coroner and the child's parent, guardian or custodian, and the case worker;
2. A verbal report of the death shall be made immediately to the Commissioner of the Department for Social Services;
3. A written comprehensive report from the executive director outlining the circumstances shall be forwarded to the Office of the Commissioner, Department for Social Services, on the next working day following the verbal report; and
4. If a child's death occurred as a result of alleged abuse or neglect, the executive director shall follow reporting procedures specified in KRS 620.030 (1) and (2).

(k) Every facility shall take immediate action for medical care in cases of illnesses and emergencies.

(l) Upon discharge, medical information shall follow the child when release forms have been obtained.

(m) The facility, within one (1) week after a child's admission, shall schedule an appointment for a dental examination unless an examination has been performed in the six (6) months preceding the admission. Emergency dental needs shall be treated by a licensed dentist as they arise.

(n) Every child age two (2) years and above shall be examined at least annually by a licensed dentist.

(o) The facility shall document the information required in this subsection and shall assure the confidentiality of this information.

(p) The facility shall maintain a continuous program of personal hygiene.

(2) Safety.

(a) The facility shall provide a safe environment and shall comply with the life safety code standards adopted by the State Fire Marshal's Office.

1. Children with physical and mental handicaps shall be protected.
2. Children shall be instructed in fire prevention. Matches, open flame, or combustible materials shall be used by children only under direct supervision of staff. Staff shall instruct children in fire emergency procedures.
3. The facility shall maintain and post a current, written emergency fire evacuation plan and diagrams, including evacuation routes and procedures and locations of fire extinguishers. Documented fire and other emergency drills shall be performed monthly.
4. Emergency plans shall designate suitable shelters in case of severe storm warnings, flash flooding, tornadoes, and other emergency situations.

(b) Sports activities shall be supervised by staff. The presence of a Red Cross-Certified Lifeguard shall be required when children swim. If the facility has a swimming pool, it shall conform to applicable state statutes and regulations.

(c) Donated home processed foods are prohibited.

(d) Transportation.

1. When transportation is provided directly, contracted for, or arranged by a facility, these requirements shall apply:

a. The facility shall comply with state laws pertaining to vehicles, drivers, and insurance;
b. Each child shall have a seat and remain seated while the vehicle is in motion;
c. Seat belts, when provided, shall be used to secure individual children;
d. All vehicles used to transport children off campus shall have seats for each passenger as manufactured standard equipment;
e. A vehicle containing children shall never be left unattended; and
f. The maximum number of children, when any are under the age of six (6), a driver shall supervise alone is five (5). The applicable staff-child ratios of this regulation shall apply after this number. Children under forty (40) inches tall or forty (40) pounds in weight shall not be transported unless restrained in an approved safety seat pursuant to Kentucky Revised Statutes.

2. The vehicle shall not pick up and deliver children under the age of six (6) to a location which requires the child to cross the street or highway unless accompanied by an adult.
3. The following standards shall be met when transportation is provided by any means other than licensed public transportation:

a. The vehicle shall be maintained in a safe mechanical and operable condition.
b. A thorough inspection of the vehicle shall be made and documented by a qualified mechanic at least annually.

c. If the driver is not in his seat, the motor shall be turned off, keys removed, and brake set.

(3) Nutritional requirements.

(a) Children shall be served nutritious meals.

1. Meals shall meet the dietary allowances of the Food and Nutrition Board of the National Research Council which include foods from the four (4) basic food groups.

2. Amounts shall accommodate the needs of each child as to age, activity of each child in care, and prescribed diet or ITP.

(b) Each child shall be encouraged to eat the food served, but shall not be subjected to coercion.

(c) Orders for modified diets from licensed physicians shall be followed by the facility.

(d) Menus shall be planned at least one (1) week in advance and shall be dated and posted. Menus shall be kept on file for one (1) year.

(e) At least three (3) meals a day shall be provided at regular intervals except when children receive meals at school. No more than fourteen (14) hours shall lapse between the evening meal and the morning meal except for weekends and holidays.

1. Nourishing snacks shall be provided and may be part of the daily food needs but they shall not replace regular meals. These snacks shall be recorded on the menu.

2. Meals shall be scheduled at set times each day so that meals are not hurried, allowing time for conversation.

3. Food shall not be used as a punishment.

4. Only pasteurized milk and milk products and U.S. Government inspected meat shall be served to the children.

5. Foods shall be prepared to preserve nutritive value and heighten flavor and appearance.

6. Children and staff are to be served the same foods unless differences in age or special dietary needs are factors.

(f) Table service shall be provided for all those capable of eating at a table.

1. Tables and chairs shall be of a height which corresponds to the size of the children served. They shall be constructed of material that can be easily sanitized.

2. Children who have not had opportunities to learn how to handle food with the usual table service shall be managed in a way that they will not be embarrassed or subjected to ridicule.

(g) Persons handling food shall wear clean outer garments and shall keep their hands and fingernails clean while handling food, drink, utensils, or equipment.

(h) Written reports of sanitary inspections by municipal, county, or federal authorities shall be kept on file at the facility. The sanitation of facilities shall meet local, state, and federal regulations.

(i) If a facility subcontracts food services, all applicable federal and state regulations shall apply.

Section 6. General Requirements. (1) Promotional use of children.

(a) Exploitation of children for promotional purposes is prohibited.

(b) Children shall not be used in any manner in which they or their family could suffer discomfort or embarrassment.

(c) Children shall not be used personally for fund-raising purposes for the facility, except as indicated in paragraph (d) of this subsection.

(d) If pictures, slides, recordings, or other private and personal effects of children are used in fund-raising or promotional efforts of facilities:

1. Written permission shall be obtained from parents or guardians.

2. If the child is committed to the Cabinet for Human Resources, permission shall be obtained from an authorized representative of the cabinet.

(2) Clothing and personal possessions.

(a) Through agreement with the child's custody holder, the facility shall provide each child with clothing and footwear which is clean, well-fitting, and seasonal.

(b) Clothing shall be age and sex appropriate and acceptable according to the standards of the surrounding community.

(c) Each child shall be provided individual articles of personal hygiene.

(d) The facility shall allow children to have personal belongings and property consistent with the regulations and facility policies.

(3) Children's money.

(a) The facility shall have written policies and procedures relating to money belonging to children.

(b) If arrangements are not made with a financial institution for the establishment and maintenance of children's accounts, the facility shall:

1. Establish an account for each child who wishes to have an account; and

2. Shall provide each child who maintains an account with a quarterly written report of the account's balance, deposits, withdrawals, and interest earned, if any.

(c) The facility shall give each school age child a weekly allowance.

(d) Within thirty (30) days of discharge, funds belonging to a child shall be transferred with or returned to the child.

(4) Visitation and communication.

(a) The facility shall have written policies concerning visitation and communication.

(b) The facility shall ensure that arrangements for visitation are not in conflict with the ITP.

(c) All scheduled visits shall be documented in the case record.

(d) The facility, in accordance with the ITP and agency policy, shall allow a child access to a telephone to permit the child to make and receive phone calls.

(5) Religion, culture, and ethnic heritage.

(a) The facility shall demonstrate consideration for and sensitivity to the racial, cultural, ethnic, or religious backgrounds of children in care. The facility, in conjunction with the custodian, shall make available to a child in care cultural or ethnic activities appropriate to the child's cultural or ethnic background.

(b) Opportunity shall be provided each child in care to practice the religious beliefs and faith of the child's individual or family preference if the practice is not destructive. A child may be encouraged to participate in religious activities, but shall not be coerced to do so.

(6) Education.

(a) When a facility operates its own school program, it shall have written policies and procedures regarding the development and implementation of the educational program. These

policies and procedures shall include:
1. School attendance;
2. Teaching staff;
3. School records;
4. Educational supplies, equipment, and facilities; and
5. Individual educational plans and use of community school.

(b) Facilities shall ensure that the children attend an accredited educational program the number of days required by law.

(c) Each child shall be enrolled in an accredited educational program within one (1) week of admission.

(d) School-age children who are ineligible or unable to attend an accredited school shall have an educational program specific to the individualized needs of the child which may include a General Education Diploma or vocational training.

(e) When facilities operate their own educational programs, maintenance of school records shall comply with state law and regulations of educational bodies having jurisdiction.

(f) The facility shall provide a quiet area and designated time for study.

(7) Work and chore assignments.

(a) An assigned chore or work assignment shall not place the child in physical danger.

(b) A chore assignment shall be posted within the child's living quarters.

(c) Children may be given jobs for which they receive payment which shall be clearly differentiated from chores expected of any child in relation to the routines of daily living. This work shall be done in compliance with child labor laws.

(d) If a child intentionally destroys or damages property or equipment, the child may be required to make restitution.

(e) Work assignments outside of daily routine chores at the facility shall not be used as a form of punishment.

1. Additional chore assignments beyond what is regularly assigned to a child may be performed as restitution for intentional property damage made by the child.

2. Additional chore or work assignments may be given to a child for violation of facility rules only upon mutual agreement between the child and supervisory child-caring staff. The child shall not be coerced to enter into an agreement.

(f) Children shall be given rest periods of at least ten (10) minutes during each hour worked.

(g) Use of children to perform chores or work assignments shall not negate the facility's ultimate responsibility for the maintenance of the facility nor the employment of staff sufficient to maintain the facility.

(8) Discipline.

(a) Facilities shall have written policies and procedures governing disciplinary actions.

(b) Discipline shall be utilized as an educational tool and be related to the child's actions initiating the disciplinary process.

(c) Discipline shall be consistent both with the child's ITP and in response to the child's lack of control or misbehavior.

(d) The following practices shall not be allowed:
1. Cursing;
2. Screaming;
3. Name calling;
4. Threatening of physical harm;
5. Intimidation;
6. Humiliation;
7. Denial of food or sleep;
8. Spanking;
9. Hitting;
10. Unnecessarily rough handling;
11. Paddling; or
12. Any other physical punishment.
13. Denial of visitation with family or custody holder.

(e) Children shall not directly discipline other children.

(f) Handcuffs, weapons, mechanical restraining, or other restraining devices shall not be used.

(g) Children placed in a time-out area shall be in sight or sound of staff. Staff shall check the child at least every five (5) minutes until it is determined the child is ready to continue normal activities.

(h) Safe physical restraint shall be used only to prevent a child from injury to self or others or to prevent serious disruption of the facility's program.

(i) Safe physical restraint shall not be used as punishment or for the convenience of staff.

(j) In facilities where safe physical restraint is used, the facility shall have clearly written policy and procedures governing the safe physical restraint of children. Direct child-caring staff shall be trained in methods of safe physical restraint utilized by the facility.

(k) The program director shall daily review the uses of safe physical restraint to assure compliance with facility policies.

14. The entire group shall not be punished due to the misbehavior of one (1) or more individual group members.

(9) Suspected child abuse or neglect. Staff shall report all incidents of suspected child abuse or neglect in accordance with KRS 620.030(1) and (2).

Section 7. Child-caring Program Services. (1) Admissions and intake.

(a) The facility shall have clearly defined written policies and procedures for admissions that identify the age, sex, and detailed description of the type of child served.

(b) Acceptance of a referral shall be based on the assessment that the child's need is one which the services of the facility are designed to address, and which cannot be met in a less restrictive setting. The facility shall not accept into care any child for whom services cannot be provided based on the child-caring program's mission statement and child-caring program's narrative.

(c) The facility shall have a written placement agreement with the child's custodian.

(d) There shall be a preadmission interview with the child.

(e) The following information regarding the child shall be obtained by the facility from the child's custodian during intake:
1. Commitment order or signed voluntary admission form;
2. Verification of birth;
3. Immunization record; and
4. Social history and needs assessment which includes medical, educational, developmental, and family history.

(f) Written consents pertaining to the child's care shall be obtained from the child's

custodian for:
1. Photographs, video, and audio tapes;
2. Emergency and routine medical care; and
3. Release of case record information.
(g) Prior to admission, the child and custodian shall be informed in writing of their rights and facility responsibilities including policies pertaining to services offered to the child.
(h) Upon admission, the child shall be oriented to life at the facility including rules and consequences for violation of the rules.
(i) A child under age six (6) may be placed only in temporary shelter care unless the child is a member of a sibling group being placed in residential child care.
(2) Casework planning.
(a) The facility shall have written policy and procedures for the individual treatment planning (ITP) process including assessment, assignment of a treatment team, designation of a case coordinator, development, implementation, and evaluation of the ITP and family involvement.
(b) An initial assessment shall be completed by designated staff within five (5) hours of admission to include:
1. Identifying information;
2. Presenting problem;
3. History (developmental, social, emotional); and
4. Current level of functioning including strengths and weaknesses.
(c) An initial ITP shall be developed by designated staff and implemented within five (5) hours of admission.
(3) Comprehensive assessment and treatment plan.
(a) A comprehensive emotional and behavioral assessment of each child shall be completed by the treatment team and entered in the case record within twenty-one (21) days of admission including the following:
1. A history of previous emotional, behavioral, and substance abuse problems and treatment;
2. The child's current emotional, behavioral, and developmental functioning including strengths and weaknesses;
3. A psychiatric evaluation when recommended by the treatment team;
4. A psychological evaluation when recommended by the treatment team;
5. Other functional evaluations of language, self-care, social affective, and visual-motor functioning when recommended by the treatment team;
6. Social assessment which includes environment and home, religion, developmental history, family dynamics and composition, education; and
7. Recommendations for provision of treatment.
(b) A coordinated treatment team approach shall be utilized in the development, implementation, and evaluation of comprehensive ITPs.
(c) Comprehensive ITPs shall be developed and implemented per the individual needs of the child, and the child's family when appropriate, and shall include at a minimum:
1. Short-term and long-term goals and objectives;
2. Time frames projected for completion of goals and objectives;
3. Methods for accomplishing goals and objectives;
4. Persons responsible for completion of goals and objectives; and
5. Projected discharge date and placement plans.
(d) The ITP shall be developed within twenty-one (21) days of admission. Treatment team reviews of the child's and family's progress toward meeting treatment goals shall occur at least monthly. Every effort shall be made to involve the child and his family in the monthly treatment team reviews. Treatment team evaluation of the comprehensive ITP shall occur at least on a quarterly basis. Additional assessments shall be completed upon the recommendation of the treatment team. This information shall be documented and maintained in the child's record.
(e) The child shall be offered the opportunity to sign ITPs and ITP reviews signifying understanding of the ITP. If the child refuses to sign or is too young to understand the circumstances, this shall be documented in the record. The child and his family or custodian shall receive a copy of the ITP.
(4) Treatment environment. The daily child-caring program shall be planned in the following manner to create an atmosphere conducive to treatment:
(a) The facility shall have written policies and procedures describing its daily routines, rules, activities, and child and staff interactions.
(b) The daily child-caring program shall be planned to provide a framework for daily living and shall be reviewed and revised as the needs of individual children or living group change.
(c) The daily routine shall be written and available to children.
(d) Rules shall be clearly defined in language that children can understand.
(e) Staff shall interact with children in a warm, supportive, constructive, and confidential manner. Children shall be treated with respect.
(f) Counseling and interviewing with a child and the child's family shall be conducted in a private area.
(g) Daily recreational activities shall be available to promote mastery of developmental tasks, development of relationships, and increase self-esteem in accordance with the child's ITP.
(h) The facility shall provide recreational equipment to implement the recreational program. Equipment necessary for the recreational program shall be maintained in usable and safe condition.
(5) Discharge and aftercare.
(a) The facility shall have written policy and procedures which describe the conditions under which a child may be discharged including criteria for emergency discharges and discharges not in accordance with the ITP.
(b) The approval of the program director shall be required for all unplanned discharges.
(c) Discharge planning shall begin with the development of the ITP and subsequent ITP reviews the treatment team shall consider:
1. Identification of placement;
2. Community resources to provide support for youth; and
3. Family services.
(d) A predischarge conference shall be held to ensure that the child and family are prepared for the successful transition into placement. The parent, guardian or custodian, the child, and the treatment team shall attend this

conference.
(e) The child shall have at least one (1) preplacement visit prior to discharge.
(f) The agency shall prepare a written discharge summary within thirty (30) days following the date of discharge. A copy shall be provided to the custody holder. This summary shall include:
1. Information related to progress toward completion of ITP goals;
2. Barriers to treatment;
3. Treatment methods used in working with the child;
4. Date of discharge;
5. Reason for discharge;
6. Name and telephone number; and
7. Address of person or agency to whom the child was discharged.
(g) Aftercare services shall be offered in cases where no other agency has responsibility for the child's transition or adjustment to a new environment. Upon discharge, the following needs of the child shall be assessed for aftercare services:
1. Education;
2. Medical;
3. Vocational;
4. Mental health services;
5. Legal; and
6. Social.
(6) Case records.
(a) The facility shall maintain current individual case records on each child in a confidential and secure manner which shall include the following:
1. Identifying information including:
a. The child's name;
b. The child's date of birth;
c. The child's former residences;
d. The name, address, and occupation of parents;
e. The date of admission; and
f. The type of commitment;
2. Commitment order or custodian's consent form for admission;
3. Birth and immunization certificates;
4. Education;
5. Medical and dental records which may be maintained separately from the case record;
6. Assessment data or social history;
7. ITPs and reviews;
8. Incident reports;
9. Chronological recordings;
10. Correspondence with courts, family, and Department for Social Services;
11. Discharge summary; and
12. A signed consent form.
(b) The facility shall document at least weekly progress made by the child and his family toward meeting treatment goals.
(c) The facility shall record aftercare services it provides until services are terminated.
(d) The facility shall have a written policy which shall comply with applicable federal and state laws and regulations regarding maintenance, security, and disposal of case records maintained by the facility.
(e) The facility shall not disclose information concerning a child or his family to any person not directly involved in the case without the written consent of the custodian of the child.
(f) When requests are made by individuals or agencies to review case records of committed children, the facility shall immediately forward the request to the Commissioner, Department for Social Services, Cabinet for Human Resources, Frankfort, Kentucky 40621.
(g) Identifying or personal information including Social Security cards, birth certificates, or drivers license shall be released to the child at discharge if this information is not a part of adoptive records which have been sealed.
(h) The facility shall comply with KRS 199.640 regarding records.
(i) After the discharge of a child, the case record shall be maintained at the facility for a minimum of three (3) years. After three (3) years, the case record may be either transferred to the Department for Social Services' Records Section so that it shall be sent to the Library and Archives Department in the Education and Humanities Cabinet, Frankfort, Kentucky 40601, or maintained permanently at the facility.
(j) If the facility ceases to operate, case records shall be transferred to the Department for Social Services, 275 East Main Street, Frankfort, Kentucky 40621.
(k) When a case record is sent to the Archives and Library Department, the facility shall maintain a file to include:
1. The name, case number, date of birth; and
2. The date the case record was sent to the Department for Social Services.

Section 8. Youth Treatment Center. The following additional requirements shall apply to facilities providing intensive treatment oriented services.
(1) Professional treatment services. When a child has an assessed need for professional psychological or psychiatric treatment services and other professional treatment services not provided by the facility, the facility shall secure these services either directly or by contract.
(a) After assessment and development of the ITP, the treatment team shall identify services to meet the needs of the child and his family. These services shall be provided by the facility or arranged through contract with another qualified agency or individual. These services may include the following:
1. Individual counseling;
2. Family counseling;
3. Group counseling;
4. Psychiatric counseling; and
5. Other recognized specialized therapies.
(b) The child shall receive individual counseling from a social worker or other treatment professional as determined by the treatment team.
(c) The child and his family shall be offered family counseling from a social worker or other treatment professional staff as determined by the treatment team.
(d) Group counseling may be offered by the facility but shall be conducted by a trained social worker or other treatment professional as determined appropriate by the treatment team and under the supervision of the program director.
(2) Staffing requirements.
(a) If treatment or supervisory needs of the children require additional staff below the minimum staff/child ratios required in Section 3(5)(c) of this regulation, the treatment director shall provide additional direct care staff to ensure the safety of residents,

facility staff, and visitors.

(b) There shall be a staff member designated as treatment director that is responsible for the supervision, evaluation, and monitoring of the treatment program, social work and other treatment staff. Facilities providing treatment services for more than thirty (30) children shall employ a separate treatment director other than the executive director.

(c) Facilities providing treatment services for thirty (30) or less children may utilize the executive director in a dual role as treatment director, provided that at least fifty (50) percent of his duties are spent supervising the treatment program.

(3) Seclusion rooms.

(a) Facilities shall have clearly defined written policies and procedures for placement of a child into a seclusion room.

(b) A seclusion room shall be only utilized when the child is in danger of harming self or others and efforts made to deescalate the child's behavior prior to placement into the seclusion room have been proven to be ineffective. The seclusion room shall not be utilized as punishment or for the convenience of staff.

(c) Approval from the program director or treatment staff designee shall be obtained prior to the individual placement of a child into a seclusion room.

(d) More than one (1) child shall not be placed into the seclusion room at one time.

(e) Objects that may be used for self harm shall be removed from the child before he is placed into the seclusion room.

(f) A child's clothing except belts and shoes shall not be removed while placed into a seclusion room.

(g) A child shall not be placed into a seclusion room with a latching device for longer than one (1) hour within a twenty-four (24) hour period. The child may be released from seclusion in less than one (1) hour provided his behavior is stabilized.

(h) If a child requires a second placement into a latched seclusion room, a treatment team meeting shall be conducted by the program director within twenty-four (24) hours of placement into the seclusion room to reassess the child's ITP.

(i) All staff shall have a copy of the policies and procedures for placement of a child into a seclusion room.

(j) Staff shall have at a minimum sixteen (16) hours of annual training on techniques of deescalation, safe physical restraint, and proper use of the seclusion room.

(k) When a child is in the seclusion room, a staff member shall visually observe the child every five (5) minutes.

(l) Staff shall document the following in the client record:

1. Interventions to deescalate the child's behavior prior to placement into the seclusion room;
2. Date and time of placement into the seclusion room;
3. Date and time of removal from the seclusion room;
4. Reason for placement into the seclusion room;
5. Names of staff involved;
6. Program director's or designee's approval;
7. Five (5) minute visual observation by staff of the child's placement; and
8. Intervention provided by treatment staff when the child leaves the seclusion room.

(m) A room used for a seclusion room shall:

1. Be lighted, ventilated, and maintained at a temperature consistent with the rest of the facility and all areas observable when the door is closed.
2. The room shall be at least fifty-six (56) square feet in size.
3. The room shall be free from exposed objects that allow the child to do self-harm.

(n) Immediately upon the child's exit from a seclusion room, treatment staff shall provide therapeutic intervention.

(o) If a latch is utilized to secure the door of the seclusion room, it shall not require the use of a key or combination.

(p) An incident report shall be completed on the child's placement into the seclusion room, reviewed, and signed by the program director.

Section 9. Temporary Shelter. (1) Temporary shelter facilities providing child care on an emergency basis shall have an intake service on a twenty-four (24) hour-a-day, seven (7) day-a-week basis.

(2) When a temporary shelter facility is part of a larger organization providing other child-caring or child-placing services, there shall be a designated person to act as director of the temporary shelter facility.

(3) The temporary shelter facility shall orient each child to the procedures regarding safety and evacuation. Upon admission, each child shall be screened by facility staff for signs of illness or communicable disease. This does not supersede the requirements of Section 5 (1)(d) of this regulation that the child be examined by a licensed physician.

(4) The temporary shelter shall maintain daily recordings on the behavior and attitudes of the child.

(5) Temporary shelters shall be exempt from the requirements of Sections 5 (1)(m), 6(3)(n)1 and 2, and 7(1), (2), (3), (4), and (5) of this regulation. When a child remains in temporary shelter for more than sixty (60) days, the requirements of Section 7(1), (2), (3), (4), and (5) of this regulation shall apply and the facility shall document the reason the child remains.

(6) The facility shall have clearly defined written policies and procedures for admissions that identify the age, sex, and detailed description of the type of child served.

(7) The child shall be oriented to life at the facility including rules and consequences for violation of the rules.

(8) The facility shall comply with the recordkeeping provisions of KRS 199.640.

(9) Temporary shelter facilities shall employ nighttime staff who shall remain awake during the sleeping hours of the children.

Section 10. Group Homes. The following additional requirements apply to group home programs as defined in KRS 199.011.

(1) The group home shall present evidence of compliance with applicable local zoning ordinances prior to initial licensure from the Cabinet for Human Resources.

(2) The group home shall comply with KRS Chapter 424 by publishing a notice of intent to locate. The group home shall hold a public

hearing if requested by citizens in the community or appropriate local governmental entity. Information obtained at the hearing shall be made available to the public and the Cabinet for Human Resources.

(3) The staff-to-child ratio shall be one (1) child-caring staff member for each four (4) children or fraction thereof. An on-duty staff member who is away from the group home with a child may be included for the computation of this ratio.

(4) The group home child-caring program shall utilize community resources; children shall be encouraged to participate in community activities.

(5) Group homes shall utilize the public school system or an accredited private school.

Section 11. Independent Living. The following additional requirements apply to facilities providing independent living programming.

(1) The child-caring facility shall develop and implement written policies and procedures which address its independent living program including:

(a) A curriculum for teaching and practicing of independent living skills including employment, education, money management, interpersonal skills, use of community resources, and basics of nutrition and food preparation;

(b) A plan for aftercare services; and

(c) A plan for services from cooperating agencies.

(2) When an independent living program exists outside of the facility, the program director shall document that local fire and building codes are met. This standard shall supersede the standard in Section 5(2) of this regulation.

(3) A staff person shall be responsible for and have daily direct contact with each child in the independent living program.

(4) The facility shall maintain documentation for each youth concerning:

(a) An assessment of the youth's readiness to live independently;

(b) Progress each youth has made in independent living skills training;

(c) Assistance to the youth in finding and keeping in touch with family when possible;

(d) Staff observation of the living arrangements; and

(e) Progress in educational program.

(5) The independent living programs shall be exempt from the following provisions of this regulation:

(a) Section 3(2)(a);

(b) Section 3(5)(b), (c), (d), (f);

(c) Section 5(3)(a), (b), (c), (d), (e), (f), (g), (h), (i);

(d) Section 6(7)(b), (c), (e), (f); and

(e) Section 7(3)(a), (b), (c), (d), (e).

Section 12. Repeal. The following regulations are hereby repealed:

(1) 905 KAR 1:065, Operation of child care institutions;

(2) 905 KAR 1:091, Standards for facilities and agencies;

(3) 905 KAR 1:110, Treatment oriented child care;

(4) 905 KAR 1:120, Treatment of adjudicated delinquents;

(5) 905 KAR 1:200, Alternative to detention shelters, nonsecure facilities operated as child-caring agencies and institutions.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: December 7, 1990
FILED WITH LRC: December 13, 1990 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on January 22, 1991 at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by January 17, 1991: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul Gibson

(1) Type and number of entities affected: 59 licensed private child-caring facilities and group homes providing 24-hour residential care to children.

(a) Direct and indirect costs or savings to those affected: There are no indirect costs or savings to affected entities as a result of this regulation. Direct costs may increase for some agencies due to lowered staff-child ratios from 1:12 to 1:10. It is not possible to estimate the increase in cost for this change as many facilities will be able to adjust groups of children to accommodate the new ratio, thus costing nothing. Some other direct cost will result in the raising of annual licensure fees by $30 per year, for a total of $1770 for 59 licensed facilities.

1. First year: There are no indirect costs or savings to affected entities as a result of this regulation. Direct costs to meet lowered staff-child ratios and higher licensure fees as noted above will occur the first year.

2. Continuing costs or savings: There are no indirect costs to affected entities as a result of this regulation. Direct costs will increase with addition of direct care staff needed to comply with 905 KAR 1:300 and a higher relicensure fee.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are not other factors involved nor should this regulation affect existing competition.

(b) Reporting and paperwork requirements: Minor revisions in recordkeeping and information required to be kept on file were made. Requirements for licensure application and relicensure were lessened from previous regulations. Self-evaluation every three years will cause most agencies to retain documentation longer.

(2) Effects on the promulgating administrative body: This regulation should enable licensing surveyors to more effectively evaluate child-caring facilities' compliance by the fact that the regulation is more definitive than before. The Cabinet for Human Resources is responsible for regulating the aforementioned program.

(a) Direct and indirect costs or savings: Some minor direct costs for retraining licensing staff on the new regulation will be incurred.

1. First year: Direct cost first year for retraining staff is estimated at less than

$2,000 which includes retraining for this regulation.

2. Continuing costs or savings: No direct or indirect costs beyond the first year is anticipated.

3. Additional factors increasing or decreasing costs: There are no other factors involved that affect costs.

(b) Reporting and paperwork requirements: Reporting procedures and paperwork requirements for the Cabinet for Human Resources should not change from existing practice.

(3) Assessment of anticipated effect on state and local revenues: This regulation will greatly assist licensing surveyors in interpreting this regulation.

(4) Assessment of alternative methods; reasons why alternatives were rejected: As KRS 199.640 requires the cabinet to regulate child-caring facilities, no other alternatives were available.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: We have not been able to identify any statutes, KARs or government policies that conflict, overlap, or duplicate this regulation.

(a) Necessity of proposed regulation if in conflict: See answer to 5 above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict with other regulations or policies.

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied? No. The cabinet is required to regulate private child-caring agencies and this regulation will be used to license all such agencies in Kentucky.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 1:310. Standards for child-placing agencies.

RELATES TO: KRS 199.011, 199.640, 199.650, 199.660, 199.670, 600.020, 615.010, 620.020

STATUTORY AUTHORITY: KRS 194.050, 199.640(3), 615.050

NECESSITY AND FUNCTION: KRS 199.640 requires that the cabinet issue administrative regulations relating to standards of care and service for child-placing agencies. This proposed administrative regulation combines provisions of 905 KAR 1:005.

Section 1. Definitions. (1) "Preschool child" means a child under six (6) years of age.

(2) "Infant" means a child under two (2) years of age.

(3) "Board of directors" means that group which is by law or charter delegated the responsibility for governing the agency.

(4) "Advisory board" means a group of citizens approved by the board of directors who lends advice, counsel, and support to an agency.

(5) "Executive director" means the person employed by the board of directors to be responsible for the overall administration and management of an agency.

(6) "Program director" means the person responsible for supervising the day-to-day operation of the program for children served by the agency or facility.

(7) "Aftercare" means services provided to the child after discharge from a child-placing facility.

(8) "Division" means the Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621.

(9) "Adoption" means the legal process by which a child becomes the child of a person or persons other than biological parents.

(10) "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and his environment.

(11) "Community resources" means services and activities available in the community that supplement those provided by the child-placing agency in the care and treatment of children.

(12) "Individual treatment plan (ITP)" means a plan of action developed and implemented to address the needs of an individual child.

Section 2. Administration and Operation. (1) Licensing procedures.

(a) Initial licensure.

1. When applying for an initial license, the agency shall provide the following:

a. A complete application as determined by the cabinet;

b. A licensure fee of $155;

c. A copy of the articles of incorporation;

d. A mission statement of purposes, objectives, scope of services provided, and intake policy specifying kinds of children to be accepted for care;

e. A copy of the constitution and bylaws;

f. A list of officers, board members, and advisory board members, if any, including addresses and professions;

g. Names and titles of officers and terms of office;

h. A list of all staff including positions or title and qualifications; and

i. Applications for child-placing facility licenses shall be in compliance with the applicable regulations or shall have submitted an acceptable plan for correction of violations relating to the particular child-placing facility. Compliance with licensure regulations shall be ascertained through on-site inspections of the child-placing facility. Representatives of the division shall have access to the child-placing facility at any time. Regulatory violations identified during inspections shall be transmitted in writing to the child-placing facility by the division. The child-placing agency shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting agency within ten (10) days. The plan shall specify the dates by which each of the violations shall be corrected. Following a review of the plan, the division shall notify the child-placing facility in writing of the acceptability of the plan. When a portion or all of the plan is unacceptable, the division shall specify the reasons for the unacceptability. In these cases, the child-placing facility shall modify or amend the plan and resubmit it to the division within ten (10) days.

2. A license shall be issued by the cabinet when the agency has been surveyed by the cabinet and it is determined that the agency qualifies for licensure.

(b) Renewal licensure. Agencies shall be relicensed annually from the date of issuance of

the original license. To be eligible for relicensure, the agency shall:

1. Submit a renewal application;
2. Submit a relicensure fee of eighty-five (85) dollars; and
3. Comply with the applicable portions of this regulation.

(c) Every child-caring agency shall provide the following information as part of the annual inspection:

1. A list of officers, board members, and advisory board members, if any, including addresses and professions;
2. Names and titles of officers and terms of office; and
3. A list of all staff including positions or title and qualifications.

(d) The agency shall comply with its mission statement, child-caring program narrative, and all applicable federal and state regulations in regard to child-caring program operations.

(e) The agency shall have an annual audit completed by an independent accounting firm or a certified public accountant.

(f) All applications for licenses shall, as a condition precedent to licensure or relicensure, be in compliance with the applicable regulations relating to the particular child-placing facility. Compliance with licensure regulations shall be ascertained through on-site inspections of the child-placing facility. The inspection procedure for relicensure shall be the same as set forth in this section.

(g) The license shall specify the types of care and service the agency is authorized to provide based upon the application and inspection.

(h) The agency shall provide the types of care and services for which they are licensed.

(i) A license shall be issued for a specific physical location and for operation by a sponsoring organization.

(j) Licenses shall not be transferable.

(k) Notification of the following shall be made to the division in advance to allow for approval before implementation:

1. Ownership or sponsorship;
2. Location;
3. Capacity; and
4. Services.

(l) The agency shall post its license in a place visible to the public.

(2) Board of directors.

(a) The agency shall have a board of directors consisting of a minimum of seven (7) members, the majority of whom shall be residents of Kentucky.

(b) The board of directors shall meet quarterly in every calendar year. Minutes of these meetings shall be taken and kept in written form.

(c) One (1) meeting of the board of directors shall be held at each agency location in every calendar year. When a board of directors has responsibility for multiple agency locations, a board committee may be appointed:

1. To meet at least once a year at each agency location; and
2. Shall submit a written report of this meeting to the full board.

(d) The board of directors shall employ an executive director. The division shall be notified in writing of a change in the facility's executive director within seven (7) days.

(e) The board of directors shall be responsible for and have the authority to ensure the continuing compliance with the requirements of all relevant federal, state or local laws or regulations.

(f) The board of directors shall conduct and approve an annual evaluation of the performance of the executive director.

(g) The board of directors shall approve a written annual budget for the agency which ensures funding to meet all operating requirements.

(h) The board of directors shall in consultation with the executive director approve and annually review all written policies of the agency.

(i) The board of directors shall obtain a criminal records check of prior convictions or pleas of guilty of the executive director prior to employment.

(j) The board of directors shall approve a mission statement delineating:

1. The purposes;
2. Objectives;
3. Scope of services to be provided; and
4. Intake policy specifying kinds of children to be accepted for care.

(3) Executive director.

(a) The duties of the executive director shall be determined by the board of directors and shall include the following responsibilities:

1. Select, employ, and terminate staff;
2. Develop and implement agency policies approved by the board of directors;
3. Provide professional help to the board of directors in:
   a. Carrying out their responsibilities;
   b. Interpreting the needs of the children and families served; and
   c. Assisting in periodic evaluation of the agency's services;
4. Supervise the preparation of an annual budget for board consideration;
5. Keep the board informed of financial needs;
6. Provide financial statements to the board of directors on a quarterly basis;
7. Operate within the established budget;
8. Attend board meetings;
9. Ensure that orientation is provided for new employees and continual training for staff; and
10. Delegate appropriate duties to other staff.

(b) When the executive director is not on the premises, a designated staff person shall be responsible for the day-to-day operations of the child-caring program.

(4) Staff qualifications. Persons hired after the effective date of this regulation as executive director shall possess the following qualifications:

(a) An executive director shall possess a master's degree in any of the following human services field:

1. Social work;
2. Sociology;
3. Psychology;
4. Guidance and counseling;
5. Education;
6. Religion;
7. Christian education;
8. Divinity;
9. Business administration;
10. Pastoral counseling;
11. Criminal justice;
12. Public administration; or
13. Child care administration;

14. Nursing;
15. Other human service field related to working with families and children; and

(b) Two (2) years of work experience in management of a human services program or a nachelor's degree with a major in social work, sociology, psychology, criminal justice, guidance and counseling, education, religion, Christian education, divinity, and pastoral counseling, business administration, public administration, or child-care administration and four (4) years work experience in human services programs.

(c) Persons other than the executive director employed in positions responsible for supervising, evaluating, or monitoring social work or other professional staff shall possess:

1. A master's degree in the human services area including the areas of social work, sociology, psychology, guidance and counseling, education, business administration, criminal justice, public administration, or child-care administration; and

2. At least two (2) years work experience in the human services field.

(d) All licensed child-placing agencies shall have one (1) member of the social work staff designated as placement director who shall hold:

1. A master's degree in social work or a related field; or

2. A bachelor's degree in social work or a related field and a minimum of two (2) years professional child-placing experience in working with children and families including foster care or adoptive placements.

(e) A child-placing agency using the service of a social worker not on the staff of the agency shall document that the social worker meets the qualifications as required in this section. An agreement for this provision of service shall be on file at the agency and shall specify the qualifications of the social worker.

(f) Social workers shall be supervised by the placement director.

(g) Employees responsible for social work, counseling, or planning and coordinating services to children shall have at least a bachelor's degree in the human services field.

(h) Social services staff shall not carry a caseload of more than twenty (20).

(5) Personnel policies.

(a) Employees shall be at least eighteen (18) years of age.

(b) There shall be a written job description which shall be reviewed and revised for each position which:

1. Clearly describes the duties of the position and the skills necessary to fill the position; and

2. Identifies the position's immediate supervisor.

(c) Personnel upon employment shall receive written agency policies and procedures to include the following:

1. Salary plan;
2. Leave provisions;
3. Working conditions;
4. Fringe benefits;
5. Employment and termination;
6. Job descriptions;
7. Staff evaluation;
8. Provisions for staff development;
9. Employee grievance;
10. Disciplinary action; and
11. Child-caring program narrative.

(d) Personnel orientation. Personnel within one (1) month of initial employment shall receive an orientation to agency policies and procedures.

(e) Current personnel records shall be maintained for each employee which include the following:

1. Name, address, Social Security number, date of employment, and date of birth;
2. Evidence of current registration, certification, or licensure;
3. Records of participation of staff development;
4. Records of performance evaluation;
5. Criminal records check;
6. Records of physical exams related to employment;
7. Personnel actions;
8. Application for employment and resume or contract; and
9. Evidence of personnel orientation.

(f) If a criminal records check reveals a prior criminal conviction or plea of guilty to charges pursuant to KRS Chapter 510 or a Class A felony, the applicant shall not be employed.

(g) The agency shall have an ongoing staff development program for the administrative, professional, volunteer, and support personnel.

1. Records of attendance at workshops, conferences, and academic courses related to work responsibilities shall be kept on employees.

2. The staff development program shall be under the supervision of a designated staff member.

(h) An employee under indictment or legally charged with felonious conduct shall be immediately removed from contact with children until the person is cleared of the charge.

(i) Volunteers who perform similar functions as paid staff shall meet the same requirements and qualifications.

(6) Agency policies. There shall be written administrative policies which the agency follows covering all aspects of operation including:

(a) Administration;
(b) Personnel;
(c) Fiscal management;
(d) Case records;
(e) Child-placing program;
(f) Internal review and evaluation;
(g) Transportation of children;
(h) A description of organization structure, staffing, and allocation of responsibility and accountability; and
(i) A child-placing program narrative describing in detail:

1. The services offered;
2. Methods and protocols for service delivery;
3. Qualifications of personnel involved in the delivery of the services; and
4. Goals of the services.

(7) Internal review and evaluation.

(a) Each agency shall provide for and conduct a self-evaluation of overall agency performance and management of its services at least every three (3) years from the effective date of this regulation.

(b) Specific written criteria and procedures for evaluating the overall agency performance and management shall be established. These shall be approved by the board of directors.

(c) The required evaluation shall examine the following factors:

1. Child-placing program content in relation to the stated role and purpose of the agency.

2. Child-placing program effectiveness based on stated and measurable goals.
3. Roles of the board of directors and management staff.
4. Personnel policies.
5. Staffing patterns and job responsibilities.
6. Staff effectiveness.
7. Staff turnover, causes, and effects.
8. Staff training program.
9. Budgeting and fiscal management.
10. Placements, planned and unplanned discharges, and length of stay of children in care.
11. Content of the child-placing program as related to the needs of the child and family based upon a random review of casework plans.
12. The service continuum from intake through aftercare.

(d) A copy of each annual evaluation shall be kept on file at the agency and a copy shall be given to each member of the board of directors.

(e) Accreditation by the Council on Accreditation sponsored by the Child Welfare League of America or the Joint Commission on Accreditation of Health Care Organization shall substitute for the three (3) year evaluation.

(f) The child-placing agency shall ensure that the rights of children and their families, including that of confidentiality, are protected in all phases of evaluation. Services shall not be denied or restricted to any client based upon his participation or lack thereof in the evaluation process.

Section 3. Interstate Placements. (1) Prior to accepting a child from another state or prior to placing a child outside Kentucky, the child-placing agency shall comply with all applicable provisions of KRS 615.030 to 615.040, Interstate Compact on Placement and Children; and KRS 615.010, Interstate Compact on Juveniles.

(2) When a child committed to the cabinet makes a brief visit out of state, not accompanied by agency personnel, the agency shall obtain prior consent from the social worker in the Department for Social Services who has case responsibility.

(3) If an emergency placement of a child into a licensed child-placing agency is made, compliance with KRS 615.030 to 615.040 shall be the responsibility of the placing agency.

Section 4. Orientation and Training of Foster and Adoptive Homes. (1) Each child-placing agency shall provide orientation and training to prospective foster and adoptive parents to include the following:

(a) Agency program description with mission statement, information about the rights and responsibilities of parents, and background information about foster or adopted children.

(b) Examples of actual experiences from parents who have fostered and adopted special needs children to include:
1. Examination of the stages of grief;
2. Identification of the behaviors linked to each stage; and
3. Consideration of the long-term effects of separation and loss on children.

(c) Examination of family functioning, values, and expectations of the adoptive or foster family. Identification of changes which may occur in the family unit with placement of a child and discipline issues.

(d) Examination of how a placement may affect family:
1. Functioning;
2. Adjustment problems;
3. Identity issues; and
4. Disruptions.

(e) Specific requirements and responsibilities of foster and adoptive families.

Section 5. Evaluation of Potential Foster Homes. (1) The functions of recruitment and response to inquiries by prospective foster parents shall be performed by the child-placing agency social work staff. An application shall not be given without an interview to determine if the application process may proceed.

(2) The agency shall be responsible for approving the home as acceptable for children based upon a home study and shall be conducted as a series of planned interviews and home visits by the social worker. Children shall be placed only in approved foster homes.

(3) The agency shall keep a written record of the findings of this study and the evidence on which these findings are based.

(4) The foster home study shall record personal interviews both joint and separate with all members of the household.

(5) The foster home study shall include the following information:

(a) Attitudes of household members toward placement of a foster child into the home.

(b) Observations of foster family functioning including interpersonal relationships and patterns of interaction.

(c) The foster parents' ability to accept the child's relationship with the child's natural parents.

(d) Information regarding nonfamilial relationships.

(e) Certification by a licensed physician regarding the family's physical ability to provide necessary care for the child.

(f) Standards of household safety, housekeeping, and cleanliness are acceptable.

(g) Water supply and sanitation compliance with all state and local health requirements.

(h) Suitability of in- and out-of-door play space according to the age and needs of the child.

(i) Accessibility of the home to the community resources.

(j) A criminal records check and child abuse registry check on any adult residing in the household.

(k) Verification of all marriages and divorces of the prospective foster parents.

(l) A minimum of three (3) written references.

(6) An agency shall not have more than two (2) children under two (2) years of age placed in the same foster home at the same time except for:

(a) Sibling groups who may remain together.

(b) Temporary shelters that are limited to serving children under two (2) years of age.

(c) Homes where three (3) or more adults reside and the maximum number of infants shall not exceed three (3) at one (1) time.

(7) A foster home shall be selected for a particular child based upon the individual needs of the child.

(8) The worker shall explain the terms of each placement and the foster parents shall certify in writing that supervision from the agency will be allowed. This shall be documented in the case record.

(9) The total number of children shall not

exceed six (6) in number, including the foster parent's own children, except when the needs of the individual child indicate the necessity of keeping sibling groups together. Justification for exceptions shall be documented in the record.

(10) A child shall not without prior notification to and written authorization from the Kentucky Interstate Compact Administrator:

(a) Be placed with persons who normally reside in another state; or

(b) Be permitted to go with any person to take up residence in another state.

(11) Homes providing care of foster children shall not be used simultaneously for any other social services, including day care centers or homes for the elderly. This shall not preclude foster parents being approved for adoption or adoptive parents being approved as foster parents.

(12) All approved foster homes in use shall be evaluated on an annual basis. The results of evaluations shall be recorded in the case record.

(13) Each agency shall have a written agreement which states the responsibilities of the agency and the foster parents.

(14) The child shall participate in the intake process and in the decision that placement is appropriate to the extent that:

(a) His age, maturity and adjustment;

(b) The nature of family relationships; and

(c) Circumstances necessitating placement justify participation.

(15) The agency shall maintain an ongoing orientation and training program for its foster families. Records of all orientation and training shall be maintained.

Section 6. Placement Process. The following shall be the responsibility of the child-placing agency with exception of those children committed or otherwise made the legal responsibility of the Cabinet for Human Resources. In these cases, services shall be coordinated by Cabinet for Human Resources and agency staff; however, final casework responsibility shall be the responsibility of the Cabinet for Human Resources.

(1) The agency social worker shall be responsible for developing an individual treatment plan (ITP) for each child and their biological family. The plan shall include the type and extent of services to be given the biological family to rehabilitate the home.

(2) The biological parents and child shall be included in developing the placement plan unless contraindicated.

(3) The foster placement shall be located as near as possible to the natural parent's home to facilitate visiting.

(4) There shall be a semiannual review of the child's natural home.

(5) Each child shall have a period of preparation for the placement unless circumstances preclude this preparation. The circumstances shall be documented in the case record.

(6) Preplacement visitation by the child under agency supervision shall be scheduled before final placement in the foster home unless circumstances, which shall be documented in the case record, preclude these visits.

(7) Prior to placement, the social worker shall hold meetings with the child to prepare him for the placement.

(8) Social services to the natural parents and the child shall be adapted to their individual capacities, needs, and problems. When parents refuse social services, it shall be documented in the record.

(9) Planning for the child regarding matters such as visitation, health, and education shall be developed with the parents, the social worker, and foster parents.

(10) Requests for a removal of a child from a foster home shall be explored immediately and documented by the social worker.

(11) Preparation for a child's return to the natural family shall be supervised by a social worker. The natural family shall participate in planning for the child's return. When the child has not had regular contact with his natural family, plans for the child's return home shall include prior visits between the child and the family and at least one (1) preliminary visit of the child to his parents' home. When the child is committed to the Cabinet for Human Resources and the parents reside a considerable distance from the agency, attempts shall be made for providing services to the parents. When the agency is unable to provide services directly to the natural parents, the executive director of the agency shall request the Cabinet for Human Resources to provide services. These efforts shall be documented in the case record. Provisions shall be made for exchange of information at least quarterly and if circumstances warrant.

(12) The agency shall provide for the semiannual review of the children in foster care to assure that foster care continues to be the best plan for each child.

Section 7. Supervision of Children in Foster Homes. (1) The agency shall maintain continuing supervision of the child and foster home while the child is in placement. The agency shall assure that the child is receiving care in accordance with his needs. The agency shall provide information to the foster parents regarding the child's behavior and development.

(2) Upon placement of a child in a foster home, the responsible worker shall make at a minimum monthly supervisory visits to the home. The individual needs of the child shall dictate when more frequent visitation is necessary. The number of contacts and the rationale shall be specified in the plan.

(3) The agency shall document every effort to see that the legal rights of parents and the child are protected and that the family ties are maintained between the child and his parents.

(4) Each child shall have clothing for his exclusive use comparable in quality and variety to that worn by other children with whom he will associate.

(5) The agency shall be responsible for seeing that children comply with state school attendance laws.

(6) The agency shall secure psychological and psychiatric services, vocational counseling, and other services when indicated by the child's needs.

(7) When the plan for long-term foster care for a child has been determined and justified, the plan shall be reassessed annually.

Section 8. Maintenance of Foster Care Records. (1) The agency shall maintain records on each child, his family, and on the foster families. These records shall show the reasons for

placement changes and steps taken to insure success.

(2) Social work staff shall document in case records the results of regular social service and progress toward goals which have been established for the child and family.

(3) Copies of all correspondence relating to the child shall be maintained.

(4) The date of discharge and the name and address of the persons or organization to whom the child is discharged shall be recorded.

(5) The discharge recording shall reflect the reason for the discharge.

(6) All case records shall be maintained in conformity with existing laws and regulations pertaining to confidentiality, KRS 61.878, 199.430(3), 199.640, and 200 KAR 1:020.

Section 9. Evaluation of Potential Adoptive Homes. (1) The agency shall select as adoptive parents applicants:

(a) Who are capable of providing for the child's care, support, education, and character development; and

(b) Who have the ability to understand and accept the child's characteristics, potential, and limitations.

(2) Adoptive placement of a child shall not be made prior to the approval of a home as an adoptive home.

(3) The agency shall complete a written study of the adoptive home which shall include the following:

(a) Personal interviews, both joint and separate, shall be conducted with each member of the household.

(b) Worker's evaluation of the home situation.

(c) The functioning of the total household shall be considered in determining the suitability of the home.

(d) Three (3) written references indicating the suitability of the home and of the potential adoptive parents.

(4) The written study of the home of the applicant documents:

(a) Attitudes of household members toward placement of an adoptive child into the home.

(b) Observations of the functioning of the potential adoptive family including interpersonal relationships and patterns of interaction.

(c) The nonfamilial relationships.

(d) Certification by a licensed physician regarding the physical and mental ability of the family to provide necessary care for the child.

(e) Standards of household safety, housekeeping, and cleanliness are acceptable.

(f) Water supply and sanitation compliance with all state and local health requirements.

(g) Suitability of in- and out-of-door play space according to the age and needs of the child.

(h) Accessibility of the home to community resources.

(i) A criminal records check on each adult residing in the household.

(j) Verification of all marriages and divorces of the potential adoptive parents.

(k) The economic circumstances of the potential adoptive parents are sufficient to meet the needs of the child.

(5) Agencies shall clearly define the qualifications they require of potential adoptive applicant.

Section 10. Adoption Placement Process. (1) A child shall not be placed for adoption until the parental rights of biological parents and alleged parents are terminated by a circuit court order in accordance with Kentucky Revised Statutes.

(2) Parents shall not be induced to terminate parental rights by a promise of financial aid or other consideration.

(3) The authority granted to agencies licensed by the cabinet authorizing them to place a child for adoption shall not be used to facilitate adoptive placements planned by doctors, lawyers, clergymen, and others outside the agency.

(4) A developmental history of the adoptive child and social history of the biological parents shall be obtained. Information shall be obtained from direct study and observation of the child by the social worker, pediatrician, foster parents, and when indicated, by the nurse, psychologist and other consultants. To comply with KRS 199.520 and 199.572, child-placing agencies shall assist the biological parents in completing forms prescribed by Cabinet for Human Resources policy and procedure.

(a) The child's developmental history shall include as much of the following as is available:

1. Birth and health history;
2. Early development;
3. Characteristic ways of the child of responding to people and situations;
4. Deviations from the range of normal development;
5. The experiences of the child prior to the decision to place him for adoption;
6. Maternal attitudes during pregnancy and early infancy;
7. Continuity of parental care and affection;
8. Foster care placements; and
9. Separation experiences.

(b) Information that may affect the child's normal development shall be obtained from biological mother and father about their family background may include:

1. Name;
2. Age;
3. Nationality;
4. Education;
5. Religion;
6. Occupation; and
7. Information to determine whether there are any significant hereditary factors or pathology, including illnesses of the biological mother or father.

(c) Information shall be obtained from the mother, if possible:

1. To the identity of the biological father for purposes of determination of the father's parental rights; and
2. Establishment of the possible hereditary endowments. If either biological parent is unavailable, unwilling, or unable to assist with the completion of information necessary to comply with KRS 199.520 and 199.572, the agency shall document information to the extent possible from existing case records.

(5) A medical examination shall be made by a licensed physician to determine:

(a) The state of the child's health;

(b) Significant factors that may interfere with normal development; and

(c) The implications of any medical problems.

(6) Before placement of the child, conditions under which adoptive parents accept the child

shall be agreed upon. This written agreement shall embody the following provisions:

(a) The adoptive parents shall comply with KRS 199.470 and agree to file an adoptive petition at a time agreeable to them and the agency.

(b) The adoptive parents agree to:

1. Permit supervision by the agency during the period of time after placement; and

2. Preceding the final judgment by the circuit court.

(c) The agency is responsible for providing the adoptive parents with:

1. Written information regarding the child's background;

2. Medical history;

3. Current behavior; and

4. Medical information necessary to comply with KRS 199.520.

(d) The adoptive parents and the agency shall agree that the child may be removed from the family at the request of either party before the filing of the adoptive petition.

(7) Preplacement meetings shall be arranged for the adoptive parents and any child one (1) month of age or older.

(8) When preparing the child for placement with the selected adoptive parents, the agency shall discuss with the child his readiness to accept this placement in accordance with the child's age and ability to understand.

(9) Siblings who have had a relationship with one another shall be placed together unless it is determined to be more beneficial for them to be placed in separate homes. Continued contact between siblings in separate homes shall be maintained when possible. When siblings have been separated in placements:

(a) The case record shall reflect a valid basis for the separation;

(b) The decision to separate siblings shall be made by the executive director of the agency.

Section 11. Supervision of Adoptive Homes. (1) The agency placing a child shall remain responsible for him until the adoption has been granted. This responsibility involves the following:

(a) Two (2) meetings by the worker with the child and the family including both adoptive parents when not a single parent adoption, one (1) of which shall be in the home before filing of the adoption petition.

(b) Awareness of changes in the adoptive family including health, education, and behavior.

(2) Upon request of the Cabinet for Human Resources, the agency shall provide information as required in KRS 199.510 which is necessary to report to the court to proceed with the adoption. Upon the request of the cabinet for filing with the appropriate circuit court, the agency placing the child shall:

(a) Prepare a confidential report to the court; and

(b) Shall forward the original and one (1) copy of this report and a copy of information required by KRS 199.520 and 199.572 to the Cabinet for Human Resources.

(3) If the court finds the adoptive parents to be unsuitable and refuses to grant a judgment, the agency shall remove the child from the home.

Section 12. Maintenance of Adoptive Case Record. (1) The agency shall maintain a case record from the time of the application for services through the completed legal adoption and termination of agency service on:

(a) Each child accepted for care;

(b) His family; and

(c) Each adoptive applicant.

(2) The case record shall contain material on which the agency decision may be based and shall:

(a) Include information and documents needed by the courts;

(b) Preserve information about the child and his family;

(c) Include a narrative or summary of the services provided with copies of all legal and other pertinent documents; and

(d) Include all information gathered during the intake study including the following:

1. A description of facts about the child's family situation which necessitated placement of the child away from his family and/or termination of parental rights;

2. A certified copy of the order of the circuit court terminating parental rights and committing the child to the agency for the purpose of adoption;

3. Verification of the child's birth record and the registration number;

4. A copy of the child's medical record up to the time of placement;

5. A copy of the required study of the adoptive home;

6. Date of placement in the adoptive home;

7. A statement of the basis of the selection of this home for the child;

8. A record of after-placement services with dates of contacts and observations;

9. Dates of filing of petition and granting of judgments and other significant court proceedings relative to the adoption; and

10. Child's adoptive name.

(3) Where there is need to share background information with one of the parties to a completed adoption or to have the benefits of information from a closed adoption record to offer services following completion of an adoption, the agency shall comply with KRS 199.570.

(4) Records on adoption which contain pertinent information shall be maintained indefinitely following final placement of a child. Each individual record shall be sealed and secured from unauthorized scrutiny.

Section 13. Repeal. 905 KAR 1:005, Operation of child placing agencies, is hereby repealed.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: December 7, 1990

FILED WITH LRC: December 13, 1990 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on January 22, 1991 at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by January 17, 1991: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul Gibson

(1) Type and number of entities affected: 24 licensed private child-placing agencies

providing foster care and adoption services to children.

(a) Direct and indirect costs or savings to those affected: There are no direct costs or savings or indirect savings to affected entities as a result of this regulation. Agencies may experience some indirect administrative costs in three years resulting from the self-evaluation requirement. Direct costs will increase as a result of raising of the annual relicensure fee by $30. This totals an additional cost per year of $750 for 25 facilities.

1. First year: There are no indirect costs or savings to affected entities as a result of this regulation. The increase in the licensure fee will increase direct costs as described above. Indirect costs will not increase the first year.

2. Continuing costs or savings: There are no direct or indirect savings to affected entities as a result of this regulation. Agencies may experience a small increase in expenses when the self-evaluation is due after a three year period. The relicensure fee increase will continue in successive years.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no other factors involved nor should this regulation affect existing competition.

(b) Reporting and paperwork requirements: Minor revisions in recordkeeping and information required to be kept on file were made. Requirements for relicensure application and relicensure were lessened from previous regulations. Self-evaluation every three years will cause most agencies to retain documentation longer.

(2) Effects on the promulgating administrative body: This regulation should enable licensing surveyors to more effectively evaluate child-placing facilities' compliance by the fact that the regulation is more definitive than before. The Cabinet for Human Resources is responsible for regulating the aforementioned programs.

(a) Direct and indirect costs or savings: Some minor direct costs for retraining licensing staff on the new regulation will be incurred. This is estimated to be less than $2,000.

1. First year: Direct cost first year for retraining staff is estimated at less than $2,000.

2. Continuing costs or savings: No direct or indirect costs beyond the first year is anticipated.

3. Additional factors increasing or decreasing costs: There are no other factors involved that affect costs.

(b) Reporting and paperwork requirements: Reporting procedures and paperwork requirements for the Cabinet for Human Resources should not change from existing practice.

(3) Assessment of anticipated effect on state and local revenues: An increase of licensure application fees was included to comply with state law. The increased revenue will have a minor impact on the state budget and will be used to defray costs of licensure inspections.

(4) Assessment of alternative methods; reasons why alternatives were rejected: As KRS 199.640 requires the cabinet to regulate child-placing facilities, no other alternatives were available.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: We have not been able to identify any statutes, KARs or government policies that conflict, overlap, or duplicate this regulation.

(a) Necessity of proposed regulation if in conflict: See answer to 5 above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict with other regulations or policies.

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied? No. The cabinet is required to regulate private child-placing agencies and this regulation will be used to license all such agencies in Kentucky.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:025. Payments for nursing facility and intermediate care facility for the mentally retarded services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456; 42 USC 1396, a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. 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 nursing care facility services and intermediate care facility for the mentally retarded 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 and brain injury unit 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) Physical, occupational and speech therapy.

(b) Laboratory procedures.

(c) X-ray.

(d) Oxygen and other related oxygen supplies.

(e) Respiratory therapy (excluding the routine administration of oxygen).

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

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

(3) "Nursing facility (NFs) means facilities

certified to the Medicaid program by the state survey agency as meeting all nursing facility requirements and all conditions of participation in the Medicare program.

(4) "Nursing facilities with waiver (NFs/W)" means facilities certified to the Medicaid program by the state survey agency as meeting all NF requirements except the nurse staffing requirement for which an NF waiver has been granted by the survey agency.

(5) "Hospital based nursing facilities" means those nursing facilities in the same building with or attached to an acute care hospital and which share common administration, nursing staff, and ancillary services with the hospital; however, those facilities classified as hospital based skilled nursing facilities on June 30, 1989 shall remain classified as hospital based nursing facilities.

(6) "Nursing services costs" are the direct costs associated with nursing services.

(7) "All other costs" are other care-related costs, other operating costs, capital costs, and indirect ancillary costs.

(8) The "basic per diem cost" for each major cost category (nursing services costs and all other costs) 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.

(9) "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.

(10) "Incentive factor" means the comparison of the basic per diem cost (for facilities qualifying for a cost savings incentive) with the upper limit for the appropriate cost arrays using the cost savings incentive (CSI) percentage (and taking into consideration the maximum allowable CSI amount for each cost array) to arrive at the actual dollar amount of cost savings incentive return to be added to the basic per diem cost.

(11) "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.

(12) "Upper limit" means the maximum level at which the cabinet shall reimburse, on a facility by facility basis, for routine services.

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

(14) "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.

(15) "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 nursing 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.)

(16) "Nursing facility with a mental retardation specialty (NF/MRS)" means a skilled nursing facility in which at least fifty-five (55) percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation.

Section 2. Reimbursement for Nursing Facilities (NFs) and Intermediate Care Facilities for the Mentally Retarded (ICF-MRs). All nursing facilities (NFs) or intermediate care facilities for the mentally retarded (ICF-MRs) participating in the Medicaid 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 and the coverage requirements specified in 907 KAR 1:022, Nursing facility and intermediate care facility for the mentally retarded services. A nursing facility desiring to participate in Medicaid shall be required to participate in the Medicare program unless the nursing facility has been granted a waiver of the nursing facility nurse staffing requirement and, as a result, is prohibited from participation in Medicare. The Medicaid program does not recognize multilevel nursing facilities, and therefore all participating beds in nursing facilities (not including ICF-MRs) must participate in Medicaid as the same type of bed (i.e., NF or NF with waiver).

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 Nursing Facility

Reimbursement Manual, dated October 1, 1990 which is hereby incorporated by reference) and supplemented by the use of the Medicare reimbursement principles. The Kentucky Medical Assistance Program 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 Medicare 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 (13) and (14) of this section. Prospective rates shall be cost based 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) shall 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 shall 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 as applicable (except that ICF-MRs shall have no administratively set upper limit). The state shall set a uniform rate year for NFs and ICF-MRs (July 1 - June 30) by taking the latest cost data available as of May 16 of each year and trending the facility costs to July 1 of the rate year. Appropriate cost report adjustments will be made for the period between July 1, 1990 and October 1, 1990 to account for the fact a nursing facility rate adjustment related to nursing home reform shall be made effective October 1, 1990. (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. 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 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.) The following specific policies shall be used with regard to determination, application, and exclusion from upper limits.

(a) Nursing facility arrays. For purposes of setting upper limits the freestanding NFs (exclusive of the NF/MRs, NF/IMDs, and NF/pediatric facilities) shall be divided into urban and rural arrays. The urban array shall include all facilities within a standard metropolitan statistical area (SMSA). The rural array shall include all facilities in non-SMSA counties. For purposes of arraying, current multilevel facilities (i.e., SNF and ICF) shall be considered as one (1) facility, and the composite or overall rate for the facility shall be paid for services rendered in either level during the period of time preceding the first survey agency occurring on or after October 1, 1990 (with separate levels ceasing to exist for Medicaid purposes at the time of the first survey). The urban and rural arrays shall be further broken down into a nursing cost center array and an "other cost center" array for each.

(b) Nursing facility upper limits. The following NF upper limits shall be applied:

1. The upper limit for nursing costs for freestanding NFs shall be set at 115 percent of the median of the array of each facility's cost per case mix unit (urban or rural as applicable). The upper limit for "other costs" for freestanding NFs shall be set at 115 percent of the median of the allowable per diem cost array for the facilities (urban or rural as applicable).

2. The upper limit for hospital based nursing facilities shall be set at 125 percent of the appropriate upper limit for freestanding facilities.

3. The upper limit for NF/MRS shall be set at 120 percent of the appropriate upper limit for freestanding facilities.

(c) Exclusions from nursing facility upper limits. The following exclusions from usual NF payment methodology and upper limits shall be applied.

1. Nursing facilities designated as institutions for mental diseases or as pediatric facilities shall be reimbursed at full reasonable and allowable prospective cost.

2. Hospital swing beds shall be paid at the average of NF payments for the preceding calendar year; the swing bed rates shall change effective January 1, 1991 and each January 1 thereafter.

3. Hospital dual licensed beds shall be paid at the hospital based facility upper limits.

4. Facilities recognized as providing ventilator dependent care shall be paid at an all-inclusive fixed rate which shall be equal to projected costs.

5. Facilities which are Medicaid certified head injury units providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive fixed rate which shall be set at $360 per diem.

(d) Other factors relating to costs and upper limit determination.

1. When the cabinet has made a separate rate

adjustment as compensation to the facilities for minimum wage updates, the cabinet shall then adjust downward trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment. The purpose of the adjustment to the factors is to avoid paying the facilities twice for the same costs. When the trending and indexing factors include costs related to a minimum wage increase, the cabinet shall not make a separate rate adjustment, and the minimum wage costs shall not be deleted from the trending and indexing factors.

2. The allowable per diem cost for NFs (excluding swing beds, dual licensed hospital beds, and facilities with all inclusive rates) shall include (through June 30, 1991) thirty-eight (38) cents for nurse aide training; and one (1) dollar and thirty-eight (38) cents for implementation of universal precautions for disease control; and four (4) cents for medical director costs; these allowable cost amounts shall not be subject to adjustment or cost settlement.

3. A special access and treatment fee shall be added to the facility per diem (without regard to upper limits) for each individual identified as having care needs associated with high infectious or communicable diseases with limited treatment potential, such as hepatitis B, methicillin-resistant staphlococcus aureaus (MRSA), acquired immune deficiency syndrome (AIDS), or who test positive for human immuno-deficiency virus (HIV).

4. The maximum payment amounts for the prospective uniform rate year shall be adjusted each July 1 so that the maximum payment amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year.

5. 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 shall not be altered due to revisions or corrections of data except as specified in this subsection.

(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 and brain injury unit services which shall be paid on the basis of all-inclusive rates. 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.

(4) Interest expense used in setting the prospective rate shall be an allowable cost if permitted under Medicare 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 shall 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 relate to providing patient care. The form of such indebtedness may include, but shall not be 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 shall not be considered an allowable cost.

(5) Compensation to owner/administrators shall be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function. Compensation shall include 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 shall 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 shall 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 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 shall be considered to exist when an individual (or individuals) possesses 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 nursing facilities entering into lease/rent arrangements as intermediate care facilities prior to April 22,

1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and nursing facilities entering into lease/rent arrangements as skilled nursing facilities prior to December 1, 1979, the cabinet shall determine the allowable costs of such arrangements based on the general reasonableness of such costs.

(8) Certain costs not directly associated with patient care shall not be considered allowable costs. Costs which shall not be 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 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.

(9) 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 shall 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 shall be 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 shall be any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which shall usually be 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 shall not be 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 shall be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(10) Notwithstanding the provisions contained in subsection (9) of this section, or in any other section or subsection of this regulation or the "Kentucky Medical Assistance Program 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 (9)(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 shall be allowed in capital costs.

(b) The allowable historical base for depreciation for the purchaser shall 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 shall be limited to the amount that was allowable to the seller at the time of the sale.

(11) 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.

(12) 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 shall 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 shall be so indicated with a description and rationale as a supplement to the cost report.

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

(13) The cabinet shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of a field audit in relation to routine and ancillary service cost. If a field audit is not necessary, the report shall be settled without a field audit. Field audits shall be conducted when determined necessary. A desk review or field audit shall be used 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 shall be conducted as needed.

(14) Year-end adjustments of the prospective rate and a retroactive cost settlement shall 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.

(15) 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.

(16) 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).

(17) Allowable prior year cost, trended to the beginning of the rate year and indexed for inflation, shall be subject to adjustment based on a 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.

(18) Qualifying nursing facilities (but not including swing beds, dual licensed hospital beds, IMDs, pediatric facilities, and facilities with all-inclusive rates) shall earn a cost savings incentive (CSI). Facilities qualifying for the CSI (except for NF/MRSs) shall be those facilities whose rate within the applicable cost array is not in excess of 110 percent of the median of the array. The CSI shall be computed at ten (10) percent of the difference between the facility's cost and the upper limit for the array with the CSI amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array. NF/MRSs shall qualify for the CSI when the NF/MRS has costs less than the NF/MRS upper limit, and the CSI shall be ten (10) percent of the difference between the facility rate and the upper limit for the class of facility with the CSI amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(19) Intermediate care facilities for the mentally retarded may qualify for a cost incentive and investment factor (CIIF) allowance based on a comparison of the facility rate with the CIIF schedule shown in this subsection. No return for investment risk shall be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the incentive or investment return. Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 10-1-90)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$96.99 & below	$1.38	$.87
97.00 -102.99	1.29	$.75
103.00 -108.99	1.18	$.62
109.00 -114.99	1.06	$.47
115.00 -120.99	.92	$.31
121.00 -126.99	.76	$.13
127.00 -133.49*	.53	-

*There is no maximum payment limit for intermediate care facilities for the mentally retarded.

(20) Hold harmless. The NFs (but not including swing beds or dual licensed hospital beds) shall be entitled to a "hold harmless" amount for the period from October 1, 1990 through June 30, 1992. This hold harmless amount shall be the amount, if any, by which the July 1, 1990 allowable facility rate plus an adjustment for ancillary costs shifted to routine costs (less a nurse aide training per diem allowance of one (1) dollar and twenty (20) cents) exceeds the allowable facility rate as computed on October 1, 1990 and July 1, 1991 (excluding the revised nurse aide training per diem allowance and other per diem add-ons in recognition of OBRA 87 requirements) under the revised reimbursement system. For hold harmless purposes, the July 1, 1990 rate shall be increased by an inflation allowance using the appropriate data resources, incorporated index for inflation.

(21) An adjustment shall be made to the usual rate for ICF-MRs, IMDs, and pediatric facilities to account for those medical supplies, catheters, syringes, and diapers not payable under the pharmacy program (and no longer payable as ancillaries under the nursing facility payment system) which are thus included under the routine cost category.

(22) Case-mix. The nursing costs for each facility shall be divided by the average case weight (as measured by each patient's needs with regard to activities of daily living and special needs using a standardized measurement as shown in the Nursing Facility Reimbursement Manual with a range from one (1.0) (lowest level of intensity) to 4.12 (highest level of intensity) to derive the facility average case unit cost. The average case weight for the period October 1, 1990 through June 30, 1991 shall be based on Medicaid patient level of care determinations made during the period July 1, 1990 through September 30, 1990 for each facility. (The peer review organization (PRO) shall first determine whether a patient is high-intensity, low-intensity, or neither. For patients meeting patient status (high or low-intensity), the PRO will then determine the case weight). The average case weight thereafter shall be based on all level of care determinations made during the period covered by the cost report (or as appropriate the most recent period available or a projection if a fully or partial cost report is not available). The facility nursing rate shall be adjusted for each quarter throughout the year and shall be the product of the average case unit cost (subject to upper limits and with the CSI adjustment as appropriate) times the average case weight for the prior quarter (as

determined using standard methodology and point-in-time analysis). The actual facility payment amount for nursing care shall thus be subject to adjustment each calendar quarter based on changes in facility average case weight, though the average case unit cost (based on prior year costs) remains the same.

(23) Nursing home reform costs. Effective October 1, 1990 and thereafter, facilities shall be required to request preauthorization for costs that must be incurred to meet nursing home reform costs in order to be reimbursed for the costs. The preauthorization request shall show the specific reform action that is involved and appropriate documentation of necessity and reasonableness of cost. Upon authorization by the Medicaid agency, the cost shall be allowable. A request for a payment rate adjustment may then be submitted to the Medicaid agency with documentation of actual cost incurred. The allowable additional amount shall then be added on the facility's rate (effective with the date the additional cost was incurred) without regard to upper limits or the CSI factor (i.e., the authorized nursing home reform cost shall be passed through at 100 percent of reasonable and allowable cost). Preauthorization shall not be required for nursing home reform costs incurred during the period July 1, 1990 through September 30, 1990; however, the actual costs incurred shall be subject to tests of reasonableness and necessity and shall be fully documented at time of the request for rate adjustment. Facilities may request multiple preauthorizations and rate adjustments (add-ons) as necessary for implementation of nursing home reform. Facility costs incurred prior to July 1, 1990 shall not (except for the costs previously recognized in a special manner, i.e., the universal precautions add-on and the nurse aide training add-on) be recognized as being nursing home reform costs. The special nursing home reform rate adjustment shall be requested using forms and methods specified by the agency. A nursing home rate adjustment shall be included within the cost base for the facility in the rate year following the rate year for which the adjustment was allowed. No interim rate adjustments for nursing home reform shall be allowed for periods after June 30, 1992.

Section 5. Prospective Rate Computation. The prospective rate for each facility (taking into account the factors described in this regulation and the case mix methodology shown in the Nursing Facility Reimbursement Manual) shall reflect the following:

(1) The adjusted allowable cost for the facility;

(2) Adjustments to allowable cost related to occupancy;

(3) Adjustments to allowable cost related to application of upper limits;

(4) Adjustments to allowable cost related to application of the cost savings incentive factor, or for ICF-MRs, the cost incentive and investment schedule;

(5) Rates shall be recomputed quarterly based on revisions in the case mix assessment classification which affects the nursing services component as described in the Nursing Facility Reimbursement Manual; however, the cost basis and the upper limits shall be revised annually using the latest available cost reports and assessments from each provider;

(6) Adjustments as appropriate for costs shifted from ancillary to routine;

(7) Nursing home reform adjustments; and

(8) Hold harmless adjustments.

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 Operations, a reevaluation of the point at issue. This request shall be received within forty-five (45) days following notification of the prospective rate or forwarding of the desk review or 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 reimbursement review panel to be established by the commissioner. This request must be postmarked within twenty (20) days following notification of the decision of the Director, Division of Reimbursement Operations. Such panel shall consist of three (3) members: one (1) member from the Division of Reimbursement Operations, 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 Operations) 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 shall 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 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 provisions of this regulation shall be effective with regard to payments for services provided on or after October 1, 1990.

Section 8. 907 KAR 1:036, Amounts payable for skilled nursing and intermediate care facility services, is hereby repealed.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: December 6, 1990

FILED WITH LRC: December 13, 1990 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1991, five days prior to 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 nursing facilities and intermediate care facilities for the mentally retarded 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: $14.3 million (costs)

2. Continuing costs or savings: $14.3 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

907 KAR 1:102. Advanced registered nurse practitioner services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a, b, c, d

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of medical assistance. The cabinet, by regulation, shall 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 advanced registered nurse practitioner 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. Advanced Registered Nurse Practitioner (ARNP) Services. (1) Covered services shall include those furnished by a licensed participating advanced registered nurse practitioner (ARNP) to eligible medical assistance recipients through direct patient contact. Services shall be those which are within the scope of their practice as a licensed ARNP so long as the services are covered in the Medicaid program.

(2) Advanced registered nurse practitioners participating as nurse-midwives or nurse anesthetists shall also comply with 907 KAR 1:095, Payment for nurse-midwife services; 907 KAR 1:100, Nurse-midwife services; 907 KAR 1:200, Nurse anesthetists' services; and 907 KAR 1:210, Payments for nurse anesthetists, as appropriate.

Section 2. Participation Requirements. An ARNP desiring to participate in the Medical Assistance Program shall:

(1) Meet all applicable requirements of state laws and conditions for practice as a licensed ARNP. A current copy of the ARNP's license shall accompany each participation application;

(2) Enter into a provider agreement with the Cabinet for Human Resources, Department for Medicaid Services to provide ARNP services; and

(3) Provide and bill for the services in accordance with the terms and conditions of the provider participation agreement.

Section 3. Service Limitations. (1) Limitations applicable with regard to services provided by physicians (as described in 907 KAR 1:009) shall also be applicable with regard to ARNPs.

(2) Immunizations provided by ARNPs are not covered.

(3) When an ARNP and a physician perform the same service on the same day within a common practice, only one (1) of the services shall be covered.

(4) When an ARNP provides and bills an office visit, an office visit or consultation by a physician in a common practice with the ARNP for a visit by the same patient on the same day is not covered. When a physician(s) provides and bills an office visit, an office visit or consultation by an ARNP in a common practice with the physician for a visit by the same

patient on the same day is not covered.
(5) When an ARNP refers a patient to a physician based on medical necessity, the necessity for the referral shall be documented in the patient's record or chart.

Section 4. Implementation Date. Coverage for services under this regulation shall be implemented for services performed by a participating advanced registered nurse practitioner on or after October 1, 1990.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: December 7, 1990
FILED WITH LRC: December 13, 1990 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1991, five days prior to 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: 227 advanced registered nurse practitioners.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: *
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: 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: *Costs reflected in companion payment regulation 907 KAR 1:104.
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 1:104. Payments for advanced registered nurse practitioner services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a, b, c, d, 42 USC 447.200
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of medical assistance. The cabinet, by regulation, shall 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 advanced registered nurse practitioners.

Section 1. General Requirements Relating to Payments. Participating licensed advanced registered nurse practitioners shall be paid only for covered services rendered to eligible medical assistance recipients which are within the scope of their practice as a licensed advanced registered nurse practitioner.

Section 2. Payments. (1) For services provided on or after October 1, 1990, licensed participating advanced registered nurse practitioners shall be reimbursed at usual and customary actual billed charges up to the fixed upper limit per procedure established by the cabinet at seventy-five (75) percent of the physicians' fixed upper limit per procedure.
(2) An ARNP employed by a primary care center, federally qualified health center, or comprehensive care center shall not bill directly.

Section 3. This regulation shall be effective with regard to services provided on and after October 1, 1990.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: December 7, 1990
FILED WITH LRC: December 13, 1990 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1991 at 9 a.m. in the Department for Employment Services Conference Room, Second Floor West, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 1991, five days prior to 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: 227 advanced registered nurse practitioners.
(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: $500,000 (cost).
2. Continuing costs or savings: $800,000 (cost).
3. Additional factors increasing or decreasing costs: Additional providers and services provided in the second year.
(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.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the December 4 & 5, 1990 Meeting

The December meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, December 4, 1990 at 2 p.m. in Room 110 of the Capitol Annex and on Wednesday, December 5, 1990 at 10 a.m. in Room 327 of the Capitol. Representative Mark D. O'Brien, Chairman, called the meeting to order, and the secretary called the roll. The minutes of the November 7 and 8, 1990 meeting were approved.

Present December 4, 1990 were:

Members: Representative Mark D. O'Brien, Chairman; Senators Pat McCuiston and Bill Quinlan; Representatives Jim Bruce, Tom Kerr and Ronny Layman.

Present December 5, 1990 were:

Members: Representative Mark D. O'Brien, Chairman; Senators Gene Huff, Pat McCuiston and Bill Quinlan; Representatives Jim Bruce, Ronny Layman and Tom Kerr.

Guests: Richard Ross, Don Ruwe, Board of Pharmacy; Deborah Cameron, Board of Dentistry; L. Wayne Tune, Board of Architects; Ronald Pritchert, Lauren Schaaf, Pete Pfeiffer, Department of Fish and Wildlife Resources; William C. Eddins, Gary W. Bevill, James Hale, Doyle Mills, Betty Beshoar, Hisham Saaid, Natural Resources and Environmental Protection Cabinet: Michael Bradley, Ellen Tharpe, Corrections Cabinet; Sandra G. Pullen, Transportation Cabinet; Gary Bale, Deborah Hendricks, Department of Education; Audrey T. Carr, Beverly H. Haverstock, Gary Werenskjold, Workforce Development Cabinet; Kembra Taylor, Guy B. Schoolfield, Charles E. Harris, Kentucky Labor Cabinet; Catherine Staib, Alcohol Beverage Control Board; Ked Fitzpatrick, Anita Moore, J. R. Nash, Joyce Young, Janice Kline, Frank Kirk, Reginald Finger, M.D., Michael Cheek, Karen Doyle, David Crane, Ralph Van Derau, Eric Friedlander, Barbara Coleman, Judy Trigg, Cabinet for Human Resources; Richard Seckel, Office of Kentucky Legal Services, Gregory J. Bausch, Kentucky Society of Hospital Pharmacists; Ranken Clinton, Michael W. Wooden, Y. Cindy Lin, Humana; Robert Ford, Medisin, Inc., Phillip G. Fort, Trigg County Hospital; James S. Judy, KAHCR; Jackie Swigart, William J. Waddell, Sarah S. Nicholson, Edward R. McClure, Kentucky Hospital Association; Cheri L. Hildreth, University of Louisville.

LRC Staff: Susan Wunderlich, Joe Hood, Gregory Karambellas, Peggy Jones, Donna Pierce, and Susan Eastman.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

General Government Cabinet: Board of Pharmacy

201 KAR 2:074 (Pharmacy services in hospitals.) This regulation had been deferred in order to permit the Kentucky Hospital Association (KHA) and the Board of Pharmacy to resolve issues relating to certain rural hospitals. These hospitals were primarily governed by the Cabinet for Human Resources and met standards required under federal regulations governing hospitals. However, they did not meet the requirements for licensure of drug storage rooms as pharmacies, and did not have Board required night drug cabinets. In addition, the Board objected to access to drug storage rooms by nonpharmacists. Representatives of the Board and KHA notified the Subcommittee that they had reached an agreement as follows:

(1) Section 3 was amended as follows: Insert a new subsection (3) as follows: "(3)(a) A currently licensed hospital is exempt from the provisions of subsection (2) of this section if it:

1. Is authorized by the Department for Health and Human Services to provide pharmacy services; and

2. Does not currently possess a pharmacy permit.

(b) A currently licensed hospital exempt from the provisions of subsection (2) of this section may permit access by authorized personnel only."

Renumber remaining subsections accordingly.

It was stated by KHA and Board representatives that the drug rooms of the hospitals concerned were required to be licensed as pharmacies by the Board; night drug cabinets would be established and maintained; and that KHA acknowledged the jurisdiction of the Board.

(2) Section 4(3) was amended as follows: Bracket the words "twenty-four (24) hours of administration" and insert in lieu thereof the words "in a reasonable amount of time". This amendment now requires a hospital pharmacist to review a medication order within a reasonable time rather than 24 hours.

Board of Examiners and Registration of Architects

The following regulations were amended to comply with the drafting requirements of KRS 13A.222 by deleting the words "will", "must", "or her", "or she" wherever they appeared; and by inserting "shall" where required. In addition, grammatical changes were made: when the singular was required, words such as "themselves", "their", and "them" were deleted and changed to the appropriate word. Specific amendments are shown with the appropriate regulation number.

201 KAR 19:025 (Application for examination.) This regulation was amended to delete Section 4. Section 4 contained an effective date. Under KRS Chapter 13A, an administrative regulation is effective 30 days after referral by LRC to a second legislative subcommittee, or upon adjournment of the second legislative subcommittee's meeting if it meets to consider the referred regulation.

201 KAR 19:030 (Examination; general provisions.) This regulation was amended to delete Section 5. Section 5 contained an effective date. Under KRS Chapter 13A, an administrative regulation is effective 30 days after referral by LRC to a second legislative subcommittee, or upon adjournment of the second legislative subcommittee's meeting if it meets to consider the referred regulation.

201 KAR 19:035 (Qualifications for examination.) Along with the amendments specified above, a new Section 4 was added to incorporate national standards by reference.

201 KAR 19:040 (Types of examinations required.)

201 KAR 19:050 (Re-examination; reconsideration.) This regulation was amended to delete Section 3. Section 3 contained an effective date. Under KRS Chapter 13A, an

administrative regulation is effective 30 days after referral by LRC to a second legislative subcommittee, or upon adjournment of the second legislative subcommittee's meeting if it meets to consider the referred regulation.

201 KAR 19:060 (Reciprocity; registration without examination.)

201 KAR 19:085 (Fees.) This regulation was amended to delete Section 5. Section 5 contained an effective date. Under KRS Chapter 13A, an administrative regulation is effective 30 days after referral by LRC to a second legislative subcommittee, or upon adjournment of the second legislative subcommittee's meeting if it meets to consider the referred regulation.

201 KAR 19:095 (Professional practice standards; violations, penalties.)

201 KAR 19:100 (Individual seals; office titles.) Along with the amendments specified above, Section 1(2) was amended so that the sentence properly reads as a prohibition.

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:220 (Hunting seasons for migratory birds.) This administrative regulation was technically amended by moving the word "and" to clarify the sentence.

Education and Humanities Cabinet: Department of Education: Office of Education for Exceptional Children: Exceptional and Handicapped Program

707 KAR 1:051 (Exceptional children's programs.) This regulation was amended to use appropriate federal citations.

Workforce Development Cabinet: Department for Adult and Technical Education: Management of the Kentucky Tech System

780 KAR 2:045 (Fees for livework projects.) This regulation was amended to: (1) include a definition of "livework"; and (2) to delete Section 4 which contravened the statutory requirement that the Board set fees.

Public Protection and Regulation Cabinet: Department of Alcoholic Beverage Control: Licensing

804 KAR 4:015 (Interlocking interest between licensees prohibited.) This regulation was amended to clarify the use of the definitions.

804 KAR 4:250 (Special temporary licenses.) This regulation was amended in order to incorporate by reference the required application form.

Cabinet for Human Resources: Department for Health Services

Health Services and Facilities

The following four regulations were amended to delete "Board" or "Commission", as appropriate, and to insert in lieu thereof the word "Cabinet"; and to delete "199.335" and insert in lieu thereof "Chapter 620".

902 KAR 20:026 (Operation and services; skilled nursing facilities.) In addition to the amendments specified above, Section 4(5)(f)2 of this regulation was also amended as follows: bracket the word "or" after the word "physician" and insert a comma in lieu thereof; and insert ", or a properly trained licensed nurse" after the word "nurse".

902 KAR 20:048 (Operation and services; nursing homes.)

902 KAR 20:051 (Operation and services; intermediate care.)

902 KAR 20:086 (Operation and services; intermediate care facilities for the mentally retarded and developmentally disabled.)

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

General Government Cabinet: Board of Dentistry

201 KAR 8:285 (Hygienists education points for license renewal.)

Board of Examiners and Registration of Architects

201 KAR 19:005 (Amendments to rules and regulations.)

201 KAR 19:056 (Repeal of 201 KAR 19:055 and 201 KAR 19:075.)

201 KAR 19:070 (Duplicate certificates.)

201 KAR 19:105 (Plans and specifications standards.)

Tourism Cabinet: Department of Fish and Wildlife Resources: Fish

301 KAR 1:015 (Boats and outboard motors; restrictions.)

301 KAR 1:056 (Sport fishing trotlines, jugging and setlines.)

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

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

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

301 KAR 1:200 (Seasons and limits for angling.)

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Waste Management: Underground Storage Tanks

401 KAR 42:011 (Definitions of terms used in 401 KAR Chapter 42, program scope, and interim prohibition.)

401 KAR 42:020 (Performance standards for new UST systems.)

401 KAR 42:030 (General operating requirements.)

401 KAR 42:040 (Release detection.)

401 KAR 42:050 (Release reporting, investigation, and confirmation.)

401 KAR 42:060 (Release response and corrective action for UST systems containing petroleum or hazardous substances.)

401 KAR 42:070 (Out-of-service UST systems and closure.)

401 KAR 42:090 (Financial responsibility.)

Corrections Cabinet: Office of the Secretary

501 KAR 6:020 (Corrections policies and procedures.)

501 KAR 6:030 (Kentucky State Reformatory.)

501 KAR 6:070 (Kentucky Correctional Institution for Women.)

Transportation Cabinet: Property Acquisition and Uniform Relocation

600 KAR 3:010 (Relocation assistance payments of the Transportation Cabinet.) Chairman O'Brien requested that Cabinet staff meet with Subcommittee staff to review federal regulations and material incorporated by reference in order to determine whether these items met the requirements of Chapter 13A.

Department of Highways: Traffic
603 KAR 5:025 (Fully controlled access highways.)
603 KAR 5:075 (Overweight and overdimensional permits.) A question was raised concerning the "additional fee" to be assessed under the provisions of Section 4 of this regulation. Cabinet personnel stated that a specific fee was not listed because the fee and the method for computation are provided in KRS 189.270. Because this matter is set out by statute, KRS Chapter 13A prohibits the Cabinet from stating it in a regulation.

Education and Humanities Cabinet: Department of Education: Office of School Administration and Finance: School District Finance
702 KAR 3:220 (Guidelines for waiver of school fees.) Richard Seckel, Office of Kentucky Legal Services Programs, stated that this regulation replaces a clear directive that schools create a process to waive fees for low income students with several unclear distinctions. This would suggest that only some fees, some of the time, must be waived. Under this policy, poorer students might be discriminated against. Agency personnel stated that there would be no discrimination because fees would be waived for required activities during school hours. Mr. Seckel pointed out that this would not cover all trips or activities, which could be considered a learning experience and have an effect on students' grades and knowledge because all trips or activities would not occur during such hours. Agency personnel stated that they did not believe that the regulation would be so implemented or that it requires such a result. Chairman O'Brien suggested that Mr. Seckel and agency personnel prepare an amendment to be proposed to the legislative committee to which this regulation will be referred by LRC.

Office of Education for Exceptional Children: Exceptional and Handicapped Program
707 KAR 1:140 (Qualifications for approved classroom assignment of teachers of exceptional children.)

Labor Cabinet: Occupational Safety and Health
In response to the staff review which questioned the detail of the summaries of the material incorporated by reference, the agency submitted more detailed summaries. Chairman O'Brien requested that the Cabinet meet with Subcommittee staff to review adoption of federal regulations, and other matters relating to the requirements of KRS Chapter 13A with regard to federal regulations.
803 KAR 2:303 (Adoption of 29 CFR Part 1910.21 - .32.)
803 KAR 2:305 (Adoption of 29 CFR Part 1910.66 - 1910.70.)
803 KAR 2:306 (Adoption of 29 CFR Part 1910.94 - 1910.100.)
803 KAR 2:307 (Adoption of 29 CFR Part 1910.101 - .120.)
803 KAR 2:313 (Adoption of 29 CFR Part 1910.176 - 1910.190.)
803 KAR 2:316 (Adoption of 29 CFR Part 1910.251 - .257.)
803 KAR 2:317 (Adoption of 29 CFR Part 1910.260-.275.)
803 KAR 2:318 (Adoption of 29 CFR Part 1910.301 - .399.)
803 KAR 2:320 (Adoption of 29 CFR Part 1910.1000 - 1910.1500.)
803 KAR 2:413 (Adoption of 29 CFR Part 1926.550 - .556.)

Public Protection and Regulation Cabinet: Department of Alcoholic Beverage Control: Fair Trade, Pricing and Sales
804 KAR 3:091 (Repeal of 804 KAR 3:090, 804 KAR 5:010 and 804 KAR 7:040.)
Conduct of Business; Employees
804 KAR 5:040 (Minors; definitions.)

Cabinet for Human Resources: Department for Social Insurance: Public Assistance
904 KAR 2:110 (Refugee assistance.)
Food Stamp Program
904 KAR 3:035 (Certification process.)
Department for Social Services: Community Action Agencies
905 KAR 6:070 (Program state plan for CSBG.)
Department for Medicaid Services: Medicaid Services
907 KAR 1:019 (Pharmacy services.)
907 KAR 1:060 (Medical transportation.)
907 KAR 1:061 (Payments for medical transportation.)

The following regulations were deferred at the promulgating agency's request:

General Government Cabinet: Board of Medical Licensure
201 KAR 9:305 (Recertification of athletic trainers.)

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division for Air Quality: New Source Standards
401 KAR 59:023 (New medical waste or hazardous waste incinerators.)
Existing Source Standards
401 KAR 61:013 (Existing medical waste and hazardous waste incinerators.)

Transportation Cabinet: Department of Highways: Traffic
603 KAR 5:071 (Bus dimension limits.)

The Subcommittee had no objections to emergency regulations which had been filed.

OTHER BUSINESS

KRS 13A.120(3) - Prior review of administrative regulations
Questions had been raised as to whether the Environmental Quality Commission (EQC) was required, under the provisions of KRS Chapters 224 and 13A, to review regulations promulgated by the Natural Resources and Environmental Protection Cabinet prior to the filing of such regulations with LRC. Chairman O'Brien had instructed staff to prepare a report on this issue.
Representative Kerr stated that he agreed with the report and its conclusions. He stated that the position of the EQC, that it is not required to review the Cabinet's regulations and make a recommendation prior to filing, 1) is based on an interpretation of KRS Chapters 224 and 13A that is not supported by these chapters; and 2) results in a nullification of KRS 13A.120(3) and other sections of KRS Chapter 13A requiring such

review and recommendation prior to the filing of administrative regulations.

Representative Kerr added that the Regulations Compiler is prohibited by law from accepting for filing administrative regulations that do not comply with KRS 13A.120. However, this would penalize the Cabinet, the public and regulated entities.

Representative Kerr made a motion that:

(1) The Subcommittee accept the report and its conclusions and transmit the report to LRC;

(2) EQC is required to make its recommendation prior to the filing of regulations by the Cabinet;

(3) Because a rejection of Cabinet regulations would adversely affect the Cabinet, regulated entities, and the public, Cabinet regulations shall be accepted for filing;

(4) LRC refer this issue to an appropriate legislative subcommittee to recommend legislation to amend:

(a) KRS 224.045(5) and (6) to conform to KRS Chapter 13A; or

(b) KRS Chapter 224 to delete the requirement that the Cabinet submit its proposed regulation to the EQC for review; or

(c) KRS Chapter 224 to provide that EQC review shall be made at the Cabinet public hearing required by KRS 13A.270, and exempt the EQC from the provisions of KRS Chapter 13A relating to prior review.

Representative Bruce stated that while he understood the problems that resulted from the EQC's failure to review and make its recommendation as required by KRS Chapter 13A, he believes that KRS Chapter 13A should be enforced. Senator Quinlan agreed. Representative Kerr agreed, at the suggestion of Representative Bruce, to amend his motion to include the following: The Subcommittee shall notify the Cabinet, the EQC and the Governor of the requirements of KRS Chapter 13A as they relate to prior review and recommendation by the EQC and request that KRS Chapter 13A be followed.

The motion, as amended, was seconded and passed unanimously.

Lottery Commission

Chairman O'Brien stated that a question had been raised regarding the requirements of KRS Chapter 13A as they relate to KRS Chapter 154A, governing the state lottery; and that Subcommittee staff had worked with Lottery staff, and had analyzed KRS Chapters 154A, 13A, and proposals of drafts submitted by Lottery staff. It was determined that, contrary to what KRS Chapter 154A might appear to require, regulations were not required for certain subjects. The enactment of KRS Chapter 154A, without due regard for the requirements of KRS Chapter 13A, had caused a great deal of confusion as to exactly what was required. Members of the Subcommittee were informed that subcommittee staff had prepared instructions for drafting administrative regulations; an analysis of KRS Chapters 154A and 13A; and detailed comments on Lottery proposals. This material will be forwarded to Lottery staff, and Lottery staff has been informed that Subcommittee staff will be available to advise Lottery staff on the requirements of KRS Chapter 13A.

KRS Chapter 13A and Bill Drafting

Chairman O'Brien stated that the misinterpretation of KRS Chapter 13A by EQC, and other agencies, concerning the requirements of KRS Chapter 13A, resulted from the failure to enact amendments to conform all statutes to KRS Chapter 13A. Procedures and terms prohibited by KRS Chapter 13A, that were not amended in other statutes to conform to KRS Chapter 13A, often were used as a basis for noncompliance with KRS Chapter 13A. In addition, legislation was often enacted without due regard to the requirements of KRS Chapter 13A. He added that terms, procedures, and other items prohibited by KRS Chapter 13A continue to be used.

Chairman O'Brien made a motion that Subcommittee staff be instructed to prepare guidelines for drafting legislation relating to administrative regulations; forward such guidelines to LRC; request LRC to transmit them to the Statute Reviser for review and inclusion in the bill drafting manual; and, request LRC to prepare legislation conforming statutes to the provisions of KRS Chapter 13A. The motion was seconded and passed unanimously.

The Subcommittee adjourned at 10:30 a.m. until January 3, 1991 at 2 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of November 12, 1990

The Interim Joint Committee on Transportation met on Monday, November 12, 1990, and submits this report:

The Committee determined that the following administrative regulations complied with KRS Chapter 13A:

601 KAR 9:074
601 KAR 9:140
603 KAR 5:105

The Committee adjourned at 2:30 a.m.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT
Meeting of November 14, 1990

The Interim Joint Committee on State Government met November 14, 1990, and submits this report.

The Committee determined that the following administrative regulation complies with KRS Chapter 13A:
101 KAR 1:325 - Probationary periods (Personnel Board)

INTERIM JOINT COMMITTEE ON BANKING & INSURANCE
Meeting of November 15, 1990

The Interim Joint Committee on Banking and Insurance met on November 15, 1990, and submits this report:

The Committee raised no objections to the following regulations:

806 KAR 12:092 & E
806 KAR 12:094 & E

Also, the Committee will not meet on 808 KAR 1:050 and 808 KAR 3:020 which were referred by the Administrative Regulation Review Committee at its November meeting.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
Meeting of November 14-15, 1990

The Interim Joint Committee on Agriculture and Natural Resources met November 14-15, 1990, and submits this report:

The committee determined that the following administrative regulations comply with KRS Chapter 13A:

Department of Agriculture:
302 KAR 15:010
302 KAR 38:010

Department for Fish and Wildlife Resources:
301 KAR 2:044 & E
301 KAR 2:140
301 KAR 2:185

Division of Water:
401 KAR 6:320 & E
401 KAR 8:010 & E
401 KAR 8:020 & E
401 KAR 8:030 & E
401 KAR 8:040 & E
401 KAR 8:050 & E
401 KAR 8:060 & E
401 KAR 8:070 & E
401 KAR 8:150 & E
401 KAR 8:200 & E
401 KAR 8:250 & E
401 KAR 8:300 & E
401 KAR 8:350 & E
401 KAR 8:400 & E
401 KAR 8:420 & E
401 KAR 8:440 & E
401 KAR 8:500 & E
401 KAR 8:550 & E
401 KAR 8:600 & E
401 KAR 8:650 & E
401 KAR 8:700 & E

401 KAR 8:100 & E, with the following amendment submitted by the cabinet, Section 1, subsection (5), paragraph (a), after the last sentence, add:
"This requirement may be waived by the Cabinet if the purchaser shows that a reasonable attempt to obtain the letter has been made and the seller of water fails to provide the required letter. In no event will this provision be the sole justification for rejection of the proposed project. The intent is to alert the seller and the purchaser that they are approaching their water purchase contract limitations and the state standards on minimum water pressure."

Division of Waste Management

401 KAR 32:030
401 KAR 34:120
401 KAR 34:250
401 KAR 35:120
401 KAR 38:230

401 KAR 38:040, with the following amendment submitted by the cabinet, Section 2, subsection (4) is amended to read as follows:
"The provisions set forth in Section 3 of this regulation as amended on March 10, 1988, shall apply to requests for modification received by the cabinet prior to November 14, 1990, and including all additional information and documentation submitted subsequent to November 14, 1990, as requested by the cabinet."

Division for Air Quality:
401 KAR 50:010
401 KAR 51:010
401 KAR 59:021
401 KAR 61:011

The committee adjourned at 11:55 a.m., November 15, 1990.

INTERIM JOINT COMMMITTEE ON APPROPRIATIONS AND REVENUE
Meeting of November 21, 1990

The Interim Joint Committee on Appropriations and Revenue, at its November 21, 1990 meeting, approved the fifteen Administrative Regulations

listed below. This is to advise you of the Committee's action.

103 KAR 1:010. Protests and appeals.
103 KAR 17:041. Tax deferral for combat zone service.
103 KAR 18:110. Withholding methods.
103 KAR 25:081. Sales tax collection; bracket system
103 KAR 25:091. Use tax collection; bracket system.
103 KAR 26:070. Construction contractors.
103 KAR 27:100. Motor vehicles, mobile homes and trailers.
103 KAR 28:051. Leases and rentals.
103 KAR 30:091. Sales to farmers.
103 KAR 30:140. Energy and energy-producing fuels.
103 KAR 30:200. Occasional sales; sale of business.
103 KAR 31:011. Methods of accounting for and remitting tax.
103 KAR 31:080. Coupons or redemption certificates.
103 KAR 31:111. Sales and purchases for resale.
103 KAR 44:040 & E. Motor vehicle valuation.

TASK FORCE ON ENERGY
Meeting of November 26, 1990

The Task Force on Energy met on November 26, 1990, and agreed to defer consideration of proposed administrative regulation 807 KAR 5:058 until the next meeting of the task force, scheduled for December 18, 1990, at 10:00 a.m. in Room 116 of the Capitol Annex. This action was taken in response to a request for deferral by the agency which promulgated the regulation, the Public Service Commission.

INTERIM JOINT COMMITTEE ON BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of November 29, 1990

The Interim Joint Committee on Business Organizations and Professions met on Friday, November 29, 1990, and submits this report:

The Committee determined that the following regulations complied with KRS Chapter 13A:

Board of Accountancy
201 KAR 1:068
201 KAR 1:100
Board of Barbering
201 KAR 14:140 & E
201 KAR 14:130 & E
201 KAR 14:100 & E
Board of Physical Therapy
201 KAR 22:031
Alcoholic Beverage Control
804 KAR 4:110

The committee adjourned at 5:30 p.m.

INTERIM JOINT COMMITTEE ON HEALTH & WELFARE
Meeting of November 28, 1990

The Interim Joint Committee on Health and Welfare met on Wednesday, November 28, 1990, but took no action on the following regulations because there was no quorum:

902 KAR 100:058
904 KAR 2:015 & E
904 KAR 2:006 & E
904 KAR 2:016 & E
904 KAR 2:022
905 KAR 8:140
907 KAR 1:010 & E
907 KAR 1:013 & E
907 KAR 1:015 & E
907 KAR 1:017 & E
907 KAR 1:470
908 KAR 3:080

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT
Meeting of December 6, 1990

The Interim Joint Committee on State Government met December 6, 1990, and submits this report.

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The Committee accepted the following Department of Personnel administrative regulations:

101 KAR 2:045 & E. Applications, qualifications and examinations
101 KAR 2:055 & E. Registers and job bank service
101 KAR 2:065 & E. Certification and selection of eligibles for appointment
101 KAR 2:075 & E . Vacancies, detail to special duty and temporary overlap
101 KAR 2:095 & E. Classified service regulations
101 KAR 2:100. Leave regulations
101 KAR 3:010. Leave regulations for unclassified service

The Committee accepted the following Department of Personnel administrative regulations, with the following amendments adopted December 6 by the State Government Committee with the Department of Personnel's consent:

101 KAR 2:035 & E. Compensation plan and pay incentive systems. Amend by adding the following new subsection at the end of Section 11: "(4) The appointing authority shall submit written justification to the commissioner, and the personnel action form shall be approved by the commissioner and the appointing authority to be effective."

101 KAR 3:045. Unclassified service; classification and compensation incentive systems. Amend by adding the following new subsection at the end of Section 4: "(4) The appointing authority shall submit written justification to the commissioner, and the personnel action form shall be approved by the commissioner and the appointing authority to be effective."

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates.....G2

KRS Index.....G15

Subject Index.....G26

LOCATOR INDEX -- EFFECTIVE DATES

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

VOLUME 16

Emergency Regulation	16 Ky.R. Page No.	Effective Date
902 KAR 17:020E	2646	4-17-90
Replaced		9-13-90

Regulation	16 Ky.R. Page No.	Effective Date
201 KAR 2:074	1713	
Amended	2150	(See 17 Ky.R.)
201 KAR 22:052		
Amended	2440	8-17-90
201 KAR 22:053	2616	(See 17 Ky.R.)
201 KAR 22:101		
Amended	2441	8-17-90
201 KAR 22:110		
Amended	2443	8-17-90
808 KAR 12:020	2811	10-14-90
810 KAR 1:003		
Amended	2744	8-17-90
810 KAR 1:006		
Amended	2748	8-17-90

VOLUME 17

Emergency Regulation	17 Ky.R. Page No.	Effective Date
11 KAR 5:030E	5	5-21-90
Replaced	256	9-13-90
11 KAR 5:130E	7	5-21-90
Replaced		8-9-90
11 KAR 5:140E	7	5-21-90
Replaced		8-9-90
11 KAR 5:160E	9	5-21-90
Replaced		8-9-90
11 KAR 6:010E	11	5-21-90
Replaced		8-9-90
11 KAR 8:010E	13	5-21-90
Replaced		8-9-90
11 KAR 8:020E	14	5-21-90
Replaced		8-9-90
11 KAR 8:030E	16	5-21-90
Replaced		8-9-90
11 KAR 8:040E	18	5-21-90
Replaced		8-9-90
11 KAR 11:010E	20	5-21-90
Replaced		8-9-90
11 KAR 11:020E	20	5-21-90
Replaced		8-9-90
11 KAR 11:030E	21	5-21-90
Replaced		8-9-90
11 KAR 11:040E	23	5-21-90
Replaced		8-9-90
11 KAR 11:050E	23	5-21-90
Replaced		8-9-90
30 KAR 2:010E	24	6-13-90
Replaced	155	9-13-90
31 KAR 4:010E	870	7-26-90
Replaced	1229	12-7-90
31 KAR 4:020E	871	7-26-90
Replaced	1229	12-7-90
31 KAR 4:030E	871	7-26-90
Replaced	1230	12-7-90
31 KAR 4:040E	877	7-26-90
Replaced	1231	12-7-90
31 KAR 4:050E	877	7-26-90
Replaced	1232	12-7-90
101 KAR 2:035E	878	8-3-90
Replaced	2171	12-6-90
101 KAR 2:045E	881	8-3-90
Replaced	1968	12-6-90

Emergency Regulation	17 Ky.R. Page No.	Effective Date
101 KAR 2:055E	885	8-3-90
Replaced	1971	12-6-90
101 KAR 2:065E	886	8-3-90
Replaced	1243	12-6-90
101 KAR 2:075E	887	8-3-90
Replaced	1245	12-6-90
101 KAR 2:095E	888	8-3-90
Replaced	1972	12-6-90
101 KAR 3:045E	889	8-3-90
Replaced	2173	12-6-90
103 KAR 30:095E	183	6-20-90
Replaced	581	9-27-90
103 KAR 44:040E	1321	9-14-90
Replaced	1632	11-21-90
105 KAR 1:010E	891	8-1-90
Replaced	276	10-10-90
105 KAR 1:040E	184	6-28-90
Replaced	99	9-12-90
201 KAR 2:111E	2144	12-11-90
201 KAR 2:116E	2144	12-11-90
201 KAR 14:100E	893	7-23-90
Replaced	1139	11-29-90
201 KAR 14:130E	893	7-23-90
Replaced	1139	11-29-90
201 KAR 14:140E	894	7-23-90
Replaced	1140	11-29-90
201 KAR 20:390E	1954	10-29-90
301 KAR 2:044E	1322	8-23-90
Replaced	1531	11-15-90
301 KAR 2:220E	1955	10-18-90
302 KAR 1:055E	894	7-27-90
Replaced	157	8-22-90
302 KAR 1:070E	896	7-27-90
Replaced	1060	8-22-90
302 KAR 20:220E	2145	11-21-90
401 KAR 6:320E	898	7-20-90
Replaced	1421	11-15-90
401 KAR 8:010E	899	7-19-90
Replaced	1422	11-15-90
401 KAR 8:020E	902	7-19-90
Replaced	1425	11-15-90
401 KAR 8:030E	906	7-19-90
Replaced	1428	11-15-90
401 KAR 8:040E	909	7-19-90
Replaced	1432	11-15-90

Emergency Regulation	17 Ky.R. Page No.	Effective Date
401 KAR 8:050E	911	7-19-90
Replaced	599	11-15-90
401 KAR 8:060E	912	7-19-90
Replaced	601	11-15-90
401 KAR 8:070E	914	7-19-90
Replaced	1433	11-15-90
401 KAR 8:100E	918	7-19-90
Replaced	1977	11-15-90
401 KAR 8:150E	920	7-19-90
Replaced	1717	11-15-90
401 KAR 8:200E	921	7-19-90
Replaced	1440	11-15-90
401 KAR 8:250E	924	7-19-90
Replaced	619	11-15-90
401 KAR 8:300E	926	7-19-90
Replaced	622	11-15-90
401 KAR 8:350E	928	7-19-90
Replaced	1443	11-15-90
401 KAR 8:400E	929	7-19-90
Replaced	626	11-15-90
401 KAR 8:420E	930	7-19-90
Replaced	628	11-15-90
401 KAR 8:440E	934	7-19-90
Replaced	633	11-15-90
401 KAR 8:500E	935	7-19-90
Replaced	635	11-15-90
401 KAR 8:550E	938	7-19-90
Replaced	639	11-15-90
401 KAR 8:600E	939	7-19-90
Replaced	641	11-15-90
401 KAR 8:650E	940	7-19-90
Replaced	643	11-15-90
401 KAR 8:700E	941	7-19-90
Replaced	645	11-15-90
401 KAR 47:132E	1960	10-19-90
401 KAR 47:134E	1962	10-19-90
401 KAR 47:136E	1963	10-19-90
500 KAR 6:210E	942	7-18-90
Replaced	1262	12-7-90
500 KAR 6:220E	944	7-18-90
Replaced	1264	12-7-90
500 KAR 9:010E	944	7-19-90
Replaced	162	9-13-90
500 KAR 9:020E	945	7-19-90
Replaced	1061	9-13-90
500 KAR 9:030E	945	7-19-90
Replaced	164	9-13-90
500 KAR 9:040E	946	7-19-90
Replaced	1062	9-13-90
500 KAR 9:050E	946	8-7-90
Expired		10-9-90
500 KAR 9:060E	947	8-7-90
Expired		10-9-90
501 KAR 6:020E	947	7-19-90
Replaced	410	10-14-90
501 KAR 6:030E	1666	9-20-90
Replaced	1536	12-9-90
501 KAR 6:060E	949	7-19-90
Replaced	413	10-14-90
501 KAR 6:070E	1964	10-18-90
501 KAR 6:080E	950	7-19-90
Replaced	415	10-14-90
501 KAR 6:090E	951	7-19-90
Replaced	415	10-14-90
501 KAR 6:120E	952	7-19-90
Replaced	417	10-14-90
501 KAR 6:150E	25	5-18-90
Replaced		8-9-90
501 KAR 6:160E	1668	9-20-90
Replaced	1648	12-9-90
501 KAR 9:025E	2147	11-20-90
501 KAR 11:010E	954	7-19-90
Replaced	690	10-14-90
502 KAR 45:050E	1965	11-8-90
601 KAR 1:029E	26	6-14-90
Replaced	1062	9-4-90
601 KAR 1:160E	27	6-14-90
Replaced	1063	9-4-90
601 KAR 13:070E	1323	8-28-90
Replaced	1991	12-4-90
603 KAR 5:110E	954	8-2-90
Replaced	1736	12-4-90
603 KAR 5:111E	956	8-2-90
Replaced	1737	12-4-90
603 KAR 5:112E	1668	10-1-90
603 KAR 5:230E	958	7-31-90
Replaced	1739	12-4-90
603 KAR 5:240E	995	7-19-90
Replaced	1352	10-2-90
702 KAR 1:130E	996	7-19-90
Replaced	692	10-14-90
704 KAR 3:304E	996	7-19-90
Replaced	458	10-14-90
704 KAR 7:100E	997	7-19-90
Replaced	705	10-14-90
781 KAR 1:010E	186	7-3-90
Expired		12-1-90
781 KAR 1:020E	188	7-3-90
Expired		12-1-90
781 KAR 1:030E	192	7-3-90
Expired		12-1-90
781 KAR 1:040E	194	7-3-90
Replaced	789	10-14-90
781 KAR 1:050E	195	7-3-90
Replaced	791	10-14-90
781 KAR 1:060E	198	7-3-90
Replaced	794	10-14-90
781 KAR 1:070E	199	7-3-90
Replaced	796	10-14-90
781 KAR 2:010E	200	7-3-90
Expired		12-1-90
781 KAR 2:020E	202	7-3-90
Expired		12-1-90
806 KAR 11:020E	2149	11-21-90
806 KAR 12:092E	998	7-17-90
Replaced	1503	11-15-90
806 KAR 12:094E	1000	7-17-90
Replaced	1505	11-15-90
806 KAR 17:066E	1004	7-17-90
Replaced	1298	10-14-90
901 KAR 5:050E	28	6-12-90
Replaced	121	9-13-90
902 KAR 10:021E	28	5-16-90
Replaced		7-18-90
902 KAR 10:030E	29	5-16-90
Replaced		7-18-90
902 KAR 10:040E	1016	7-19-90
Replaced	1372	9-19-90
902 KAR 10:060E	30	5-16-90
Replaced		7-18-90
902 KAR 10:121E	30	5-16-90
Replaced		7-18-90
902 KAR 10:130E	30	5-16-90
Replaced		7-18-90
902 KAR 11:010E	204	6-21-90
Replaced	129	9-13-90
902 KAR 15:010E	1021	7-19-90
Replaced	1392	9-19-90
902 KAR 15:020E	1024	7-19-90
Replaced	500	9-19-90
902 KAR 17:010E	1670	10-4-90
Expired*		12-6-90

Emergency Regulation	17 Ky.R. Page No.	Effective Date
902 KAR 20:006E	1028	7-19-90
Replaced	1724	12-7-90
902 KAR 20:008E	205	6-21-90
Replaced	133	9-13-90
902 KAR 20:116E	1966	10-15-90
Expired*		12-6-90
902 KAR 20:133E	1035	7-19-90
Replaced	834	9-19-90
902 KAR 20:135E	207	6-21-90
Replaced	135	9-13-90
902 KAR 20:300E	1670	10-5-90
Expired*		12-6-90
902 KAR 20:310E	1681	10-5-90
Expired*		12-6-90
902 KAR 20:320E	2150	11-19-90
902 KAR 20:330E	2163	11-19-90
902 KAR 45:005E	207	7-11-90
Replaced	1395	9-19-90
902 KAR 45:110E	31	5-16-90
Replaced	222	7-11-90
Resubmitted	222	7-11-90
Replaced	526	9-19-90
902 KAR 45:120E	32	5-16-90
Replaced	222	7-11-90
Resubmitted	222	7-11-90
Replaced	528	9-19-90
902 KAR 55:010E	32	5-30-90
Replaced	136	9-13-90
903 KAR 1:010E	223	6-21-90
Replaced	137	9-13-90
903 KAR 5:270E	224	6-21-90
Replaced	138	9-13-90
904 KAR 2:006E	1325	9-14-90
Replaced	1608	12-9-90
904 KAR 2:015E	1035	8-2-90
Replaced	1731	12-7-90
904 KAR 2:016E	1331	9-14-90
Replaced	1616	12-9-90
904 KAR 2:035E	1040	7-19-90
Replaced	532	9-19-90
904 KAR 2:050E	1041	7-19-90
Replaced	1412	9-19-90
904 KAR 2:110E	1688	10-4-90
904 KAR 2:116E	2167	12-6-90
904 KAR 3:035E	1690	10-9-90
905 KAR 2:010E	225	6-21-90
Replaced	140	9-13-90
907 KAR 1:004E	1042	7-19-90
Replaced	535	9-19-90
907 KAR 1:006E	1052	7-19-90
Replaced	546	9-19-90
907 KAR 1:010E	232	7-11-90
Replaced	1518	12-7-90
907 KAR 1:011E	1053	7-19-90
Replaced	549	9-19-90
907 KAR 1:013E	234	7-11-90
Replaced	1520	12-7-90
907 KAR 1:014E	237	7-11-90
Replaced	557	9-19-90
907 KAR 1:015E	238	7-11-90
Replaced	1944	12-7-90
907 KAR 1:016E	238	7-11-90
Replaced	559	9-19-90
907 KAR 1:017E	1058	8-7-90
Replaced	1295	12-7-90
907 KAR 1:019E	1694	10-9-90
907 KAR 1:020E	1695	10-9-90
Expired*		12-6-90
907 KAR 1:022E	1697	10-5-90
Expired*		12-6-90
907 KAR 1:025E	1701	10-5-90
Expired*		12-6-90
907 KAR 1:027E	239	7-11-90
Replaced	561	9-19-90
907 KAR 1:036E	241	7-11-90
Withdrawn		9-10-90
Resubmitted	1342	9-10-90
Replaced	1414	9-19-90
907 KAR 1:039E	248	7-11-90
Replaced	572	9-19-90
907 KAR 1:040E	249	7-11-90
Replaced	573	9-19-90
907 KAR 1:045E	250	7-11-90
Replaced	574	9-19-90
907 KAR 1:061E	1708	10-5-90
907 KAR 1:102E	1710	10-9-90
Expired*		12-6-90
907 KAR 1:104E	1711	10-9-90
Expired*		12-6-90
907 KAR 1:280E	251	7-11-90
Replaced	579	9-19-90
908 KAR 1:020E	252	6-21-90
Replaced	151	9-13-90
908 KAR 1:160E	253	6-21-90
Replaced	153	9-13-90

*Emergency expired; ordinary regulation died because Statement of Consideration was not filed 15 days following public hearing. (KRS 13A.190(10)(b))

Regulation	17 Ky.R. Page No.	Effective Date
11 KAR 5:030		
Amended	256	9-13-90
11 KAR 7:010		
Amended	2007	
11 KAR 7:020		
Amended	2010	
30 KAR 2:010	155	9-13-90
31 KAR 4:010	1229	12-7-90
31 KAR 4:020	1229	12-7-90
31 KAR 4:030	1230	12-7-90
31 KAR 4:040	1231	12-7-90
31 KAR 4:050	1232	12-7-90
101 KAR 1:325		
Amended	1114	11-14-90
101 KAR 1:335		
Amended	95	9-12-90
101 KAR 1:375		
Amended	97	9-12-90
101 KAR 1:400	156	9-12-90
101 KAR 2:030		
Expired		7-13-90
101 KAR 2:035	1233	
As amended	2171	12-6-90
101 KAR 2:040		
Expired		7-13-90
101 KAR 2:045	1236	12-6-90
As Amended	1968	
101 KAR 2:050		
Expired		7-13-90
101 KAR 2:055	1241	
As Amended	1971	12-6-90
101 KAR 2:060		
Expired		7-13-90
101 KAR 2:065	1243	12-6-90
101 KAR 2:070		
Expired		7-13-90
101 KAR 2:075	1245	12-6-90
101 KAR 2:090		
Expired		7-13-90
101 KAR 2:095	1246	
As Amended	1972	12-6-90

Regulation	17 Ky.R. Page No.	Effective Date
101 KAR 2:100		
Amended	1115	12-6-90
101 KAR 3:010		
Amended	1121	12-6-90
101 KAR 3:040		
Expired		7-13-90
101 KAR 3:045	1248	
As Amended	2173	12-6-90
103 KAR 1:010		
Amended	1126	11-21-90
103 KAR 5:010		
Expired		7-13-90
103 KAR 5:015		
Expired		7-13-90
103 KAR 5:021	2081	
103 KAR 5:050		
Expired		7-13-90
103 KAR 5:070		
Expired		7-13-90
103 KAR 5:090		
Expired		7-13-90
103 KAR 5:110		
Expired		7-13-90
103 KAR 5:130		
Expired		7-13-90
103 KAR 5:140		
Expired		7-13-90
103 KAR 8:020		
Expired		7-13-90
103 KAR 8:030		
Expired		7-13-90
103 KAR 8:070		
Expired		7-13-90
103 KAR 16:040		
Expired		7-13-90
103 KAR 16:050		
Expired		7-13-90
103 KAR 16:070		
Expired		7-13-90
103 KAR 16:080		
Expired		7-13-90
103 KAR 16:090		
Expired		7-13-90
103 KAR 17:030		
Expired		7-13-90
103 KAR 17:040		
Expired		7-13-90
103 KAR 17:041	1250	11-21-90
103 KAR 17:070		
Expired		7-13-90
103 KAR 17:080		
Amended	2012	
Withdrawn		11-26-90
103 KAR 17:081	2293	
103 KAR 18:100		
Amended	2209	
103 KAR 18:110		
Amended	1524	11-21-90
103 KAR 25:010		
Expired		7-13-90
103 KAR 25:020		
Expired		7-13-90
103 KAR 25:030		
Expired		7-13-90
103 KAR 25:040		
Expired		7-13-90
103 KAR 25:080		
Expired		7-13-90
103 KAR 25:081	1251	11-21-90
103 KAR 25:090		
Expired		7-13-90
103 KAR 25:091	1252	11-21-90
103 KAR 25:100		
Expired		7-13-90
103 KAR 26:040		
Expired		7-13-90
103 KAR 26:070		
Amended	1128	11-21-90
103 KAR 27:010		
Expired		7-13-90
103 KAR 27:090		
Expired		7-13-90
103 KAR 27:100		
Amended	1130	11-21-90
103 KAR 28:051		
Amended	1130	11-21-90
103 KAR 28:070		
Expired		7-13-90
103 KAR 28:100		
Expired		7-13-90
103 KAR 28:110		
Expired		7-13-90
103 KAR 28:120		
Expired		7-13-90
103 KAR 30:020		
Amended	2201	
103 KAR 30:090		
Expired		7-13-90
103 KAR 30:091	1254	
As Amended	1973	11-21-90
103 KAR 30:095	581	9-27-90
103 KAR 30:130		
Expired		7-13-90
103 KAR 30:140	1134	11-21-90
103 KAR 30:200		
Amended	1136	11-21-90
103 KAR 30:225		
Expired		7-13-90
103 KAR 31:010		
Expired		7-13-90
103 KAR 31:011	1256	11-21-90
103 KAR 31:060		
Expired		7-13-90
103 KAR 31:080		
Amended	1137	11-21-90
103 KAR 31:100		
Expired		7-13-90
103 KAR 31:110		
Expired		7-13-90
103 KAR 31:111	1257	11-21-90
103 KAR 31:120		
Expired		7-13-90
103 KAR 31:140		
Expired		7-13-90
103 KAR 31:150		
Expired		7-13-90
103 KAR 35:030		
Expired		7-13-90
103 KAR 43:070		
Expired		7-13-90
103 KAR 43:080		
Expired		7-13-90
103 KAR 43:130		
Expired		7-13-90
103 KAR 43:210		
Expired		7-13-90
103 KAR 43:230		
Expired		7-13-90
103 KAR 43:240		
Expired		7-13-90
103 KAR 43:250		
Expired		7-13-90
103 KAR 43:270		
Expired		7-13-90

Regulation	17 Ky.R. Page No.	Effective Date
103 KAR 43:290		
Expired		7-13-90
103 KAR 43:300		
Expired		7-13-90
103 KAR 44:010		
Expired		7-13-90
103 KAR 44:040	1632	11-21-90
105 KAR 1:010		
Amended	276	10-10-90
105 KAR 1:040		
Amended	99	9-12-90
201 KAR 1:068		
Amended	1525	
As Amended	1975	11-29-90
201 KAR 1:100		
Amended	1528	11-29-90
201 KAR 2:074		
As Amended	2175	12-13-90
201 KAR 2:111	2293	
201 KAR 2:116		
Amended	2212	
201 KAR 8:140		
Amended	1777	
201 KAR 8:285		
Amended	1778	12-13-90
201 KAR 9:300	1633	
Withdrawn		11-5-90
201 KAR 9:305	1634	
201 KAR 11:011	2294	
201 KAR 11:095		
Amended	2213	
201 KAR 11:105		
Amended	2214	
201 KAR 11:110		
Amended	2214	
201 KAR 11:115		
Amended	2215	
201 KAR 11:121	2295	
201 KAR 11:170		
Amended	2216	
201 KAR 11:175	2296	
201 KAR 11:210		
Amended	2217	
201 KAR 11:230	2297	
201 KAR 11:245	2299	
201 KAR 11:250	2300	
201 KAR 11:300	2301	
201 KAR 14:100		
Amended	1139	11-29-90
201 KAR 14:130		
Amended	1139	11-29-90
201 KAR 14:140		
Amended	1140	11-29-90
201 KAR 18:140		
Amended	278	
Withdrawn		9-4-90
201 KAR 19:005		
Amended	1779	12-13-90
201 KAR 19:025		
Amended	1779	
As Amended	2177	12-13-90
201 KAR 19:030		
Amended	1780	
As Amended	2178	12-13-90
201 KAR 19:035		
Amended	1781	
As Amended	2178	12-13-90
201 KAR 19:040		
Amended	1785	12-13-90
201 KAR 19:050		
Amended	1786	
As Amended	2182	12-13-90
201 KAR 19:055		
Repealed	1884	12-13-90
201 KAR 19:056	1884	12-13-90
201 KAR 19:060		
Amended	1787	12-13-90
201 KAR 19:070		
Amended	1788	12-13-90
201 KAR 19:075		
Repealed	1884	12-13-90
201 KAR 19:085		
Amended	1788	
As Amended	2182	12-13-90
201 KAR 19:095		
Amended	1790	12-13-90
201 KAR 19:100		
Amended	1792	12-13-90
201 KAR 19:105		
Amended	1793	12-13-90
201 KAR 20:310		
Amended	280	9-14-90
201 KAR 20:390	2082	
201 KAR 22:031		
Amended	1141	11-29-90
201 KAR 22:053		
As Amended	34	
As Amended	1350	8-17-90
201 KAR 26:160		
Amended	101	8-17-90
301 KAR 1:015		
Amended	1793	
301 KAR 1:056	1884	
301 KAR 1:075		
Amended	1795	
301 KAR 1:122		
Amended	1796	
301 KAR 1:150		
Amended	1797	
301 KAR 1:200		
Amended	1799	
301 KAR 2:044		
Amended	1531	11-15-90
301 KAR 2:047		
As Amended	35	6-27-90
301 KAR 2:110		
Amended	102	8-22-90
301 KAR 2:140		
Amended	1533	11-15-90
301 KAR 2:170		
Amended	54	7-11-90
301 KAR 2:180		
Repealed	1259	11-15-90
301 KAR 2:185	1259	11-15-90
301 KAR 2:220		
Amended	1800	
302 KAR 1:055	157	8-22-90
302 KAR 1:070	160	
As Amended	1060	8-22-90
302 KAR 1:080	2084	
302 KAR 15:010		
Amended	1143	
As Amended	1712	11-15-90
302 KAR 16:070	2302	
302 KAR 20:220	2087	
302 KAR 38:010	1261	
As Amended	1715	11-15-90
304 KAR 1:050	2090	
401 KAR 5:085		
Expired		7-13-90
401 KAR 6:015		
Expired		7-13-90
401 KAR 6:020		
Repealed		7-19-90

Regulation	17 Ky.R. Page No.	Effective Date
401 KAR 6:040		
Expired		7-13-90
401 KAR 6:060		
Repealed		7-19-90
401 KAR 6:300		
Expired		7-13-90
401 KAR 6:320	581	
Amended	1421	11-15-90
401 KAR 8:010	584	
Amended	1422	11-15-90
401 KAR 8:020	588	
Amended	1425	11-15-90
401 KAR 8:030	592	
Amended	1428	11-15-90
401 KAR 8:040	597	
Amended	1432	11-15-90
401 KAR 8:050	599	11-15-90
401 KAR 8:060	601	11-15-90
401 KAR 8:070	604	
Amended	1433	11-15-90
401 KAR 8:100	609	
Amended	1437	
As Amended	1715	
As Amended	1977	11-15-90
401 KAR 8:150	612	
Amended	1439	
As Amended	1717	11-15-90
401 KAR 8:200	614	
Amended	1440	11-15-90
401 KAR 8:250	619	11-15-90
401 KAR 8:300	622	11-15-90
401 KAR 8:350	624	
Amended	1443	11-15-90
401 KAR 8:400	626	11-15-90
401 KAR 8:420	628	11-15-90
401 KAR 8:440	633	11-15-90
401 KAR 8:500	635	11-15-90
401 KAR 8:550	639	11-15-90
401 KAR 8:600	641	11-15-90
401 KAR 8:650	643	11-15-90
401 KAR 8:700	645	11-15-90
401 KAR 32:030		
Amended	281	
Amended	1444	11-15-90
401 KAR 32:050		
Amended	284	9-25-90
401 KAR 34:020		
Amended	287	9-25-90
401 KAR 34:050		
Amended	292	9-25-90
401 KAR 34:060		
Amended	295	9-25-90
401 KAR 34:070		
Amended	304	9-25-90
401 KAR 34:090		
Amended	310	9-25-90
401 KAR 34:100		
Amended	319	9-25-90
401 KAR 34:120		
Amended	328	
Amended	1445	11-15-90
401 KAR 34:130		
Amended	333	9-25-90
401 KAR 34:165		
Amended	334	9-25-90
401 KAR 34:250	646	
Amended	1448	11-15-90
401 KAR 34:360	648	9-25-90
401 KAR 35:010		
Amended	337	9-25-90
401 KAR 35:020		
Amended	340	9-25-90
401 KAR 35:120		
Amended	343	
Amended	1450	11-15-90
401 KAR 35:130		
Amended	347	9-25-90
401 KAR 35:190		
Amended	349	9-25-90
401 KAR 36:070		
Amended	357	9-25-90
401 KAR 37:010		
Amended	359	9-25-90
401 KAR 37:030		
Amended	365	9-25-90
401 KAR 37:040		
Amended	367	9-25-90
401 KAR 37:050		
Amended	370	9-25-90
401 KAR 37:110	656	9-25-90
401 KAR 38:010		
Amended	372	9-25-90
401 KAR 38:040		
Amended	376	
Amended	1453	
As Amended	1978	11-15-90
401 KAR 38:050		
Amended	381	9-25-90
401 KAR 38:060		
Amended	385	9-25-90
401 KAR 38:070		
Amended	391	9-25-90
401 KAR 38:090		
Amended	394	9-25-90
401 KAR 38:100		
Amended	399	9-25-90
401 KAR 38:230	658	
Amended	1456	11-15-90
401 KAR 38:500		
Amended	401	9-25-90
401 KAR 39:010		
Expired		7-13-90
401 KAR 39:020		
Expired		7-13-90
401 KAR 39:030		
Expired		7-13-90
401 KAR 39:070		
Expired		7-13-90
401 KAR 42:011	1635	
401 KAR 42:020	1637	
Amended	1994	
401 KAR 42:030	1638	
401 KAR 42:040	1640	
401 KAR 42:050	1641	
401 KAR 42:060	1643	
401 KAR 42:070	1645	
Amended	1994	
401 KAR 42:090	1646	
401 KAR 42:200	660	9-25-90
401 KAR 47:134	2091	
401 KAR 47:136	2093	
401 KAR 50:005		
Recodifed to 401 KAR 50:012		7-31-90
401 KAR 50:010		
Amended	403	
Amended	1457	11-15-90
401 KAR 50:012		
Recodified from 401 KAR 50:005		7-31-90
401 KAR 50:036		
Expired		7-13-90
401 KAR 51:010		
Amended	407	11-15-90

Regulation	17 Ky.R. Page No.	Effective Date
401 KAR 59:021	662	
Amended	1460	
As Amended	1982	11-15-90
401 KAR 59:023	672	
Amended	1470	
401 KAR 61:011	681	
Amended	1478	11-15-90
401 KAR 61:013	686	
Amended	1481	
405 KAR 10:050		
Reprint	1654	12-13-88
500 KAR 6:210	1262	12-7-90
500 KAR 6:220	1264	12-7-90
500 KAR 8:010	1885	
Amended	2203	
500 KAR 9:010	162	9-13-90
Amended	2218	
500 KAR 9:015	2303	
500 KAR 9:020	163	
As Amended	1061	9-13-90
500 KAR 9:030	164	9-13-90
500 KAR 9:040	165	
As Amended	1062	9-13-90
Amended	2219	
500 KAR 9:050	1265	
Withdrawn		10-9-90
500 KAR 9:060	1265	
Withdrawn		10-9-90
501 KAR 6:020		
Amended	410	10-14-90
Amended	1807	
Amended	2221	
501 KAR 6:030		
Amended	103	9-13-90
Amended	1536	12-9-90
Amended	1809	
Amended	2223	
501 KAR 6:040		
Amended	412	10-14-90
Amended	1538	12-9-90
501 KAR 6:060		
Amended	413	10-14-90
501 KAR 6:070		
Amended	1811	
501 KAR 6:080		
Amended	415	10-14-90
501 KAR 6:090		
Amended	415	10-14-90
Amended	2225	
501 KAR 6:120		
Amended	417	10-14-90
501 KAR 6:130		
Amended	2226	
501 KAR 6:160	1648	12-9-90
501 KAR 9:020		
Expired		7-13-90
501 KAR 9:025	2095	
501 KAR 11:010	690	10-14-90
502 KAR 45:050		
Amended	2013	
600 KAR 1:050		
Expired		7-13-90
600 KAR 3:010		
Amended	1812	
600 KAR 4:010		
Amended	1540	12-4-90
601 KAR 1:025		
Amended	105	9-4-90
601 KAR 1:029		
Amended	165	
As Amended	1062	9-4-90
601 KAR 1:035		
Expired		7-13-90
601 KAR 1:150		
Expired		7-13-90
601 KAR 1:160	167	
As Amended	1063	9-4-90
601 KAR 1:170	2306	
601 KAR 9:074		
Amended	1146	11-12-90
601 KAR 9:125		
Amended	419	10-2-90
601 KAR 9:140		
Amended	1150	11-12-90
601 KAR 9:145	2307	
601 KAR 13:020		
Expired		7-13-90
601 KAR 13:070	1649	
As Amended	1991	12-4-90
601 KAR 14:010		
Amended	108	9-4-90
603 KAR 5:025		
Amended	1832	
603 KAR 5:070		
Amended	1834	
603 KAR 5:071		
Amended	1838	
603 KAR 5:075		
Amended	1839	
603 KAR 5:105	1266	11-12-90
603 KAR 5:110		
Amended	1151	
Amended	1736	12-4-90
603 KAR 5:111	1267	
Amended	1737	12-4-90
603 KAR 5:112	1886	
Amended	2203	
603 KAR 5:230		
Amended	1153	
Amended	1739	12-4-90
603 KAR 5:240	691	
As Amended	1352	10-2-90
605 KAR 1:180	2308	
701 KAR 5:020		
Amended	421	10-14-90
701 KAR 5:050		
Amended	422	10-14-90
701 KAR 5:080	2311	
702 KAR 1:005		
Amended	2227	
702 KAR 1:010		
Amended	2014	
702 KAR 1:025		
Repealed	168	9-13-90
702 KAR 1:026	168	9-13-90
702 KAR 1:035		
Amended	423	10-14-90
702 KAR 1:040		
Amended	2015	
702 KAR 1:070		
Amended	2017	
702 KAR 1:080		
Amended	424	10-14-90
702 KAR 1:100		
Amended	425	10-14-90
702 KAR 1:115		
Amended	2017	
702 KAR 1:121	2096	
702 KAR 1:130	692	10-14-90
702 KAR 3:010		
Amended	1544	12-9-90
702 KAR 3:020		
Amended	1545	12-9-90

Regulation	17 Ky.R. Page No.	Effective Date
702 KAR 3:030		
Amended	426	
As Amended	1352	10-14-90
702 KAR 3:040		
Amended	1547	12-9-90
702 KAR 3:045		
Amended	1548	12-9-90
702 KAR 3:050		
Amended	1548	12-9-90
702 KAR 3:060		
Amended	1549	12-9-90
702 KAR 3:070		
Amended	1550	12-9-90
702 KAR 3:075		
Amended	1552	12-9-90
702 KAR 3:080		
Amended	1552	12-9-90
702 KAR 3:090		
Amended	1553	12-9-90
702 KAR 3:100		
Amended	1554	
As Amended	1993	12-9-90
702 KAR 3:110		
Amended	1555	
As Amended	1993	12-9-90
702 KAR 3:120		
Amended	427	10-14-90
702 KAR 3:130		
Amended	428	
As Amended	1353	10-14-90
702 KAR 3:135		
Amended	2019	
702 KAR 3:150		
Amended	2020	
702 KAR 3:170		
Amended	1556	12-9-90
702 KAR 3:190		
Amended	429	12-7-90
702 KAR 3:200		
Amended	109	
As Amended	1064	9-13-90
702 KAR 3:210		
Repealed	169	9-13-90
702 KAR 3:211	169	9-13-90
702 KAR 3:220	1651	
Amended	1994	
702 KAR 3:230	1652	12-9-90
702 KAR 3:240	2097	
702 KAR 4:005		
Amended	2021	
702 KAR 4:010		
Amended	2234	
702 KAR 4:020		
Amended	2235	
702 KAR 4:030		
Amended	2237	
702 KAR 4:040		
Amended	2238	
702 KAR 4:050		
Amended	2022	
702 KAR 4:060		
Amended	2024	
702 KAR 4:070		
Amended	2026	
702 KAR 4:080		
Amended	2028	
702 KAR 4:090		
Amended	2029	
702 KAR 4:100		
Amended	2030	
702 KAR 4:110		
Amended	2031	
702 KAR 4:120		
Amended	2032	
702 KAR 4:130		
Amended	2033	
702 KAR 5:010		
Amended	431	10-14-90
Amended	2035	
702 KAR 5:020		
Amended	432	10-14-90
702 KAR 5:030		
Amended	435	
As Amended	1354	10-14-90
Amended	2036	
702 KAR 5:040		
Amended	2037	
702 KAR 5:050		
Amended	2038	
702 KAR 5:060		
Amended	436	10-14-90
702 KAR 5:080		
Amended	2239	
702 KAR 5:090		
Amended	437	10-14-90
702 KAR 5:100		
Amended	438	10-14-90
702 KAR 5:110		
Amended	439	
As Amended	1355	10-14-90
702 KAR 5:120		
Amended	441	10-14-90
702 KAR 5:130		
Amended	442	10-14-90
702 KAR 5:140		
Amended	443	10-14-90
702 KAR 5:150	693	12-7-90
702 KAR 6:010		
Amended	2040	
702 KAR 6:020		
Amended	2040	
702 KAR 6:030		
Amended	2041	
702 KAR 6:040		
Amended	2042	
702 KAR 6:045		
Amended	2043	
702 KAR 6:050		
Amended	2044	
702 KAR 6:060		
Amended	2045	
702 KAR 6:070		
Expired		7-13-90
702 KAR 6:075	694	
As Amended	1356	10-14-90
702 KAR 6:090		
Amended	2046	
702 KAR 7:010		
Amended	444	10-14-90
702 KAR 7:020		
Amended	446	10-14-90
702 KAR 7:030		
Amended	447	10-14-90
702 KAR 7:040		
Amended	448	10-14-90
702 KAR 7:050		
Amended	449	12-7-90
702 KAR 7:060		
Repealed	695	10-14-90
702 KAR 7:061	695	10-14-90
702 KAR 7:065		
Amended	451	
Amended	1484	12-7-90

Regulation	17 Ky.R. Page No.	Effective Date
702 KAR 7:070		
Expired		7-13-90
702 KAR 7:080		
Amended	452	10-14-90
702 KAR 7:090		
Amended	453	10-14-90
702 KAR 7:100	1269	12-7-90
704 KAR 3:035		
Amended	455	
Amended	1485	12-7-90
704 KAR 3:266	2098	
704 KAR 3:285		
Amended	111	9-13-90
704 KAR 3:292		
Amended	2047	
704 KAR 3:304		
Amended	112	
Withdrawn		7-12-90
Amended	458	10-14-90
704 KAR 3:305		
Amended	113	9-13-90
704 KAR 3:307		
Amended	2050	
704 KAR 3:320		
Repealed	169	9-13-90
704 KAR 3:321	169	9-13-90
704 KAR 3:325		
Amended	114	9-13-90
704 KAR 3:335		
Amended	2051	
704 KAR 3:340		
Amended	2243	
704 KAR 3:345		
Amended	116	9-13-90
704 KAR 3:355		
Expired		7-13-90
704 KAR 3:360		
Expired		7-13-90
704 KAR 3:365		
Amended	2055	
704 KAR 3:380	170	
As Amended	1065	9-13-90
704 KAR 3:390	695	10-14-90
704 KAR 3:400	698	10-14-90
704 KAR 3:410	701	
Amended	1487	12-9-90
704 KAR 4:010		
Amended	2056	
704 KAR 4:020		
Amended	2245	
704 KAR 5:050		
Amended	119	9-13-90
704 KAR 5:060		
Amended	2057	
704 KAR 7:011	2099	
704 KAR 7:050		
Amended	2058	
704 KAR 7:055	2100	
704 KAR 7:070		
Amended	2059	
704 KAR 7:080		
Amended	2247	
704 KAR 7:090		
Amended	2061	
704 KAR 7:100	705	10-14-90
704 KAR 10:050		
Amended	2063	
704 KAR 15:015		
Amended	459	10-14-90
704 KAR 20:005		
Amended	460	10-14-90
705 KAR 1:001	172	9-13-90
705 KAR 1:010		
Repealed	172	9-13-90
705 KAR 1:020		
Repealed	172	9-13-90
705 KAR 2:120		
Amended	2065	
705 KAR 3:010		
Repealed	172	9-13-90
705 KAR 3:030		
Repealed	172	9-13-90
705 KAR 3:040		
Repealed	172	9-13-90
705 KAR 3:075		
Repealed	172	9-13-90
705 KAR 3:080		
Repealed	172	9-13-90
705 KAR 3:110		
Repealed	172	9-13-90
705 KAR 3:120		
Repealed	172	9-13-90
705 KAR 3:140	2101	
705 KAR 4:010		
Repealed	172	9-13-90
705 KAR 4:040		
Amended	2066	
705 KAR 4:050		
Amended	2067	
705 KAR 4:080		
Amended	2068	
705 KAR 4:210		
Repealed	172	9-13-90
705 KAR 4:220		
Repealed	172	9-13-90
705 KAR 4:230	2103	
705 KAR 5:020		
Repealed	172	9-13-90
705 KAR 5:040		
Repealed	172	9-13-90
705 KAR 5:060		
Repealed	172	9-13-90
705 KAR 5:070		
Repealed	172	9-13-90
705 KAR 5:080		
Repealed	172	9-13-90
705 KAR 5:090		
Repealed	172	9-13-90
705 KAR 5:100		
Repealed	172	9-13-90
705 KAR 5:110		
Repealed	172	9-13-90
705 KAR 5:130		
Repealed	172	9-13-90
705 KAR 5:140		
Repealed	172	9-13-90
705 KAR 6:010		
Repealed	172	9-13-90
705 KAR 11:010		
Repealed	172	9-13-90
705 KAR 11:020		
Repealed	172	9-13-90
705 KAR 11:030		
Repealed	172	9-13-90
705 KAR 11:040		
Repealed	172	9-13-90
706 KAR 1:001	706	10-14-90
706 KAR 1:010		
Repealed		1-12-90
706 KAR 1:020		
Repealed	706	10-14-90
706 KAR 1:050		
Repealed		1-12-90

Regulation	17 Ky.R. Page No.	Effective Date
706 KAR 1:060		
Repealed	706	10-14-90
706 KAR 1:070		
Repealed	706	10-14-90
706 KAR 1:080		
Repealed	706	10-14-90
706 KAR 1:090		
Repealed	706	10-14-90
706 KAR 1:100		
Repealed	706	10-14-90
706 KAR 1:110		
Repealed	706	10-14-90
707 KAR 1:003		
Repealed		8-9-90
707 KAR 1:041		
Amended	1191	12-7-90
707 KAR 1:045		
Amended	1192	12-7-90
707 KAR 1:051		
Amended	1557	
As Amended	2183	
707 KAR 1:052		
Amended	1195	12-7-90
707 KAR 1:053		
Amended	1198	12-7-90
707 KAR 1:054		
Amended	1200	12-7-90
707 KAR 1:055		
Amended	1202	12-7-90
707 KAR 1:056		
Amended	1204	12-7-90
707 KAR 1:057		
Amended	1206	12-7-90
707 KAR 1:058		
Amended	1209	12-7-90
707 KAR 1:059		
Amended	1211	12-7-90
707 KAR 1:060		
Amended	2069	
707 KAR 1:070		
Amended	1212	12-7-90
707 KAR 1:080		
Amended	1214	12-7-90
707 KAR 1:090		
Amended	2070	
707 KAR 1:100		
Amended	2071	
707 KAR 1:110		
Amended	2073	
707 KAR 1:120		
Amended	2077	
707 KAR 1:130		
Amended	2078	
707 KAR 1:140		
Amended	1566	
Amended	1995	
708 KAR 1:001	2104	
709 KAR 1:001	707	10-14-90
709 KAR 1:010		
Repealed	707	10-14-90
709 KAR 1:020		
Repealed	707	10-14-90
709 KAR 1:030		
Repealed	707	10-14-90
709 KAR 1:040		
Repealed	707	10-14-90
709 KAR 1:060		
Repealed	172	9-13-90
709 KAR 1:070		
Repealed	172	9-13-90
709 KAR 1:090		
Repealed	707	10-14-90
709 KAR 1:100		
Repealed	707	10-14-90
709 KAR 1:110		
Repealed	707	10-14-90
709 KAR 1:120		
Repealed	707	10-14-90
709 KAR 1:130		
Repealed	707	10-14-90
709 KAR 1:140		
Repealed	707	10-14-90
720 KAR 1:010		
Recodified to 782 KAR 1		7-5-90
720 KAR 1:020		
Recodified to 782 KAR 1		7-5-90
720 KAR 1:030		
Recodified to 782 KAR 1		7-5-90
720 KAR 1:040		
Recodified to 782 KAR 1		7-5-90
720 KAR 1:050		
Recodified to 782 KAR 1		7-5-90
725 KAR 1:060	2105	
765 KAR 1:010	708	10-14-90
765 KAR 1:020	709	10-14-90
765 KAR 1:030	709	10-14-90
765 KAR 1:040	710	10-14-90
765 KAR 1:050	711	10-14-90
765 KAR 1:060	712	10-14-90
765 KAR 1:070	712	10-14-90
775 KAR 1:010	1270	12-7-90
775 KAR 1:020	1271	12-7-90
775 KAR 1:030	1272	12-7-90
775 KAR 1:040	1273	12-7-90
775 KAR 1:050	1274	12-7-90
775 KAR 1:060	1275	12-7-90
780 KAR 1:010	713	10-14-90
780 KAR 2:010	714	10-14-90
780 KAR 2:020	715	10-14-90
780 KAR 2:030	716	10-14-90
780 KAR 2:040	717	10-14-90
780 KAR 2:045	1888	
As Amended	2192	
780 KAR 2:050	718	10-14-90
780 KAR 2:060	719	10-14-90
780 KAR 2:070	720	10-14-90
780 KAR 2:080	721	10-14-90
780 KAR 2:090	722	10-14-90
780 KAR 2:100	723	10-14-90
780 KAR 2:110	725	10-14-90
780 KAR 2:120	726	10-14-90
780 KAR 2:130	727	10-14-90
780 KAR 2:140	728	10-14-90
780 KAR 3:010	730	10-14-90
780 KAR 3:020	731	10-14-90
780 KAR 3:030	732	10-14-90
780 KAR 3:040	733	10-14-90
780 KAR 3:050	734	10-14-90
780 KAR 3:060	735	10-14-90
780 KAR 3:070	736	10-14-90
780 KAR 3:080	741	10-14-90
780 KAR 3:090	742	10-14-90
780 KAR 3:100	743	10-14-90
780 KAR 3:110	745	10-14-90
780 KAR 3:120	746	10-14-90
780 KAR 3:130	748	10-14-90
780 KAR 3:140	749	10-14-90
780 KAR 3:150	750	10-14-90
780 KAR 4:010	751	10-14-90
780 KAR 4:020	754	10-14-90
780 KAR 5:010	755	10-14-90
780 KAR 5:020	755	10-14-90
780 KAR 5:030	756	10-14-90
780 KAR 5:040	757	10-14-90

Regulation	17 Ky.R. Page No.	Effective Date
780 KAR 5:050	757	10-14-90
780 KAR 6:010	1276	12-9-90
780 KAR 6:020	1277	12-9-90
780 KAR 6:030	1278	12-9-90
780 KAR 6:040	1279	12-9-90
780 KAR 6:050	1279	12-9-90
780 KAR 6:060	1280	12-9-90
780 KAR 6:070	1285	12-9-90
780 KAR 6:080	1286	12-9-90
780 KAR 6:090	1287	12-9-90
780 KAR 6:100	1287	12-9-90
780 KAR 7:010	758	10-14-90
780 KAR 7:020	760	10-14-90
780 KAR 7:030	761	10-14-90
780 KAR 7:040	762	10-14-90
780 KAR 7:050	762	10-14-90
780 KAR 7:060	763	10-14-90
780 KAR 7:070	764	10-14-90
780 KAR 8:010	765	10-14-90
780 KAR 9:010	766	10-14-90
780 KAR 9:020	767	10-14-90
780 KAR 9:030	768	10-14-90
780 KAR 9:040	769	10-14-90
780 KAR 9:050	771	10-14-90
780 KAR 9:060	774	10-14-90
780 KAR 9:070	776	10-14-90
780 KAR 9:080	776	10-14-90
780 KAR 9:090	778	10-14-90
781 KAR 1:010	779	
Amended	1491	12-7-90
781 KAR 1:020	782	
Amended	1493	12-7-90
781 KAR 1:030	787	
Amended	1497	
As Amended	1718	12-7-90
781 KAR 1:040	789	10-14-90
781 KAR 1:050	791	10-14-90
781 KAR 1:060	794	10-14-90
781 KAR 1:070	796	10-14-90
781 KAR 2:010	797	
Amended	1499	12-7-90
781 KAR 2:020	800	
Amended	1501	12-7-90
782 KAR 1:010		
Recodified from 720 KAR 1		7-5-90
782 KAR 1:020		
Recodified from 720 KAR 1		7-5-90
782 KAR 1:030		
Recodified from 720 KAR 1		7-5-90
782 KAR 1:040		
Recodified from 720 KAR 1		7-5-90
782 KAR 1:050		
Recodified from 720 KAR 1		7-5-90
803 KAR 2:303		
Amended	1842	
803 KAR 2:305		
Amended	1843	
803 KAR 2:306		
Amended	1845	
803 KAR 2:307		
Amended	1847	
803 KAR 2:313		
Amended	1849	
803 KAR 2:316		
Amended	1851	
803 KAR 2:317		
Amended	1852	
803 KAR 2:318		
Amended	1854	
803 KAR 2:320		
Amended	1855	
803 KAR 2:413		
Amended	1858	
804 KAR 2:007		
Amended	461	9-14-90
804 KAR 3:090		
Repealed	1889	12-13-90
804 KAR 3:091	1889	12-13-90
804 KAR 4:015		
Amended	1860	
As Amended	2192	12-13-90
804 KAR 4:110		
Amended	1569	11-29-90
804 KAR 4:250		
Amended	1861	
As Amended	2193	12-13-90
804 KAR 5:010		
Repealed	1889	12-13-90
804 KAR 5:040		
Amended	1861	12-13-90
804 KAR 7:040		
Repealed	1889	12-13-90
806 KAR 9:220	803	10-14-90
806 KAR 11:020	2311	
806 KAR 12:090		
Expired		7-13-90
806 KAR 12:092	806	
Amended	1503	11-15-90
806 KAR 12:094	809	
Amended	1505	11-15-90
806 KAR 12:130		
Expired		7-13-90
806 KAR 17:065		
Expired		7-13-90
806 KAR 17:066	813	
Reprinted	1298	10-14-90
806 KAR 18:040	2313	
807 KAR 5:058	1289	
As Amended	1720	
808 KAR 1:050		
Amended	1571	12-9-90
808 KAR 1:070		
As Amended	1066	9-13-90
808 KAR 3:020		
Amended	1572	12-9-90
815 KAR 7:010		
Amended	462	
As Amended	1356	10-14-90
815 KAR 7:020		
Repealed	1365	10-14-90
815 KAR 7:025	827	
As Amended	1365	10-14-90
815 KAR 10:040		
Amended	257	
As Amended	1068	8-22-90
Amended	2248	
815 KAR 15:020		
As Amended	1085	8-22-90
815 KAR 20:010		
As Amended	1092	8-22-90
815 KAR 20:020		
Amended	472	10-14-90
Amended	2266	
815 KAR 20:071		
As Amended	1098	8-22-90
815 KAR 20:076		
As Amended	1099	8-22-90
815 KAR 20:120		
As Amended	1100	8-22-90
Amended	2269	
815 KAR 20:130		
As Amended	1108	8-22-90

Regulation	17 Ky.R. Page No.	Effective Date
815 KAR 30:050 Expired		7-13-90
815 KAR 30:060	1890	
Amended	2205	
815 KAR 35:030	172	
As Amended	1111	8-22-90
815 KAR 45:070 Expired		7-13-90
901 KAR 5:050		
Amended	121	9-13-90
901 KAR 5:070		
Amended	122	9-13-90
901 KAR 5:110 Expired		7-13-90
902 KAR 2:130	174	
Withdrawn		7-20-90
902 KAR 2:140	175	9-13-90
902 KAR 2:150	2107	
902 KAR 2:160	2109	
902 KAR 8:030		
Amended	2079	
902 KAR 10:010		
Amended	123	
Withdrawn		7-12-90
902 KAR 10:040		
Amended	474	
As Amended	1372	9-19-90
902 KAR 10:120		
Amended	480	
As Amended	1377	9-19-90
902 KAR 11:010		
Amended	129	9-13-90
902 KAR 13:050		
Amended	130	9-13-90
902 KAR 13:080		
Amended	2277	
902 KAR 13:120	2316	
902 KAR 15:010		
Amended	496	
As Amended	1392	9-19-90
902 KAR 15:020		
Amended	500	9-19-90
902 KAR 17:010		
Amended	1863	
Died*		12-6-90
Amended	2278	
902 KAR 17:020		
As Amended	1112	9-13-90
902 KAR 20:006		
Amended	504	
Amended	1509	
As Amended	1724	12-7-90
902 KAR 20:008		
Amended	133	9-13-90
902 KAR 20:026		
Amended	58	7-18-90
Amended	1572	
Amended	1998	
As Amended	2193	
902 KAR 20:048		
Amended	67	7-18-90
Amended	1582	
902 KAR 20:051		
Amended	76	7-18-90
Amended	1590	
902 KAR 20:086		
Amended	84	7-18-90
Amended	1598	
902 KAR 20:116	1893	
Died*		12-6-90
902 KAR 20:127 Repealed		7-19-90
902 KAR 20:132 Repealed		7-19-90
902 KAR 20:133	834	9-19-90
902 KAR 20:135		
Amended	135	9-13-90
902 KAR 20:300	1894	
Died*		12-6-90
Resubmitted	2319	
902 KAR 20:310	1905	
Died*		12-6-90
Resubmitted	2331	
902 KAR 20:320	2110	
902 KAR 20:330	2123	
902 KAR 45:005		
Amended	512	
As Amended	1395	9-19-90
902 KAR 45:045		
Repealed	207	7-11-90
902 KAR 45:110		
Amended	526	9-19-90
902 KAR 45:120		
Amended	528	9-19-90
902 KAR 45:150		
Amended	529	
As Amended	1409	9-19-90
902 KAR 55:010		
Amended	136	9-13-90
902 KAR 100:010		
As Amended	39	6-27-90
902 KAR 100:058		
Amended	1215	12-7-90
902 KAR 100:175 Expired		7-13-90
903 KAR 1:010		
Amended	137	9-13-90
903 KAR 5:270		
Amended	138	9-13-90
903 KAR 6:070	2127	
904 KAR 2:006		
Amended	1608	12-9-90
904 KAR 2:015		
Amended	1222	
As Amended	1731	12-7-90
904 KAR 2:016		
As Amended	46	6-27-90
Amended	1616	12-9-90
904 KAR 2:022		
Amended	1628	12-9-90
904 KAR 2:026	2129	
904 KAR 2:035		
Amended	532	9-19-90
904 KAR 2:050		
Amended	534	
As Amended	1412	9-19-90
904 KAR 2:110		
Amended	1864	
904 KAR 2:116		
Amended	2279	
904 KAR 3:035		
Amended	1867	
905 KAR 1:050		
Amended	138	9-13-90
905 KAR 1:071		
Expired		7-13-90
905 KAR 1:300	835	
Died*		9-5-90
Resubmitted	1913	
Died*		12-6-90
Resubmitted	2339	

Regulation	17 Ky.R. Page No.	Effective Date
905 KAR 1:310	847	
Died*		9-5-90
Resubmitted	1925	
Died*		12-6-90
Resubmitted	2351	
905 KAR 2:010		
Amended	140	9-13-90
905 KAR 6:070	1932	
905 KAR 8:140	854	
Amended	1515	12-7-90
906 KAR 1:070	2130	
907 KAR 1:004		
Amended	535	9-19-90
907 KAR 1:005		
Amended	148	9-13-90
907 KAR 1:006		
Amended	546	9-19-90
907 KAR 1:010		
Amended	547	
Amended	1518	12-7-90
907 KAR 1:011		
Amended	549	9-19-90
907 KAR 1:013		
Amended	554	
Amended	1520	12-7-90
907 KAR 1:014		
Amended	557	9-19-90
907 KAR 1:015		
Amended	558	
Amended	1523	
Reprinted	1944	12-7-90
907 KAR 1:016		
Amended	559	9-19-90
907 KAR 1:017	1295	12-7-90
907 KAR 1:019		
Amended	1871	
907 KAR 1:020		
Amended	1872	
Died*		12-6-90
Amended	2284	
907 KAR 1:022		
Amended	1874	
Died*		12-6-90
Amended	2286	
907 KAR 1:024		
Repealed	1701	10-5-90
907 KAR 1:025	1934	
Died*		12-6-90
Resubmitted	2358	
907 KAR 1:027		
Amended	561	9-19-90
907 KAR 1:031		
Amended	562	9-19-90
907 KAR 1:036		
Amended	564	
As Amended	1414	9-19-90
Repealed	1701	10-5-90
907 KAR 1:039		
Amended	572	9-19-90
907 KAR 1:040		
Amended	149	
Withdrawn		6-25-90
Amended	573	9-19-90
907 KAR 1:045		
Amended	574	9-19-90
907 KAR 1:060		
Amended	1879	
907 KAR 1:061		
Amended	576	9-19-90
Amended	1880	
907 KAR 1:095		
Amended	1883	
Died*		12-6-90
Amended	2291	
907 KAR 1:102	1941	
Died*		12-6-90
Resubmitted	2365	
907 KAR 1:104	1942	
Died*		12-6-90
Resubmitted	2366	
907 KAR 1:280		
Amended	579	9-19-90
907 KAR 1:330		
Amended	150	9-13-90
907 KAR 1:430		
Amended	2292	
907 KAR 1:470		
Amended	1227	12-7-90
908 KAR 1:020		
Amended	151	9-13-90
908 KAR 1:160		
Amended	153	9-13-90
908 KAR 3:080		
Amended	1228	12-7-90
908 KAR 3:180		
Amended	579	9-19-90

*Died - Proposed regulation or proposed amendment died; statement of consideration not filed within 15 days after public hearing (KRS 13A.280(2))

KRS INDEX

KRS Section	Regulation
6.525	103 KAR 17:081
13A.082	804 KAR 3:091
15A.070	500 KAR 8:010
15A.210	500 KAR 6:210
	500 KAR 6:220
16.040	502 KAR 45:050
16.505-16.652	105 KAR 1:010
	105 KAR 1:040
18A.030	101 KAR 2:035
	101 KAR 2:045
	101 KAR 2:065
	101 KAR 2:095
	101 KAR 2:100
18A.055	101 KAR 2:055
	101 KAR 2:075
18A.075	101 KAR 1:325
	101 KAR 1:335
	101 KAR 1:375
	101 KAR 1:400
18A.0751	101 KAR 1:325
	101 KAR 1:335
	101 KAR 1:375
	101 KAR 1:400
18A.110	101 KAR 2:035
	101 KAR 2:045
	101 KAR 2:055
	101 KAR 2:065
	101 KAR 2:075
	101 KAR 2:095
	101 KAR 2:100
18A.111	101 KAR 1:325
18A.115	101 KAR 1:335
	101 KAR 1:400
	101 KAR 2:075
18A.120	101 KAR 2:045
	101 KAR 2:055
	101 KAR 2:075
18A.155	101 KAR 3:010
	101 KAR 3:045
18A.165	101 KAR 2:035
	101 KAR 2:065
18A.205	702 KAR 1:035
18A.225	702 KAR 1:035
21.470	103 KAR 17:081
42.024	708 KAR 1:001
45A.350	702 KAR 3:135
56.610-56.760	600 KAR 3:010
58.150	702 KAR 3:020
61.510-61.705	105 KAR 1:010
	105 KAR 1:040
61.690	103 KAR 17:081
78.510-78.852	105 KAR 1:010
	105 KAR 1:040
Chapter 96A	600 KAR 4:010
117.045	31 KAR 4:050
117.086	31 KAR 4:040
117.227	31 KAR 4:010
117.343	31 KAR 4:020
117.355	31 KAR 4:030
118.105	30 KAR 2:010
119.307	31 KAR 4:030
131.081	103 KAR 1:010
131.110	103 KAR 1:010
131.340	103 KAR 1:010
131.345	103 KAR 1:010
131.360	103 KAR 1:010
131.370	103 KAR 1:010

KRS Section	Regulation
134.370	103 KAR 5:021
136.290	103 KAR 5:021
136.300	103 KAR 5:021
Chapter 138	601 KAR 1:160
138.450	103 KAR 44:040
138.460	103 KAR 44:040
138.470	103 KAR 44:040
138.655-138.725	601 KAR 9:074
139.025	103 KAR 31:011
139.050	103 KAR 27:100
	103 KAR 28:051
	103 KAR 30:020
	103 KAR 31:011
	103 KAR 31:080
139.070	103 KAR 30:200
139.080	103 KAR 31:080
139.090	103 KAR 28:051
	103 KAR 31:080
139.100	103 KAR 28:051
	103 KAR 30:200
	103 KAR 31:080
139.110	103 KAR 26:070
	103 KAR 28:051
	103 KAR 30:020
	103 KAR 30:200
	103 KAR 31:080
139.120	103 KAR 28:051
	103 KAR 30:200
	103 KAR 31:011
139.130	103 KAR 27:100
	103 KAR 30:020
	103 KAR 31:011
	103 KAR 31:080
139.150	103 KAR 26:070
139.190	103 KAR 26:070
139.200	103 KAR 28:051
	103 KAR 31:011
139.210	103 KAR 25:081
	103 KAR 26:070
	103 KAR 28:051
	103 KAR 31:080
139.230	103 KAR 25:081
	103 KAR 25:091
139.240	103 KAR 26:070
	103 KAR 30:200
139.260	103 KAR 26:070
	103 KAR 30:091
	103 KAR 31:011
	103 KAR 31:111
139.270	103 KAR 26:070
	103 KAR 31:111
139.290	103 KAR 28:051
	103 KAR 31:111
139.300	103 KAR 31:111
139.310	103 KAR 26:070
	103 KAR 28:051
139.320	103 KAR 28:051
139.330	103 KAR 28:051
139.340	103 KAR 25:091
	103 KAR 26:070
	103 KAR 28:051
	103 KAR 31:011
139.360	103 KAR 25:091
139.380	103 KAR 25:091
139.400	103 KAR 31:111
139.410	103 KAR 30:200
	103 KAR 31:111
139.420	103 KAR 31:111

KRS Section	Regulation
139.430	103 KAR 28:051
	103 KAR 31:111
139.440	103 KAR 31:111
139.470	103 KAR 30:091
	103 KAR 30:200
139.471	103 KAR 28:051
139.472	103 KAR 30:020
139.480	103 KAR 30:091
	103 KAR 30:095
	103 KAR 30:140
139.484	103 KAR 28:051
139.490	103 KAR 28:051
	103 KAR 30:095
139.532	103 KAR 28:051
139.550	103 KAR 31:011
139.560	103 KAR 26:070
	103 KAR 31:011
139.600	103 KAR 28:051
139.620	103 KAR 28:051
139.670	103 KAR 30:200
139.680	103 KAR 30:200
139.710	103 KAR 26:070
	103 KAR 31:011
139.720	103 KAR 31:011
139.730	103 KAR 26:070
139.760	103 KAR 1:010
	103 KAR 31:111
139.980	103 KAR 1:010
139.990	103 KAR 31:111
141.021	103 KAR 17:081
141.065	903 KAR 6:070
141.215	103 KAR 17:041
141.310	103 KAR 18:110
141.325	103 KAR 18:100
141.370	103 KAR 18:110
141.990	103 KAR 17:041
Chapter 148	304 KAR 1:050
150.010	301 KAR 1:015
	301 KAR 1:056
	301 KAR 1:075
	301 KAR 1:122
	301 KAR 1:150
	301 KAR 1:200
	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:185
	301 KAR 2:220
150.015	301 KAR 2:044
	301 KAR 2:185
	301 KAR 2:220
150.025	301 KAR 1:015
	301 KAR 1:056
	301 KAR 1:075
	301 KAR 1:122
	301 KAR 1:150
	301 KAR 1:200
	301 KAR 2:044
	301 KAR 2:110
	301 KAR 2:140
	301 KAR 2:220
150.092	301 KAR 2:140
150.120	301 KAR 1:056
	301 KAR 1:150
150.170	301 KAR 1:056
	301 KAR 1:075
	301 KAR 1:150
	301 KAR 1:200
	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:220
150.175	301 KAR 1:056
	301 KAR 1:075
	301 KAR 1:122

KRS Section	Regulation
150.175 (cont'd)	301 KAR 1:150
	301 KAR 1:200
	301 KAR 2:140
	301 KAR 2:220
150.176	301 KAR 2:140
150.180	301 KAR 1:122
150.190	301 KAR 1:122
150.235	301 KAR 1:075
	301 KAR 2:220
150.240	301 KAR 2:220
150.300	301 KAR 2:044
150.305	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:220
150.320	301 KAR 2:044
	301 KAR 2:140
150.330	301 KAR 2:044
	301 KAR 2:140
	301 KAR 2:220
150.340	301 KAR 2:044
	301 KAR 2:220
150.360	301 KAR 1:075
	301 KAR 2:044
	301 KAR 2:110
	301 KAR 2:140
	301 KAR 2:220
150.365	301 KAR 2:110
	301 KAR 2:140
150.370	301 KAR 2:110
150.390	301 KAR 2:110
	301 KAR 2:140
150.399	301 KAR 2:110
150.400	301 KAR 2:110
150.410	301 KAR 2:110
150.440	301 KAR 1:075
150.445	301 KAR 1:056
	301 KAR 1:075
	301 KAR 1:150
150.450	301 KAR 1:150
150.470	301 KAR 1:075
	301 KAR 1:200
150.600	301 KAR 2:220
150.603	301 KAR 2:044
	301 KAR 2:220
150.620	301 KAR 1:015
150.625	301 KAR 1:015
150.630	301 KAR 2:220
150.990	301 KAR 1:015
	301 KAR 1:056
	301 KAR 1:075
	301 KAR 1:122
	301 KAR 1:150
	301 KAR 1:200
	301 KAR 2:185
	301 KAR 2:220
151B.025	702 KAR 1:130
	705 KAR 3:140
	705 KAR 4:040
	705 KAR 4:050
	705 KAR 4:080
	705 KAR 4:230
	780 KAR 1:010
	780 KAR 2:010
	780 KAR 2:020
	780 KAR 2:030
	780 KAR 2:040
	780 KAR 2:050
	780 KAR 2:060
	780 KAR 2:070
	780 KAR 2:080
	780 KAR 2:090
	780 KAR 2:100
	780 KAR 2:110

KRS Section	Regulation
151B.025 (cont'd)	780 KAR 2:120
	780 KAR 2:130
	780 KAR 2:140
	780 KAR 9:050
	780 KAR 9:060
	780 KAR 9:070
	780 KAR 9:080
	780 KAR 9:090
151B.030	780 KAR 2:010
	780 KAR 2:020
151B.035	780 KAR 3:010
	780 KAR 3:020
	780 KAR 3:030
	780 KAR 3:040
	780 KAR 3:050
	780 KAR 3:060
	780 KAR 3:070
	780 KAR 3:080
	780 KAR 3:090
	780 KAR 3:100
	780 KAR 3:110
	780 KAR 3:120
	780 KAR 3:130
	780 KAR 3:140
	780 KAR 3:150
	780 KAR 6:010
	780 KAR 6:020
	780 KAR 6:030
	780 KAR 6:040
	780 KAR 6:050
	780 KAR 6:060
	780 KAR 6:070
	780 KAR 6:080
	780 KAR 6:090
	780 KAR 6:100
151B.110	780 KAR 2:010
	780 KAR 2:020
	780 KAR 2:030
	780 KAR 2:040
	780 KAR 2:045
	780 KAR 2:060
	780 KAR 2:080
	780 KAR 2:090
	780 KAR 2:100
	780 KAR 2:110
	780 KAR 2:120
	780 KAR 2:130
	780 KAR 2:140
	780 KAR 4:020
	780 KAR 5:010
	780 KAR 5:020
	780 KAR 5:030
	780 KAR 5:040
	780 KAR 5:050
	780 KAR 7:010
	780 KAR 7:020
	780 KAR 7:030
	780 KAR 7:050
	780 KAR 7:060
	780 KAR 7:070
	780 KAR 8:010
	780 KAR 9:010
	780 KAR 9:020
	780 KAR 9:030
	780 KAR 9:040
	780 KAR 9:070
	780 KAR 9:080
	780 KAR 9:090
151B.120	780 KAR 2:080
151B.125	780 KAR 9:010
	780 KAR 9:020
151B.140	780 KAR 1:010

KRS Section	Regulation
151B.145	780 KAR 1:010
	780 KAR 2:010
	780 KAR 2:100
	780 KAR 2:110
	780 KAR 2:130
	780 KAR 4:010
	780 KAR 7:040
	780 KAR 9:030
	780 KAR 9:040
	780 KAR 9:060
	780 KAR 9:070
	780 KAR 9:080
	780 KAR 9:090
151B.150	780 KAR 4:010
	780 KAR 5:010
	780 KAR 5:020
	780 KAR 5:030
	780 KAR 5:040
	780 KAR 5:050
	780 KAR 7:010
	780 KAR 7:020
	780 KAR 7:030
	780 KAR 7:040
	780 KAR 7:050
	780 KAR 7:060
	780 KAR 7:070
	780 KAR 8:010
	780 KAR 9:050
	780 KAR 9:060
151B.165	780 KAR 2:045
	780 KAR 2:080
	780 KAR 2:140
156.010	702 KAR 6:010
	702 KAR 6:030
	702 KAR 6:040
	702 KAR 6:075
	702 KAR 6:090
	704 KAR 3:292
	704 KAR 3:365
	704 KAR 7:011
156.031	701 KAR 5:020
	701 KAR 5:050
	702 KAR 1:005
	702 KAR 1:010
	702 KAR 1:035
	702 KAR 1:040
	702 KAR 1:070
	702 KAR 1:080
	702 KAR 1:100
	702 KAR 1:115
	702 KAR 3:010
	702 KAR 3:020
	702 KAR 3:040
	702 KAR 3:045
	702 KAR 3:050
	702 KAR 3:060
	702 KAR 3:070
	702 KAR 3:075
	702 KAR 3:080
	702 KAR 3:090
	702 KAR 3:100
	702 KAR 3:110
	702 KAR 3:120
	702 KAR 3:130
	702 KAR 3:135
	702 KAR 3:150
	702 KAR 3:170
	702 KAR 3:200
	702 KAR 4:005
	702 KAR 4:010
	702 KAR 4:020
	702 KAR 4:030
	702 KAR 4:040

KRS Section	Regulation
156.031 (cont'd)	702 KAR 4:080
	702 KAR 4:090
	702 KAR 4:100
	702 KAR 4:110
	702 KAR 4:120
	702 KAR 4:130
	702 KAR 5:010
	702 KAR 5:020
	702 KAR 5:030
	702 KAR 5:040
	702 KAR 5:050
	702 KAR 5:060
	702 KAR 5:080
	702 KAR 5:090
	702 KAR 5:100
	702 KAR 5:110
	702 KAR 5:120
	702 KAR 5:130
	702 KAR 5:140
	702 KAR 6:010
	702 KAR 6:020
	702 KAR 6:030
	702 KAR 6:040
	702 KAR 6:045
	702 KAR 6:050
	702 KAR 6:060
	702 KAR 6:075
	702 KAR 6:090
	702 KAR 7:010
	702 KAR 7:020
	702 KAR 7:030
	702 KAR 7:040
	702 KAR 7:050
	702 KAR 7:065
	702 KAR 7:080
	702 KAR 7:090
	704 KAR 3:266
	704 KAR 3:292
	704 KAR 3:307
	704 KAR 3:335
	704 KAR 3:340
	704 KAR 3:365
	704 KAR 4:010
	704 KAR 4:020
	704 KAR 5:060
	704 KAR 7:011
	704 KAR 7:050
	704 KAR 7:070
	704 KAR 7:080
	704 KAR 7:090
	704 KAR 10:050
	705 KAR 2:120
	705 KAR 3:140
	705 KAR 4:040
	705 KAR 4:050
	705 KAR 4:080
	705 KAR 4:230
	707 KAR 1:041
	707 KAR 1:045
	707 KAR 1:051
	707 KAR 1:052
	707 KAR 1:053
	707 KAR 1:054
	707 KAR 1:055
	707 KAR 1:056
	707 KAR 1:057
	707 KAR 1:058
	707 KAR 1:059
	707 KAR 1:060
	707 KAR 1:070
	707 KAR 1:080
	707 KAR 1:090
	707 KAR 1:100

KRS Section	Regulation
156.031 (cont'd)	707 KAR 1:110
	707 KAR 1:120
	707 KAR 1:130
	708 KAR 1:001
156.033	705 KAR 3:140
156.035	702 KAR 3:045
	702 KAR 6:010
	702 KAR 6:030
	702 KAR 6:040
	702 KAR 6:075
	704 KAR 3:266
	704 KAR 3:292
	704 KAR 3:335
	704 KAR 3:365
	704 KAR 7:011
	704 KAR 7:090
	705 KAR 2:120
	707 KAR 1:045
	707 KAR 1:060
	707 KAR 1:080
156.070	701 KAR 5:020
	702 KAR 3:020
	702 KAR 3:045
	702 KAR 3:060
	702 KAR 3:120
	702 KAR 3:130
	702 KAR 3:135
	702 KAR 3:150
	702 KAR 7:065
	702 KAR 7:080
	702 KAR 7:090
	702 KAR 7:100
	704 KAR 3:292
	704 KAR 3:304
	704 KAR 3:340
156.074	702 KAR 3:170
156.076	702 KAR 3:135
156.095	704 KAR 3:035
156.0951	704 KAR 3:035
156.100	702 KAR 6:075
156.101	704 KAR 3:325
	704 KAR 3:345
156.105	704 KAR 3:400
156.132	701 KAR 5:050
156.152	702 KAR 5:060
156.153	702 KAR 5:060
156.154	702 KAR 5:060
156.160	701 KAR 5:080
	702 KAR 3:075
	702 KAR 3:110
	702 KAR 3:120
	702 KAR 4:020
	702 KAR 4:030
	702 KAR 4:040
	702 KAR 4:050
	702 KAR 4:060
	702 KAR 4:070
	702 KAR 4:080
	702 KAR 4:090
	702 KAR 4:110
	702 KAR 4:120
	702 KAR 4:130
	702 KAR 5:010
	702 KAR 5:030
	702 KAR 5:040
	702 KAR 5:050
	702 KAR 5:060
	702 KAR 5:080
	702 KAR 5:090
	702 KAR 5:100
	702 KAR 5:130
	702 KAR 6:045
	702 KAR 6:060

KRS Section	Regulation
156.160 (cont'd)	702 KAR 6:090
	702 KAR 7:100
	704 KAR 3:304
	704 KAR 3:305
	704 KAR 3:307
	704 KAR 3:340
	704 KAR 3:410
	704 KAR 4:010
	704 KAR 4:020
	704 KAR 5:050
	704 KAR 7:055
	704 KAR 10:050
156.200	702 KAR 3:020
	702 KAR 3:120
	702 KAR 3:130
	702 KAR 6:075
	702 KAR 6:090
156.210	701 KAR 5:050
	702 KAR 3:020
156.230	702 KAR 1:070
156.265	702 KAR 3:150
156.400-156.476	702 KAR 1:005
156.476	707 KAR 1:045
156.480	702 KAR 6:075
157.060	702 KAR 3:110
157.100-157.190	702 KAR 1:005
157.200	704 KAR 3:285
	707 KAR 1:041
	707 KAR 1:051
	707 KAR 1:052
	707 KAR 1:053
	707 KAR 1:054
	707 KAR 1:056
	707 KAR 1:057
	707 KAR 1:058
	707 KAR 1:059
157.200-157.290	707 KAR 1:060
	707 KAR 1:080
157.220	707 KAR 1:041
	707 KAR 1:052
	707 KAR 1:053
	707 KAR 1:054
	707 KAR 1:055
	707 KAR 1:056
	707 KAR 1:057
	707 KAR 1:058
	707 KAR 1:059
157.224	704 KAR 3:285
	707 KAR 1:041
	707 KAR 1:051
	707 KAR 1:052
	707 KAR 1:053
	707 KAR 1:054
	707 KAR 1:056
	707 KAR 1:057
	707 KAR 1:058
	707 KAR 1:059
157.226	702 KAR 5:150
157.230	704 KAR 3:285
	707 KAR 1:041
	707 KAR 1:051
	707 KAR 1:052
	707 KAR 1:053
	707 KAR 1:054
	707 KAR 1:056
	707 KAR 1:057
	707 KAR 1:058
	707 KAR 1:059
157.250	707 KAR 1:140
157.270	707 KAR 1:051
	707 KAR 1:055
157.280	702 KAR 5:120
	707 KAR 1:051
	707 KAR 1:070
157.285	707 KAR 1:051
157.3175	702 KAR 5:150
	704 KAR 3:410
157.320	702 KAR 3:070
	702 KAR 3:211
	702 KAR 7:050
	704 KAR 5:050
157.360	702 KAR 3:190
	702 KAR 7:050
	704 KAR 5:050
	704 KAR 7:011
	707 KAR 1:051
157.370	702 KAR 5:010
	702 KAR 5:020
	702 KAR 5:100
	702 KAR 5:110
	702 KAR 5:140
157.390	702 KAR 3:070
	702 KAR 3:100
157.420	702 KAR 1:010
	702 KAR 3:010
	702 KAR 3:100
	702 KAR 4:010
157.510-157.540	702 KAR 7:040
157.605	704 KAR 7:080
157.606	704 KAR 7:080
157.620	702 KAR 4:110
	702 KAR 4:120
	702 KAR 4:130
157.622	702 KAR 1:010
158.030	702 KAR 7:050
	704 KAR 5:050
158.060	702 KAR 7:010
	702 KAR 7:020
	702 KAR 7:061
158.070	702 KAR 7:010
	702 KAR 7:020
	702 KAR 7:040
	704 KAR 3:035
	704 KAR 3:390
158.148	704 KAR 7:050
	704 KAR 7:070
158.240	702 KAR 7:050
158.6451	704 KAR 3:304
	704 KAR 7:055
158.750	704 KAR 3:321
158.780	702 KAR 3:200
158.785	702 KAR 3:200
159.010	704 KAR 5:060
159.020	704 KAR 5:060
159.030	707 KAR 1:055
159.035	702 KAR 7:050
159.051	704 KAR 7:100
159.170	702 KAR 7:030
159.250	702 KAR 7:030
160.041	702 KAR 1:100
160.045	702 KAR 1:080
160.105	702 KAR 3:030
160.180	702 KAR 1:115
	702 KAR 1:121
160.290	702 KAR 6:020
	704 KAR 3:304
160.291	702 KAR 3:060
160.293	702 KAR 4:005
160.330	702 KAR 3:220
160.340	702 KAR 3:150
160.345	701 KAR 5:080
	702 KAR 3:240
160.380	702 KAR 6:020
	702 KAR 6:050

KRS Section	Regulation
160.450	702 KAR 3:060
160.550	702 KAR 3:050
160.560	702 KAR 3:040
	702 KAR 3:080
160.570	702 KAR 3:090
160.599	702 KAR 4:100
161.010	702 KAR 7:090
161.020	702 KAR 6:020
	704 KAR 15:010
	704 KAR 20:005
161.025	704 KAR 15:015
	704 KAR 20:005
161.030	702 KAR 3:211
	704 KAR 5:050
	704 KAR 15:015
	704 KAR 20:005
161.044	702 KAR 7:090
161.140	702 KAR 6:050
161.152	707 KAR 1:120
161.154	707 KAR 1:120
161.158	702 KAR 1:035
161.159	702 KAR 1:026
161.180	702 KAR 7:090
161.200	702 KAR 7:050
161.210	702 KAR 3:060
161.780	702 KAR 1:040
161.790	707 KAR 1:130
161.800	707 KAR 1:130
162.010	702 KAR 4:050
162.060	702 KAR 4:020
	702 KAR 4:040
	702 KAR 4:050
	702 KAR 4:060
	702 KAR 4:070
	702 KAR 4:080
	702 KAR 4:110
	702 KAR 4:120
	702 KAR 4:130
162.070	702 KAR 4:040
162.080-162.100	702 KAR 3:020
162.120-162.290	702 KAR 3:020
162.300	702 KAR 3:020
163.032	707 KAR 1:120
	707 KAR 1:130
163.140	706 KAR 1:001
163.160	706 KAR 1:001
164.2871	103 KAR 17:081
164.2893	201 KAR 20:310
164.768	11 KAR 7:010
	11 KAR 7:020
164A.410	765 KAR 1:060
	775 KAR 1:060
164A.560	765 KAR 1:010
	765 KAR 1:020
	775 KAR 1:010
	775 KAR 1:020
164A.565	765 KAR 1:010
	765 KAR 1:020
	775 KAR 1:010
	775 KAR 1:020
164A.570	765 KAR 1:030
	775 KAR 1:030
164A.575	765 KAR 1:020
	765 KAR 1:040
	775 KAR 1:020
	775 KAR 1:040
164A.580	765 KAR 1:020
	765 KAR 1:040
164A.585	765 KAR 1:020
	765 KAR 1:040
164A.590	765 KAR 1:020
	765 KAR 1:040

KRS Section	Regulation
164A.595	765 KAR 1:020
	765 KAR 1:040
164A.600	765 KAR 1:020
	765 KAR 1:040
164A.605	765 KAR 1:050
	775 KAR 1:050
164A.610	765 KAR 1:070
164A.620	765 KAR 1:020
	765 KAR 1:060
	775 KAR 1:020
	775 KAR 1:060
167.015	707 KAR 1:120
	707 KAR 1:130
167.150	707 KAR 1:090
	707 KAR 1:100
	707 KAR 1:110
167.170	707 KAR 1:090
167.210	707 KAR 1:041
168.100	702 KAR 3:170
Chapter 171	725 KAR 1:060
Chapter 174	600 KAR 4:010
174.400-174.435	601 KAR 1:025
Chapter 176	600 KAR 4:010
Chapter 177	600 KAR 4:010
177.220	603 KAR 5:025
177.230	603 KAR 5:025
177.300	603 KAR 5:025
177.9771	603 KAR 5:230
Chapter 183	600 KAR 4:010
Chapter 186	601 KAR 9:125
	601 KAR 9:140
186.440	601 KAR 13:070
	704 KAR 7:100
186.450	601 KAR 13:070
186.470	601 KAR 13:070
186.560	601 KAR 13:070
186.565	500 KAR 8:010
186.1723	601 KAR 9:145
Chapter 186A	601 KAR 9:140
189.190	603 KAR 5:025
189.222	603 KAR 5:070
	603 KAR 5:071
	603 KAR 5:075
189.239	603 KAR 5:230
189.265	603 KAR 5:071
189.270	603 KAR 5:075
	603 KAR 5:105
	603 KAR 5:110
	603 KAR 5:111
	603 KAR 5:112
189.285	601 KAR 14:010
189.340	603 KAR 5:025
189.540	702 KAR 5:010
	702 KAR 5:030
	702 KAR 5:040
	702 KAR 5:050
	702 KAR 5:080
	702 KAR 5:090
189.735	603 KAR 5:071
190.010-190.990	605 KAR 1:180
194.050	904 KAR 2:110
	904 KAR 2:116
	904 KAR 3:035
Chapter 196	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:040
	501 KAR 6:060
	501 KAR 6:070
	501 KAR 6:080
	501 KAR 6:090
	501 KAR 6:120
	501 KAR 6:130
	501 KAR 6:160

KRS Section	Regulation
Chapter 197	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:040
	501 KAR 6:060
	501 KAR 6:070
	501 KAR 6:080
	501 KAR 6:090
	501 KAR 6:120
	501 KAR 6:130
	501 KAR 6:160
Chapter 198B	815 KAR 7:010
	815 KAR 7:025
	815 KAR 10:040
199.011	905 KAR 1:300
	905 KAR 1:310
199.555	905 KAR 1:050
199.640	905 KAR 1:310
199.640-199.670	905 KAR 1:300
199.650	905 KAR 1:310
199.660	905 KAR 1:310
199.670	905 KAR 1:310
199.890-199.896	905 KAR 2:010
Chapter 202A	908 KAR 3:080
	908 KAR 3:180
Chapter 202B	908 KAR 3:080
	908 KAR 3:180
Chapter 205	904 KAR 2:022
205.010	904 KAR 2:006
205.200	904 KAR 2:006
	904 KAR 2:016
	904 KAR 2:035
205.201	905 KAR 8:140
205.204	905 KAR 8:140
205.210	904 KAR 2:016
205.220	904 KAR 2:050
205.245	904 KAR 2:015
	904 KAR 2:035
205.460-205.465	905 KAR 8:140
205.520	904 KAR 2:035
	907 KAR 1:004
	907 KAR 1:005
	907 KAR 1:006
	907 KAR 1:010
	907 KAR 1:011
	907 KAR 1:013
	907 KAR 1:014
	907 KAR 1:015
	907 KAR 1:016
	907 KAR 1:017
	907 KAR 1:019
	907 KAR 1:020
	907 KAR 1:022
	907 KAR 1:025
	907 KAR 1:027
	907 KAR 1:031
	907 KAR 1:036
	907 KAR 1:039
	907 KAR 1:040
	907 KAR 1:045
	907 KAR 1:060
	907 KAR 1:061
	907 KAR 1:095
	907 KAR 1:102
	907 KAR 1:104
	907 KAR 1:280
	907 KAR 1:330
	907 KAR 1:430
	907 KAR 1:470
205.560	907 KAR 1:010
205.715-205.800	904 KAR 2:026
Chapter 210	908 KAR 3:080
	908 KAR 3:180
210.610-210.680	908 KAR 1:160

KRS Section	Regulation
Chapter 211	401 KAR 8:650
211.060-211.968	902 KAR 13:050
211.170	902 KAR 8:030
211.180	902 KAR 2:140
	902 KAR 2:150
	902 KAR 2:160
	902 KAR 10:010
	902 KAR 10:040
	902 KAR 10:120
	902 KAR 45:150
211.842-211.852	902 KAR 100:058
211.960-211.968	902 KAR 13:080
	902 KAR 13:120
211.990	902 KAR 10:120
	902 KAR 13:050
	902 KAR 13:080
	902 KAR 13:120
	902 KAR 100:058
212.170	902 KAR 8:030
212.210	902 KAR 45:150
212.870	902 KAR 8:030
212.990	902 KAR 45:150
214.020	902 KAR 2:150
	902 KAR 2:160
214.610	902 KAR 2:160
214.615	902 KAR 2:150
216.900-216.915	906 KAR 1:070
216B.010-216B.130	902 KAR 20:006
	902 KAR 20:008
	902 KAR 20:116
	902 KAR 20:300
	902 KAR 20:310
	902 KAR 20:320
	902 KAR 20:330
216B.010-216B.131	902 KAR 20:026
	902 KAR 20:048
	902 KAR 20:051
	902 KAR 20:086
	902 KAR 20:133
	902 KAR 20:135
216B.040	902 KAR 17:010
216B.990	902 KAR 20:006
	902 KAR 20:008
	902 KAR 20:026
	902 KAR 20:048
	902 KAR 20:051
	902 KAR 20:086
	902 KAR 20:116
	902 KAR 20:132
	902 KAR 20:135
	902 KAR 20:300
	902 KAR 20:310
	902 KAR 20:320
	902 KAR 20:330
Chapter 217	201 KAR 2:111
217.005-217.215	902 KAR 45:005
217.025	902 KAR 45:110
217.035	902 KAR 45:110
217.037	902 KAR 45:110
217.125	902 KAR 45:110
217.811	902 KAR 45:110
217.819	201 KAR 2:116
217.992	902 KAR 45:005
Chapter 218	901 KAR 5:050
	901 KAR 5:070
Chapter 218A	902 KAR 55:010
218A.410	500 KAR 9:010
	500 KAR 9:030
218A.435	500 KAR 9:015
	500 KAR 9:020
	500 KAR 9:040
	500 KAR 9:050
	500 KAR 9:060
	501 KAR 11:010

KRS Section	Regulation
218A.440	500 KAR 9:030
219.031	902 KAR 45:120
219.041	902 KAR 45:120
219.310-219.410	902 KAR 15:010
	902 KAR 15:020
219.330	902 KAR 45:120
219.350	902 KAR 45:120
219.991	902 KAR 15:010
	902 KAR 15:020
222.210	902 KAR 20:086
222.210-222.310	908 KAR 1:020
Chapter 223	401 KAR 8:010
	401 KAR 8:020
	401 KAR 8:030
223.400-223.460	401 KAR 6:320
223.991	401 KAR 6:320
Chapter 224	401 KAR 6:320
	401 KAR 8:010
	401 KAR 8:020
	401 KAR 8:030
	401 KAR 8:040
	401 KAR 8:050
	401 KAR 8:060
	401 KAR 8:070
	401 KAR 8:100
	401 KAR 8:150
	401 KAR 8:200
	401 KAR 8:250
	401 KAR 8:300
	401 KAR 8:350
	401 KAR 8:400
	401 KAR 8:420
	401 KAR 8:440
	401 KAR 8:500
	401 KAR 8:550
	401 KAR 8:600
	401 KAR 8:650
	401 KAR 8:700
	401 KAR 47:132E
	401 KAR 47:134
	401 KAR 47:136
224.033	401 KAR 34:020
	401 KAR 34:050
	401 KAR 34:060
	401 KAR 34:070
	401 KAR 34:090
	401 KAR 34:100
	401 KAR 34:120
	401 KAR 34:130
	401 KAR 34:165
	401 KAR 34:250
	401 KAR 34:360
	401 KAR 35:010
	401 KAR 35:020
	401 KAR 35:120
	401 KAR 35:130
	401 KAR 35:190
	401 KAR 36:070
	401 KAR 37:010
	401 KAR 37:030
	401 KAR 37:040
	401 KAR 37:050
	401 KAR 37:110
	401 KAR 38:010
	401 KAR 38:040
	401 KAR 38:050
	401 KAR 38:060
	401 KAR 38:070
	401 KAR 38:090
	401 KAR 38:100
	401 KAR 38:230
	401 KAR 38:500
	401 KAR 42:011

KRS Section	Regulation
224.033 (cont'd)	401 KAR 42:020
	401 KAR 42:030
	401 KAR 42:040
	401 KAR 42:050
	401 KAR 42:060
	401 KAR 42:070
	401 KAR 42:090
	401 KAR 42:200
224.036	401 KAR 38:010
	401 KAR 38:040
	401 KAR 38:050
	401 KAR 38:060
	401 KAR 38:070
	401 KAR 38:090
	401 KAR 38:100
	401 KAR 38:230
	401 KAR 38:500
224.060	401 KAR 34:020
	401 KAR 34:050
	401 KAR 34:060
	401 KAR 34:070
	401 KAR 34:250
	401 KAR 34:360
	401 KAR 37:010
	401 KAR 37:030
	401 KAR 37:040
	401 KAR 37:050
	401 KAR 37:110
224.071	401 KAR 32:030
	401 KAR 32:050
	401 KAR 34:020
	401 KAR 34:050
	401 KAR 34:060
	401 KAR 34:070
	401 KAR 34:090
	401 KAR 34:100
	401 KAR 34:120
	401 KAR 34:130
	401 KAR 34:165
	401 KAR 34:250
	401 KAR 34:360
	401 KAR 35:120
	401 KAR 35:130
	401 KAR 37:010
	401 KAR 37:030
	401 KAR 37:040
	401 KAR 37:050
	401 KAR 37:110
	401 KAR 38:010
	401 KAR 38:040
	401 KAR 38:050
	401 KAR 38:060
	401 KAR 38:070
	401 KAR 38:090
	401 KAR 38:100
	401 KAR 38:230
	401 KAR 38:500
224.087	401 KAR 38:010
	401 KAR 38:040
	401 KAR 38:050
	401 KAR 38:060
	401 KAR 38:070
	401 KAR 38:090
	401 KAR 38:100
	401 KAR 38:230
	401 KAR 38:500
224.2201-224.2215	401 KAR 38:500
224.320	401 KAR 50:010
	401 KAR 51:010
	401 KAR 59:021
	401 KAR 59:023
	401 KAR 61:011
	401 KAR 61:013

KRS Section	Regulation
224.330	401 KAR 50:010
	401 KAR 51:010
	401 KAR 59:021
	401 KAR 59:023
	401 KAR 61:011
	401 KAR 61:013
224.340	401 KAR 50:010
	401 KAR 51:010
	401 KAR 59:021
	401 KAR 59:023
	401 KAR 61:011
	401 KAR 61:013
224.810	401 KAR 42:200
224.814	401 KAR 42:011
	401 KAR 42:020
	401 KAR 42:030
	401 KAR 42:040
	401 KAR 42:050
	401 KAR 42:060
	401 KAR 42:070
	401 KAR 42:090
	401 KAR 42:200
	815 KAR 30:060
224.820	815 KAR 30:060
224.830-224.877	401 KAR 32:030
	401 KAR 32:050
	401 KAR 34:020
	401 KAR 34:050
	401 KAR 34:060
	401 KAR 34:070
	401 KAR 34:090
	401 KAR 34:100
	401 KAR 34:120
	401 KAR 34:130
	401 KAR 34:165
	401 KAR 34:250
	401 KAR 34:260
	401 KAR 35:010
	401 KAR 35:020
	401 KAR 35:120
	401 KAR 35:130
	401 KAR 35:190
	401 KAR 36:070
	401 KAR 37:010
	401 KAR 37:030
	401 KAR 37:040
	401 KAR 37:050
	401 KAR 37:110
	401 KAR 38:010
	401 KAR 38:040
	401 KAR 38:050
	401 KAR 38:060
	401 KAR 38:070
	401 KAR 38:090
	401 KAR 38:100
	401 KAR 38:230
	401 KAR 38:500
224.855	401 KAR 59:021
	401 KAR 59:023
	401 KAR 61:011
	401 KAR 61:013
224.994	401 KAR 32:030
	401 KAR 32:050
	401 KAR 34:020
	401 KAR 34:050
	401 KAR 34:060
	401 KAR 34:070
	401 KAR 34:090
	401 KAR 34:100
	401 KAR 34:120
	401 KAR 34:130
	401 KAR 34:165
	401 KAR 34:250

KRS Section	Regulation
224.994 (cont'd)	401 KAR 34:360
	401 KAR 35:010
	401 KAR 35:020
	401 KAR 35:120
	401 KAR 35:130
	401 KAR 35:190
	401 KAR 36:070
	401 KAR 37:010
	401 KAR 37:030
	401 KAR 37:040
	401 KAR 37:050
	401 KAR 37:110
	401 KAR 38:010
	401 KAR 38:040
	401 KAR 38:050
	401 KAR 38:060
	401 KAR 38:070
	401 KAR 38:090
	401 KAR 38:100
	401 KAR 38:230
Chapter 227	815 KAR 10:040
227.450-227.500	815 KAR 35:030
243.020	804 KAR 4:110
243.030	804 KAR 4:015
	804 KAR 4:110
243.040	804 KAR 4:015
	804 KAR 4:110
243.090	804 KAR 4:110
243.260	804 KAR 4:250
243.290	804 KAR 4:250
243.430	804 KAR 4:110
244.080	804 KAR 5:040
244.083	804 KAR 5:040
244.085	804 KAR 5:040
244.130	804 KAR 2:007
247.220	302 KAR 15:010
247.232	302 KAR 16:070
247.5061	302 KAR 1:080
Chapter 257	302 KAR 20:220
260.010	302 KAR 38:010
273.410-273.453	905 KAR 6:070
Chapter 278	807 KAR 5:058
Chapter 281	601 KAR 1:029
	601 KAR 1:160
281.605	601 KAR 1:170
287.375	808 KAR 1:050
290.070	808 KAR 3:020
304.2-165	806 KAR 12:092
304.2-210	806 KAR 12:092
	806 KAR 12:094
304.3-200	806 KAR 12:092
	806 KAR 12:094
304.9-295	806 KAR 9:220
304.11-030	806 KAR 11:020
304.11-045	806 KAR 11:020
304.12-010	806 KAR 12:092
	806 KAR 12:094
304.12-020	806 KAR 17:066
304.12-220	806 KAR 12:092
	806 KAR 12:094
304.12-230	806 KAR 12:092
	806 KAR 12:094
304.12-235	806 KAR 12:092
	806 KAR 12:094
304.14-400	806 KAR 12:094
304.14-500-304.14-550	806 KAR 17:066
304.17-305	806 KAR 17:066
304.17-318	806 KAR 17:066
304.18-036	806 KAR 17:066
304.18-095	806 KAR 17:066
304.18-115	806 KAR 18:040
304.20-070	806 KAR 12:094
304.20-150-304.20-180	806 KAR 12:094

KRS Section	Regulation
304.29-341	806 KAR 12:092
304.32-157	806 KAR 17:066
304.32-165	806 KAR 17:066
304.32-270	806 KAR 12:092
	806 KAR 17:066
304.38-193	806 KAR 17:066
304.38-196	806 KAR 17:066
304.38-200	806 KAR 12:092
	806 KAR 17:066
304.43-130	806 KAR 12:092
311.900	201 KAR 9:300
311.900-311.928	201 KAR 9:305
313.080	201 KAR 8:140
313.270	201 KAR 8:285
314.025	201 KAR 20:390
314.026	201 KAR 20:390
314.027	201 KAR 20:390
314.111	201 KAR 20:310
317.410	201 KAR 14:100
	201 KAR 14:130
317.440	201 KAR 14:130
	201 KAR 14:140
317.450	201 KAR 14:140
Chapter 318	815 KAR 20:020
	815 KAR 20:120
319.050	201 KAR 26:160
319.058	201 KAR 26:160
319.062	201 KAR 26:160
319.064	201 KAR 26.160
322.050	201 KAR 18:140
322.180	201 KAR 18:140
322.190	201 KAR 18:140
322.200	201 KAR 18:140
322.290	201 KAR 18:140
322.350	201 KAR 18:140
322.360	702 KAR 4:030
323.010	201 KAR 19:060
323.020	201 KAR 19:060
	201 KAR 19:105
323.050	201 KAR 19:025
	201 KAR 19:030
	201 KAR 19:035
	201 KAR 19:040
323.060	201 KAR 19:060
323.080	201 KAR 19:085
323.090	201 KAR 19:050
	201 KAR 19:085
323.095	201 KAR 19:095
	201 KAR 19:100
323.100	201 KAR 19:070
323.110	201 KAR 19:095
323.120	201 KAR 19:095
323.210	201 KAR 19:005
	201 KAR 19:030
	201 KAR 19:040
	201 KAR 19:050
	201 KAR 19:056
323.215	201 KAR 19:040
Chapter 324	201 KAR 11:011
	201 KAR 11:095
	201 KAR 11:105
	201 KAR 11:110
	201 KAR 11:115
	201 KAR 11:121
	201 KAR 11:170
	201 KAR 11:175
	201 KAR 11:210
	201 KAR 11:230
	201 KAR 11:245
	201 KAR 11:250
	201 KAR 11:300
325.321	201 KAR 1:068
325.330	201 KAR 1:100
327.050	201 KAR 22:031
327.060	201 KAR 22:031
327.080	201 KAR 22:031
Chapter 333	902 KAR 11:010
Chapter 338	803 KAR 2:303
	803 KAR 2:305
	803 KAR 2:306
	803 KAR 2:307
	803 KAR 2:313
	803 KAR 2:316
	803 KAR 2:317
	803 KAR 2:318
	803 KAR 2:320
	803 KAR 2:413
Chapter 340	903 KAR 1:010
341.380	903 KAR 5:270
342.325	806 KAR 12:092
	806 KAR 12:094
403.210	904 KAR 2:026
403.215	904 KAR 2:026
Chapter 405	904 KAR 2:022
405.450-405.530	904 KAR 2:026
424.260	702 KAR 3:135
433.750	603 KAR 5:025
433.753	603 KAR 5:025
Chapter 439	501 KAR 6:020
	501 KAR 6:030
	501 KAR 6:040
	501 KAR 6:060
	501 KAR 6:070
	501 KAR 6:080
	501 KAR 6:090
	501 KAR 6:120
	501 KAR 6:130
	501 KAR 6:160
441.057	501 KAR 9:025
530.050	904 KAR 2:026
600.020	905 KAR 1:300
	905 KAR 1:310
615.010	905 KAR 1:300
	905 KAR 1:310
620.020	905 KAR 1:300
	905 KAR 1:310
Acts 1990 c. 199	905 KAR 1:050
Acts 1990 c. 445	500 KAR 9:010
1990 GA, HB 425	902 KAR 2:130
	902 KAR 2:140
1990 GA, HB 503	302 KAR 1:055
1990 GA, HB 584	302 KAR 1:070
1990 GA, HB 799	704 KAR 3:380
	902 KAR 11:010
	903 KAR 1:010
	905 KAR 2:010
	908 KAR 1:020
	908 KAR 1:160
1990 GA, HB 814	705 KAR 1:001
	709 KAR 1:001
	781 KAR 1:010
	781 KAR 1:020
	781 KAR 1:030
	781 KAR 1:040
1990 GA, HB 814	781 KAR 1:050
(cont'd)	781 KAR 1:060
	781 KAR 1:070
	781 KAR 2:010
	781 KAR 2:020
1990 GA, SB 158	601 KAR 14:010
7 CFR 210	702 KAR 6:050
	702 KAR 6:075
	702 KAR 6:090
7 CFR 273	904 KAR 3:035
8 CFR	904 KAR 2:110
13 CFR 121.101-.601	600 KAR 4:010

KRS Section	Regulation
29 CFR 1910	803 KAR 2:303
	803 KAR 2:305
	803 KAR 2:306
	803 KAR 2:307
	803 KAR 2:313
	803 KAR 2:316
	803 KAR 2:317
	803 KAR 2:318
	803 KAR 2:320
34 CFR 200, 201	704 KAR 3:365
34 CFR 668, 690	904 KAR 2:110
36 CFR 800	401 KAR 38:010
40 CFR	401 KAR 32:050
	401 KAR 34:250
	401 KAR 37:010
	401 KAR 37:040
	401 KAR 37:050
40 CFR 60	401 KAR 59:021
	401 KAR 59:023
40 CFR 141	401 KAR 8:010
	401 KAR 8:020
	401 KAR 8:040
	401 KAR 8:070
	401 KAR 8:150
	401 KAR 8:200
	401 KAR 8:250
	401 KAR 8:300
	401 KAR 8:350
	401 KAR 8:400
	401 KAR 8:420
	401 KAR 8:440
	401 KAR 8:500
	401 KAR 8:550
40 CFR 142	401 KAR 8:060
	401 KAR 8:070
	401 KAR 8:150
	401 KAR 8:500
40 CFR 143	401 KAR 8:070
	401 KAR 8:600
40 CFR 280	401 KAR 42:011
	401 KAR 42:020
	401 KAR 42:030
	401 KAR 42:040
	401 KAR 42:050
	401 KAR 42:060
	401 KAR 42:070
	401 KAR 42:090
40 CFR 281	401 KAR 42:011
	401 KAR 42:020
	401 KAR 42:030
	401 KAR 42:040
	401 KAR 42:050
	401 KAR 42:060
	401 KAR 42:070
	401 KAR 42:090
42 CFR 435.831	904 KAR 2:016
45 CFR	904 KAR 2:006
	904 KAR 2:016
45 CFR 131	905 KAR 8:140
45 CFR 301-307	904 KAR 2:022
45 CFR 400	904 KAR 2:110
49 CFR	401 KAR 32:030
	601 KAR 1:025
49 CFR 23	600 KAR 4:010
49 CFR 24	600 KAR 3:010
49 CFR 571.218	601 KAR 14:010
50 CFR 402	401 KAR 38:010
20 USC 101	707 KAR 1:045
20 USC 1400	707 KAR 1:070
20 USC 1415	707 KAR 1:060
	707 KAR 1:080
	707 KAR 1:110

KRS Section	Regulation
29 USC 722	781 KAR 1:010
	781 KAR 2:010
42 USC	702 KAR 6:075
42 USC 673	905 KAR 1:050
42 USC 1751-1769b	702 KAR 6:010
	702 KAR 6:020
	702 KAR 6:030
	702 KAR 6:040
	702 KAR 6:050
	702 KAR 6:060
	702 KAR 6:090
42 USC 1771-1789	702 KAR 6:010
	702 KAR 6:020
	702 KAR 6:030
	702 KAR 6:040
	702 KAR 6:050
	702 KAR 6:060
	702 KAR 6:090
42 USC 3027	905 KAR 8:140
42 USC 6991	401 KAR 42:011
	401 KAR 42:020
	401 KAR 42:030
	401 KAR 42:040
	401 KAR 42:050
	401 KAR 42:060
	401 KAR 42:070
	401 KAR 42:090
42 USC 9901-9912	905 KAR 6:070
42 USC 11432	704 KAR 7:090
E. O. 90-68	401 KAR 59:021
	401 KAR 59:023
	401 KAR 61:011
	401 KAR 61:013
PL 97-35	904 KAR 2:116

SUBJECT INDEX

ACCOUNTANCY, BOARD OF
Continuing education; 201 KAR 1:100
Quality enhancement program; 201 KAR 1:068

ADMINISTRATION, FINANCE (EDUCATION)
Administration
  Annexed property, transfer; 702 KAR 1:080
  Board member in-service training; 702 KAR 1:115
  Breach of contract; 702 KAR 1:040
  Facilities surveys, plans; 702 KAR 1:010
  Group health, life insurance; 702 KAR 1:035
  Repealer; 702 KAR 1:121; 702 KAR 1:026
  Report requirements; 702 KAR 1:070
  School mergers; 702 KAR 1:110
  Secondary funding; 702 KAR 1:130 & E
  Textbook program plan; 702 KAR 1:005
Buildings and Grounds
  Architect, engineer contract; 702 KAR 4:030
  Construction criteria; 702 KAR 4:060
  Construction plan, specification; 702 KAR 4:020
  Construction project application; 702 KAR 4:010
  Contract completion; 702 KAR 4:040
  Costs, maximum budget; 702 KAR 4:120
  Design specifications; 702 KAR 4:070
  Emergency school loan fund; 702 KAR 4:100
  Financial budget increase; 702 KAR 4:130
  Program space, allocation; 702 KAR 4:110
  Property disposal; 702 KAR 4:090
  Sites, inspection, approval; 702 KAR 4:050
  Temporary, supplemental units; 702 KAR 4:080
Food Service Program
  Competitive sales, service; 702 KAR 6:090
  District director; 702 KAR 6:020
  Local responsibility; 702 KAR 6:010
  Lunch, breakfast requirements; 702 KAR 6:050
  Meal time minimum; 702 KAR 6:060
  Personnel policy, procedure; 702 KAR 6:040
  Personnel qualifications; 702 KAR 6:045
  Principal responsibility; 702 KAR 6:030
  Reports and funds; 702 KAR 6:075
Pupil Transportation
  Blind, deaf pupils; 702 KAR 5:120
  Bus drivers; 702 KAR 5:080
  Buses; 702 KAR 5:060
  District board responsibility; 702 KAR 5:040
  Division responsibilities; 702 KAR 5:010
  Handicapped reimbursement; 702 KAR 5:100
  Kindergarten pupils; 702 KAR 5:140
  Preschool children; 702 KAR 5:150
  Program cost calculation; 702 KAR 5:020
  Pupil responsibilities; 702 KAR 5:090
  Pupil supervision, discipline; 702 KAR 5:050
  Superintendent responsibilities; 702 KAR 5:030
  Less than ten passengers; 702 KAR 5:130
  Vocational pupils reimbursement; 702 KAR 5:110
School District Finance
  Audit; 702 KAR 3:150
  Bidding procedures; 702 KAR 3:135
  Bond issue approval; 702 KAR 3:020
  Budget exceedance application; 702 KAR 3:050
  Capital outlay funds; 702 KAR 3:010
  Check issuing policy; 702 KAR 3:040
  Depository bond, penal sum; 702 KAR 3:090
  Document filing dates; 702 KAR 3:110
  Educational television equipment purchases; 702 KAR 3:170
  Employees' payment; 702 KAR 3:060
  Insurance requirements; 702 KAR 3:030
  Internal accounting; 702 KAR 3:130
  Management assistance program; 702 KAR 3:200

ADMINISTRATION, FINANCE (EDUCATION)
  Maximum class size; 702 KAR 3:190
  Professional staff data form; 702 KAR 3:100
  Recreational facilities; 702 KAR 4:005
  Repealer; 702 KAR 3:211
  School counsel funding formula; 702 KAR 3:240
  SEEK funds; 702 KAR 3:230
  Substitute teachers' salary; 702 KAR 3:075
  Teachers' salary scheduling; 702 KAR 3:070
  Treasurer's bond, penal sum; 702 KAR 3:080
  Uniform financial accounting; 702 KAR 3:120
  Waiver of school fees; 702 KAR 3:220
  Withholding funds; 702 KAR 3:045
School Terms, Attendance, Operation
  Athletic recruiting prohibited; 702 KAR 7:080
  Attendance; 702 KAR 7:050
  Calendar; 702 KAR 7:020
  Census; 702 KAR 7:030
  Experimental schools; 702 KAR 7:040
  Interscholastic athletics personnel; 702 KAR 7:090
  Interscholastic athletics agent; 702 KAR 7:065
  Repealer; 702 KAR 7:061
  Sports, 5th, 6th grades; 702 KAR 7:100
  Terms and months; 702 KAR 7:010

ADULT AND TECHNICAL EDUCATION
Adult Education
  Eighth grade equivalency; 780 KAR 9:030
  English literacy; 780 KAR 9:060
  High school equivalency; 780 KAR 9:020
  Migrant farmworkers, immigrants; 780 KAR 9:070
  Reporting requirements; 780 KAR 9:080
  Section 322, Adult Education Act; 780 KAR 9:040
  Section 353, Adult Education Act; 780 KAR 9:050
  Testing program; 780 KAR 9:010
  Workplace literacy; 780 KAR 9:090
Personnel System for Certified & Equivalent Employees
  Appeals, hearings; 780 KAR 3:120
  Appointments; 780 KAR 3:030
  Attendance; 780 KAR 3:070
  Certification; 780 KAR 3:140
  Classification plan; 780 KAR 3:010
  Compensation plan; 780 KAR 3:020
  Disciplinary actions; 780 KAR 3:110
  Employee actions; 780 KAR 3:100
  Employee grievances; 780 KAR 3:130
  Employment lists; 780 KAR 3:050
  Probationary periods; 780 KAR 3:060
  Records, reports; 780 KAR 3:090
  School term; 780 KAR 3:080
  Special appointments; 780 KAR 3:040
  Staff development, in-service; 780 KAR 3:150
Facilities and Equipment
  Area center, public high school; 780 KAR 7:020
  Construction; 780 KAR 7:050
  Definitions; 780 KAR 7:010
  Equipment insurance; 780 KAR 7:070
  Equipment inventory; 780 KAR 7:060
  Facility maintenance; 780 KAR 7:040
  Vocational-technical; 780 KAR 7:030
General Administration
  1991-92 program plan; 780 KAR 1:010
Instructional Programs
  Diploma requirements; 780 KAR 4:020
  General standards; 780 KAR 4:010
Management of the Kentucky Tech System
  Academic progress; 780 KAR 2:120
  Admission minimum standards; 780 KAR 2:130

ADULT AND TECHNICAL EDUCATION (cont'd)
Area vocational education schools; 780 KAR 2:010
Costs, tuition, fees; 780 KAR 2:080
Livework projects; 780 KAR 2:040
Livework project fees; 780 KAR 2:045
Long-term adult attendance; 780 KAR 2:100
Medical, accident insurance; 780 KAR 2:110
Occupational appeals officer; 780 KAR 2:020
Postsecondary admission; 780 KAR 2:090
Regional program; 780 KAR 2:050
Steering committee; 780 KAR 2:030
Suspension, expulsion; 780 KAR 2:060
Tuition, fees; 780 KAR 2:140
Veteran's preference; 780 KAR 2:070
Repealer; 709 KAR 1:001
Unclassified Personnel
Appeals, hearings; 780 KAR 6:100
Appointments; 780 KAR 6:030
Attendance; 780 KAR 6:060
Classification plan; 780 KAR 6:010
Compensation plan; 780 KAR 6:020
Disciplinary actions; 780 KAR 6:090
Employee actions; 780 KAR 6:080
Probationary periods; 780 KAR 6:050
Records, reports; 780 KAR 6:070
Special appointments; 780 KAR 6:040
Veteran's Approval Agency
Apprenticeship, OJT; 780 KAR 5:020
Denial, revocation; 780 KAR 5:040
Inspection, supervision; 780 KAR 5:050
Institutional courses; 780 KAR 5:010
Revisions, amendments; 780 KAR 5:030
Vocational and Teacher Education
Vocational teacher education; 780 KAR 8:010

AGRICULTURAL MARKETING
Product logo program; 302 KAR 38:010

AGRICULTURE
Agricultural marketing; 302 KAR Chapter 38
Amusement rides; 302 KAR Chapter 16
Fairs and shows; 302 KAR Chapter 15
Livestock sanitation; 302 KAR Chapter 20
Referendums; 302 KAR Chapter 1

AIR QUALITY
Administrative Procedures
Definitions, abbreviations; 401 KAR 50:010
Existing Source Standards
Medical, hazardous waste incinerators; 401 KAR 61:013
Solid waste incinerators; 401 KAR 61:011
New Source Requirements; Nonattainment Areas
Status designations; 401 KAR 51:010
New Source Standards
Medical, hazardous waste incinerators; 401 KAR 59:023
Solid waste incinerators; 401 KAR 59:021

ALCOHOLIC BEVERAGE CONTROL
Advertising Malt Beverages
Inside signs; 804 KAR 2:007
Conduct of Business; Employees
Minors, definitions; 804 KAR 5:040
Fair Trade, Pricing and Sales
Repealer; 804 KAR 3:091
Licensing
Dormant license renewal; 804 KAR 4:110
Interlocking interest prohibited; 804 KAR 4:015
Temporary license, special; 804 KAR 4:250

AMUSEMENT RIDES
Amusement rides; 302 KAR 16:070

ARCHITECTS
Duplicate certificates; 201 KAR 19:070
Examination application; 201 KAR 19:025
Examination, general provisions; 201 KAR 19:030
Examination qualification; 201 KAR 19:035
Examinations required; 201 KAR 19:040
Fees; 201 KAR 19:085
Nonresident registration; 201 KAR 19:060
Plans, specification standards; 201 KAR 19:105
Professional practice standards; 201 KAR 19:095
Reciprocity; 201 KAR 19:060
Reexamination, reconsideration; 201 KAR 19:050
Repealer; 201 KAR 19:056
Rules & regulations amendments; 201 KAR 19:005
Seals, titles; 201 KAR 19:100

ASSET FORFEITURES
(See, Justice)

BARBERING
School advertising; 201 KAR 14:100 & E
School fees for services; 201 KAR 14:130 & E
School license; 201 KAR 14:140 & E

BIRTH CERTIFICATES
(See, Health Services - Vital Statistics)

BREATH ANALYSIS OPERATORS
Certification; 500 KAR 8:010

CERTIFICATE OF NEED
(See, Health Services)

CHILD WELFARE
(See, Social Services)

CHIEF STATE SCHOOL OFFICER
(See Education and Humanities Cabinet)

COMMUNICABLE DISEASES
(See, Health Services)

CONTROLLED SUBSTANCES
(See, Health Services)

CORRECTIONS
Administrative Services
Asset forfeiture; 501 KAR 11:010 & E
Facilities
Blackburn Correctional Complex; 501 KAR 6:120 & E
Cabinet manuals; 501 KAR 6:080 & E
Correctional industries; 501 KAR 6:160
Frankfort Career Development Center; 501 KAR 6:090 & E
General policies; 501 KAR 6:020 & E
Kentucky Correctional Institute for Women; 501 KAR 6:070 & E
Kentucky State Penitentiary; 501 KAR 6:040
Kentucky State Reformatory; 501 KAR 6:030
Northpoint Training Center; 501 KAR 6:060 & E
Western Kentucky Correctional Complex; 501 KAR 6:130
Juvenile Holding Facilities
Administration, management; 501 KAR 9:025 & E

CREDIT UNIONS
(See Financial Institutions)

DAY CARE
(See, Social Services)

DEALER PLATES
(See Vehicle Regulation)

DENTISTRY
Continuing education compliance; 201 KAR 8:140
Hygienists' continuing education; 201 KAR 8:285

EASTERN KENTUCKY UNIVERSITY
Annual audit; 775 KAR 1:030
Financial management responsibility; 775 KAR 1:020
Fund disbursement, accounting; 775 KAR 1:010
Fund for excellence; 775 KAR 1:060
Issuance of bonds; 775 KAR 1:050
Purchase, inventories, surplus property, capital construction; 775 KAR 1:040

EDUCATION AND HUMANITIES
Adult, Vocational Education & Vocational Rehab Programs
  Vocational Education
    Administration; 705 KAR Chapter 1
    Facilities, equipment; 705 KAR Chapter 3
    Fiscal management; 705 KAR Chapter 2
    Instructional programs; 705 KAR Chapter 4
Adult education; 709 KAR Chapter 1
Chief State School Officer's Office
  Alternative school-based decision-making model; 701 KAR 5:080
  Hearing officer; 701 KAR 5:020
  Summary hearing procedure; 701 KAR 5:050
Elementary and Secondary
  Instruction
    Education Act; 704 KAR Chapter 10
    Health, PE; 704 KAR Chapter 4
    Instructional services; 704 KAR Chapter 3
    Kindergarten, nursery school; 704 KAR Chapter 5
    Student services; 704 KAR Chapter 7
    Teacher certification; 704 KAR Chapter 20
    Teacher education; 704 KAR Chapter 15
Exceptional children; 707 KAR Chapter 1
Resource Management
  Surplus property; 708 KAR Chapter 1
School Administration, Finance
  Administration; 702 KAR Chapter 1
  Buildings and grounds; 702 KAR Chapter 4
  Food service program; 702 KAR Chapter 6
  Pupil transportation; 702 KAR Chapter 5
  School district finance; 702 KAR Chapter 3
  School terms, attendance, operation; 702 KAR Chapter 7
Vocational Rehabilitation
  Administration; 706 KAR Chapter 1

ELECTIONS, STATE BOARD
Certifications
  Election costs; 31 KAR 4:020 & E
  Officer removal; 31 KAR 4:050 & E
  Reporting forms; 31 KAR 4:030 & E
  Special ballots; 31 KAR 4:040 & E
  Voter ID cards; 31 KAR 4:010 & E

ELECTRICAL INSPECTORS
(See, Housing, Buildings & Construction)

ELEMENTARY AND SECONDARY
Instruction
  Instructional services; 704 KAR Chapter 3
  Kindergarten, nursery school; 704 KAR Chapter 5

EMERGENCY MEDICAL TECHNICIANS
(See, Health Services)

EMPLOYEES, STATE
(See also, Personnel)
Board; 101 KAR Chapter 1
Classified; 101 KAR Chapter 2
Unclassified; 101 KAR Chapter 3

EMPLOYMENT SERVICES
Employment Agencies
  Private; 903 KAR 1:010
Employment Services
  Classify as unemployed, appeals; 903 KAR 6:070
Unemployment Insurance
  Maximum weekly benefits; 903 KAR 5:270

EXCEPTIONAL CHILDREN EDUCATION
Appeals board; 707 KAR 1:080
Blind education, state plan; 707 KAR 1:045
Classroom teaching assignments; 707 KAR 1:140
Communication disorders; 707 KAR 1:052
Deaf-blind children; 707 KAR 1:041
Emotionally disturbed; 707 KAR 1:054
Home/hospital instruction; 707 KAR 1:055
Identification, evaluation, placement; 707 KAR 1:060
Learning disabilities; 707 KAR 1:056
Mentally handicapped; 707 KAR 1:057
Multiple handicapped; 707 KAR 1:058
Nonpublic school program; 707 KAR 1:070
Physically handicapped; 707 KAR 1:053
Programs; 707 KAR 1:051
School for the Blind, admission; 707 KAR 1:110
School for the Deaf, admission; 707 KAR 1:100
School for the Deaf, conduct code; 707 KAR 1:090
Schools for the Blind and Deaf
  Contract teachers appeal, grievance; 707 KAR 1:130
  Contract teachers service; 707 KAR 1:120
Visually handicapped; 707 KAR 1:059

FAIRS AND SHOWS
Aid to local fairs; 302 KAR 15:010

FINANCIAL INSTITUTIONS
Administration
  Retention of records; 808 KAR 1:050
Credit Unions
  Record retention schedule; 808 KAR 3:020

FIRE PREVENTION
(See Housing, Buildings & Construction)

FISH AND WILDLIFE
Fish
  Angling seasons, limits; 301 KAR 1:200
  Boats, outboard motors; 301 KAR 1:015
  Commercial fishing waters; 301 KAR 1:150
  Gigging, grabbling, snagging, tickling, noodling; 301 KAR 1:075
  Life fish; 301 KAR 1:122
  Trotlines, jugging, setlines; 301 KAR 1:056
Game
  Hunter education training; 301 KAR 2:185
  Migratory birds; 301 KAR 2:220 & E
  Migratory wildlife; 301 KAR 2:044 & E
  Raccoon and opossum; 301 KAR 2:110
  Wild turkey seasons; 301 KAR 2:140

FOOD, COSMETICS
(See Health Services)

HEALTH DEPARTMENTS, LOCAL
(See Health Services)

HEALTH SERVICES
Communicable Diseases
  HIV education; 902 KAR 2:150; 902 KAR 2:160
  HIV test counseling; 902 KAR 2:140
Controlled Substances
  Manufacturers, wholesalers; 902 KAR 55:010
Emergency Medical Technicians
  Authorized procedures; 902 KAR 13:080

HEALTH SERVICES (cont'd)
Defibrillation training; 902 KAR 13:120
Training, examination, certification; 902 KAR 13:050
Food, Cosmetics
Inspection, permit fees; 902 KAR 45:110 & E; 902 KAR 45:120 & E
Retail food code; 902 KAR 45:005 & E
School sanitation; 902 KAR 45:150
Health Services and Facilities
Certificate of need application fees; 902 KAR 20:135
Certificate of need process; 902 KAR 20:006 & E
Emergency care, ambulance transportation; 902 KAR 20:116 & E
Intermediate care; 902 KAR 20:051
License procedures, fees; 902 KAR 20:008
Mentally retarded, developmentally disabled; 902 KAR 20:086
Nursing homes; 902 KAR 20:048
Nursing facilities; 902 KAR 20:300 & E; 902 KAR 20:310 & E
Psychiatric residential treatment; 902 KAR 20:320 & E; 902 KAR 20:330 & E
Repealer; 902 KAR 20:133 & E
Skilled nursing; 902 KAR 20:026
Local Health Departments
Merit system; 902 KAR 8:030
Medical Laboratories
Licensure, fee; 902 KAR 11:010
Mobile Homes, Recreational Vehicles
Mobile homes; 902 KAR 15:010 & E
Recreational vehicles; 902 KAR 15:020 & E
Radiology
Specific licenses; 902 KAR 100:058
Sanitation
Public restrooms; 902 KAR 10:010
Public swimming, bathing facilities; 902 KAR 10:120
Youth camps; 902 KAR 10:040 & E
State Health Plan
Plan; 902 KAR 17:010 & E
Vital Statistics
Amended birth certificate; 901 KAR 5:070
Fees for searches, copies; 901 KAR 5:050 & E

HEALTH SERVICES AND FACILITIES
(See, Health Services)

HIGHER EDUCATION ASSISTANCE AUTHORITY
Incentive Loan Program
Deferment; 11 KAR 7:020
Mathematics, science; 11 KAR 7:010

HIGHWAYS
Traffic
Access highways-fully controlled; 603 KAR 5:025
Bridge weight limits, haul road; 603 KAR 5:230 & E
Bus dimension limits; 603 KAR 5:071
Mobile homes under 14 feet; 603 KAR 5:110 & E
Mobile homes over 14 feet; 603 KAR 5:111 & E
Motor vehicle dimension limits; 603 KAR 5:070
Naming of roads, bridges; 603 KAR 5:240 & E
Overweight, overdimensional permits; 603 KAR 5:075
Utility poles, pipes, moving; 603 KAR 5:112 & E
Wood trusses, permits; 603 KAR 5:105

HOUSING, BUILDINGS & CONSTRUCTION
Building Code
Administration, enforcement; 815 KAR 7:010
Kentucky building code; 815 KAR 7:025
Electrical Inspectors
Certification of contractors; 815 KAR 35:030

HOUSING, BUILDINGS & CONSTRUCTION (cont'd)
Hazardous Materials
Underground petroleum storage tank installers; 815 KAR 30:060
Plumbing
Parts or materials list; 815 KAR 20:020
Water supply, distribution; 815 KAR 20:120
Standards of Safety
Fire prevention code; 815 KAR 10:040

HUMAN IMMUNODEFICIENCY VIRUS (HIV)
(See, Health Services - Communicable Diseases)

HUMAN RESOURCES
Employment Services
Employment agencies; 903 KAR Chapter 1
Employment services; 903 KAR Chapter 6
Unemployment insurance; 903 KAR Chapter 5
Health Services
Communicable diseases; 902 KAR Chapter 2
Controlled substances; 902 KAR Chapter 55
EMTs; 902 KAR Chapter 13
Food, cosmetics; 902 KAR Chapter 45
Health services and facilities; 902 KAR Chapter 20
Medical laboratories; 902 KAR Chapter 11
Mobile homes, recreational vehicle parks; 902 KAR Chapter 15
Radiology; 902 KAR Chapter 100
Sanitation; 902 KAR Chapter 10
Vital statistics; 901 KAR Chapter 5
Inspector General
Networks; 906 KAR 1:070
Medicaid services; 907 KAR Chapter 1
Mental Health/Mental Retardation Services
Institutional care; 908 KAR Chapter 3
Substance abuse; 908 KAR Chapter 1
Social Insurance
Food stamps; 904 KAR Chapter 3
Public assistance; 904 KAR Chapter 2
Social Services
Aging services; 905 KAR Chapter 8
Child welfare; 905 KAR Chapter 1
Community action agencies; 905 KAR Chapter 6
Day care; 905 KAR Chapter 2

INCENTIVE LOAN PROGRAM
(See Higher Education)

INCOME TAX
(See Taxation)

INSTRUCTION (EDUCATION)
Elementary and Secondary Education Act
Courses not in program of studies; 704 KAR 10:050
Health, Physical Education
Comprehensive school health; 704 KAR 4:020
Physical education; 704 KAR 4:010
Instructional Services
Basic skills remediation; 704 KAR 3:380
Chapter 1, ESSIA migrant education; 704 KAR 3:292
Chapter 1 complaint procedure; 704 KAR 3:365
Chapter 2, Augustus F. Hawkins-Robert T. Stafford amendments; 702 KAR 3:335
Diploma program; 704 KAR 3:340
Evaluation guidelines; 704 KAR 3:345
Extended school service; 704 KAR 3:390
Four year old preschool; 704 KAR 3:410
Gifted, talented programs; 704 KAR 3:285
High school graduation; 704 KAR 3:305
Instructional leadership act; 704 KAR 3:325
Principal assessment; 704 KAR 3:400
Professional development; 704 KAR 3:035

INSTRUCTION (EDUCATION) (cont'd)
Program of studies; 704 KAR 3:304 & E
Repealer; 704 KAR 3:266; 704 KAR 3:321
Transferring without transcript; 704 KAR 3:307
Kindergarten, Nursery School
Primary school program; 704 KAR 5:060
Programs, accreditation; 704 KAR 5:050
Student Services
Ride to Center for the Arts; 704 KAR 7:080
Corporal punishment; 704 KAR 7:055
Driver's license revocation; 704 KAR 7:100 & E
Dropout prevention; 704 KAR 7:070
Homeless children education; 704 KAR 7:090
Repealer; 704 KAR 7:011
Student discipline; 704 KAR 7:050
Teacher Certification
Professional school personnel; 704 KAR 20:005
Teacher Education
Preparation programs; 704 KAR 15:015

INSURANCE
Agents, Consultants, Solicitors, Adjusters
Agent continuing education; 806 KAR 9:220
Group and Blanket Health Insurance
Higher education students; 806 KAR 18:040
Health Insurance Contracts
Medicare supplement insurance; 806 KAR 17:066 & E
Trade Practices, Frauds
Unfair life & health insurance claims settlement practices; 806 KAR 12:092 & E
Unfair property & casualty insurance claims settlement practices; 806 KAR 12:094 & E
Unauthorized Insurers
Multiple employer welfare arrangements; 806 KAR 11:020 & E

JUSTICE
Asset Forfeiture
Agency forfeiture policy; 500 KAR 9:020
Definitions; 500 KAR 9:010
Drug strategy; 500 KAR 9:060 & E
Forfeiture of assets policy; 500 KAR 9:015
Grants; 500 KAR 9:040
Model policy; 500 KAR 9:050 & E
Reports and audits; 500 KAR 9:030
Breath analysis Operators; 500 KAR Chapter 8
Juvenile Detention Facilities
Construction, expansion, renovation; 500 KAR 6:210 & E
Registration; 500 KAR 6:200 & E
State Police
Candidate selection; 502 KAR Chapter 45

JUVENILE DETENTION FACILITIES
(See Justice)

JUVENILE HOLDING FACILITIES
(See Corrections)

KINDERGARTEN, NURSERY SCHOOL
(See, Instruction)

LABOR
Occupational safety & health; 803 KAR Chapter 2

LAND SURVEYORS
Professional practice, conduct; 201 KAR 18:140

LIBRARIES AND ARCHIVES
Archives
Recording documents standards; 725 KAR 1:060

LIVESTOCK SANITATION
Pseudorabies eradication, control; 302 KAR 20:220 & E

MEDICAID SERVICES
Advanced registered nurse practitioner; 907 KAR 1:102 & E
Advanced registered nurse practitioner; 907 KAR 1:104 & E
Dental; 907 KAR 1:027 & E
Drug payments; 907 KAR 1:020 & E
Hearing; 907 KAR 1:039 & E
Home health; 907 KAR 1:031
Home health services manual; 907 KAR 1:430
Hospice; 907 KAR 1:330
HICAP; 907 KAR 1:017 & E
Hospital inpatients; 907 KAR 1:013 & E
Hospital outpatients; 907 KAR 1:014 & E; 907 KAR 1:015 & E
Intermediate care; 907 KAR 1:036 & E
Medical equipment, durable; 907 KAR 1:470
Medical transportation; 907 KAR 1:060
Medical transportation payment; 907 KAR 1:061 & E
Medically needy; 907 KAR 1:004 & E
Mental health centers; 907 KAR 1:045 & E
Mentally retarded facilities; 907 KAR 1:022 & E
Mentally retarded facility payments; 907 KAR 1:025 & E
Nurse-midwife services; 907 KAR 1:095
Payment nonduplication; 907 KAR 1:005
Pharmacy services; 907 KAR 1:019 & E
Physicians' services; 907 KAR 1:010 & E
Podiatry services; 907 KAR 1:280 & E
Psychiatric hospitals; 907 KAR 1:016 & E
Skilled nursing; 907 KAR 1:036 & E
Technical eligibility; 907 KAR 1:011 & E
Title XVIII benefits; 907 KAR 1:006 & E
Vision care; 907 KAR 1:040 & E

MEDICAL LABORATORIES
(See, Health Services)

MEDICAL LICENSURE
Athletic trainer recertification; 201 KAR 9:305
KRS 311.900 interpretation; 201 KAR 9:300

MENTAL HEALTH/MENTAL RETARDATION SERVICES
Institutional Care
Hazelwood ICF-MR; 908 KAR 3:080
Oakwood ICF/MR; 908 KAR 3:180
Substance Abuse
Licensing (DATE); 908 KAR 1:060
Licensing (NATE); 908 KAR 1:020

METAL DETECTORS
(See Parks)

MINORITY AFFAIRS (USDOT)
(See Transportation)

MOBILE HOMES
(See Health Services)

MOTOR VEHICLE COMMISSION
Limited motor vehicle brokers; 605 KAR 1:180

MOTORCYCLE SAFETY
(See, Vehicle Regulation)

NATURAL RESOURCES, ENVIRONMENTAL PROTECTION
Environmental Protection
Air quality; 401 KAR Chapters 50 through 60
Waste management; 401 KAR Chapters 32 through 47
Water; 401 KAR Chapters 6 through 8

NOMINATIONS
(See Secretary of State)

NURSING
Faculty; 201 KAR 20:310
Scholarship fund; 201 KAR 20:390 & E

OCCUPATIONAL SAFETY AND HEALTH
29 CFR 1910; 803 KAR 2:303 through 803 KAR 2:320
29 CFR 1926; 803 KAR 2:413

OCCUPATIONS AND PROFESSIONS
Accountancy; 201 KAR Chapter 1
Architects; 201 KAR 19:005
Barbering; 201 KAR Chapter 14
Dentistry; 201 KAR Chapter 8
Land surveyors; 201 KAR Chapter 18
Medical licensure; 201 KAR Chapter 9
Nursing; 201 KAR Chapter 20
Pharmacy; 201 KAR Chapter 2
Physical therapists; 201 KAR Chapter 22
Psychology; 201 KAR Chapter 26
Real Estate Commission; 201 KAR Chapter 11

PARKS
Parks and Campgrounds
  Metal detectors; 304 KAR 1:050

PERSONNEL
Board
  Employee actions; 101 KAR 1:335
  Grievances and complaints; 101 KAR 1:375
  Probationary periods; 101 KAR 1:325
  Promotion; 101 KAR 1:400
Classified
  Applications, qualifications, examinations; 101 KAR 2:045 & E
  Certification, eligibles; 101 KAR 2:065 & E
  Classified service; 101 KAR 2:095 & E
  Compensation, pay incentive; 101 KAR 2:035 & E
  Leave; 101 KAR 2:100
  Register, job bank; 101 KAR 2:055 & E
  Vacancies, special duty; 101 KAR 2:075 & E
Unclassified
  Classification, compensation; 101 KAR 3:045 & E
  Leave; 101 KAR 3:010

PHARMACY
Bioinequivalence problems; 201 KAR 2:116 & E
Repealer; 201 KAR 2:111 & E

PHYSICAL THERAISTS
Licensing procedures; 201 KAR 22:031

PSYCHOLOGY
Fee schedule; 201 KAR 26:160

PUBLIC PROTECTION, REGULATION
Alcoholic Beverage Control
  Advertising malt beverages; 804 KAR Chapter 2
  Business, employees conduct; 804 KAR Chapter 5
  Fair trade, pricing, sales; 804 KAR Chapter 3
  Licensing; 804 KAR Chapter 4
Financial Institutions
  Administration; 808 KAR Chapter 1
  Credit unions; 808 KAR Chapter 3
Housing, Buildings & Construction
  Building code; 815 KAR Chapter 7
  Electrical inspectors; 815 KAR Chapter 35
  Hazardous materials; 815 KAR Chapter 30
  Plumbing; 815 KAR Chapter 20
  Standards of safety; 815 KAR Chapter 10
Insurance
  Agents, consultants, solicitors, adjusters; 806 KAR Chapter 9
  Group, blanket health insurance; 806 KAR Chapter 18
  Health insurance contracts; 806 KAR Chapter 17

PUBLIC PROTECTION, REGULATION (cont'd)
  Trade practices, frauds; 806 KAR Chapter 12
  Unauthorized insurers; 806 Chapter 11
Public Service Commission; 807 KAR Chapter 5

PUBLIC SERVICE COMMISSION
Electric utilities integrated resources planning; 807 KAR 5:058

RADIOLOGY
(See, Health Services)

REAL ESTATE COMMISSION
Auction obligations; 201 KAR 11:115
Closing statements; 201 KAR 11:095
Continuing education, mandatory; 201 KAR 11:230
Contracts, listing, purchase; 201 KAR 11:250
Definitions; 201 KAR 11:011
Facsimile transmissions; 201 KAR 11:300
Improper conduct; 201 KAR 11:121
Instructor approval; 201 KAR 11:175
Licensing, education, testing; 201 KAR 11:210
Original broker authority; 201 KAR 11:110
Private school approval; 201 KAR 11:170
Property management; 201 KAR 11:245

REFERENDUMS (AGRICULTURE)
Corn; 302 KAR 1:070
Milk; 302 KAR 1:055
Small grain producers; 302 KAR 1:080

REFUGEE ASSISTANCE
(See Social Insurance)

RELOCATION ASSISTANCE
(See Transportation)

RESOURCE MANAGEMENT (EDUCATION)
Surplus Property
  Repealer; 708 KAR 1:001

RETIREMENT
KERS
  Actuarial assumptions, tables, 105 KAR 1:040 & E
  Contributions and interest rates; 105 KAR 1:010 & E

REVENUE
(See also Taxation)
Ad Valorem Tax
  Administration; 103 KAR Chapter 5
General administration; 103 KAR Chapter 1
Income Tax
  Individual; 103 KAR Chapter 17
  Withholding; 103 KAR Chapter 18
Sales and Use Tax
  Administration, accounting; 103 KAR Chapter 31
  Exemptions, general; 103 KAR Chapter 30
  Miscellaneous retail transactions; 103 KAR Chapter 28
  Miscellaneous retailer occupation; 103 KAR Chapter 27
  Registration, collection; 103 KAR Chapter 25
  Service, professional occupations; 103 KAR Chapter 26
Selective Excise Tax
  Motor vehicle usage; 103 KAR Chapter 44

SANITATION
(See, Health Services)

SCHOOL ADMINISTRATION, FINANCE
(See Administration, Finance, Education)

SECRETARY OF STATE
Certifications
Vacancy in nominations; 30 KAR 2:010 & E

SOCIAL INSURANCE
Food Stamps
Certification process; 904 KAR 3:035 & E
Public Assistance
AFDC need & amount standards; 904 KAR 2:016 & E
AFDC technical requirements; 904 KAR 2:006 & E
Aged, blind, disabled; 904 KAR 2:015 & E
Child support process; 904 KAR 2:022
LIHEAP; 904 KAR 2:116 & E
Payments, time, manner; 904 KAR 2:050 & E
Refugee assistance; 904 KAR 2:110 & E
Repealer; 904 KAR 2:026
Right to apply; 904 KAR 2:035 & E

SOCIAL SERVICES
Aging Services
Hearing procedures; 905 KAR 8:140
Child Welfare
Child caring facilities; 905 KAR 1:300
Child placing agencies; 905 KAR 1:310
Subsidy approval; 905 KAR 1:050
Community Action Agencies
Program state plan, CSBG; 905 KAR 6:070
Day Care
Facility standards; 905 KAR 2:010

SOLID WASTE
(See Waste Management)

STATE POLICE
Candidate Selection
Physical examination; 502 KAR 45:050 & E

SUBSTANCE ABUSE
(See, Mental Health/Mental Retardation)

TAXATION
Ad Valorem Tax; Administration
Repealer; 103 KAR 5:021
General Administration
Protests, appeals; 103 KAR 1:010
Income Tax; Individual
Combat zone service; 103 KAR 17:041
Repealer; 103 KAR 17:081
Income Tax; Withholding
Exemption certificates; 103 KAR 18:100
Methods; 103 KAR 18:110
Sales and Use Tax; Administration, Accounting
Coupons, redemption; 103 KAR 31:080
Sales, purchases, resale; 103 KAR 31:111
Tax accounting, remitting; 103 KAR 31:011
Sales and Use; Exemptions
Energy, fuels; 103 KAR 30:140
Farm chemicals; 103 KAR 30:095 & E
Occasional sales; 103 KAR 30:200
Prescription medicines, prosthetic devices, physical aids; 103 KAR 30:020
Sales to farmers; 103 KAR 30:091
Sales and Use Tax; Miscellaneous Retail Transactions
Leases, rentals; 103 KAR 28:051
Sales and Use Tax; Miscellaneous Retailer Occupation
Motor vehicles; 103 KAR 27:100
Sales and Use Tax; Registration, Collection
Sales tax bracket system; 103 KAR 25:081
Use tax bracket system; 103 KAR 25:091
Sales and Use Tax; Service, Professional Occupations
Construction contractors; 103 KAR 26:070
Selective Excise Tax; Motor Vehicle Usage
Motor vehicle valuation; 103 KAR 44:040 & E

TOURISM
Fish and Wildlife
Fish; 301 KAR Chapter 1
Game; 301 KAR Chapter 2

TRANSPORTATION
Highways
Traffic; 603 KAR Chapter 5
Minority Affairs
Certification of disadvantaged, minority, women business enterprises; 600 KAR 4:010
Motor Vehicle Commission
605 KAR Chapter 1
Property Acquisition, Uniform Relocation
Assistance payments; 600 KAR 3:010
Vehicle Regulation
Driver improvement; 601 KAR Chapter 13
Motor carriers; 601 KAR Chapter 1
Motorcycle safety; 601 KAR Chapter 14
Motor vehicle tax; 601 KAR Chapter 9

UNEMPLOYMENT INSURANCE
(See, Employment Services)

UNDERGROUND STORAGE TANKS
(See Waste Management)

UNIVERSITY OF KENTUCKY
Affiliated corporations; 765 KAR 1:070
Annual audit; 765 KAR 1:030
Financial management responsibility; 765 KAR 1:020
Fund disbursement, accounting; 765 KAR 1:010
Fund for excellence; 765 KAR 1:060
Issuance of bonds; 765 KAR 1:050
Purchase, inventories, surplus property, capital construction; 765 KAR 1:040

VEHICLE REGULATION
Driver Improvement
School attendance, academic sufficiency verification; 601 KAR 13:070 & E
Motor Carriers
Definitions; 601 KAR 1:029 & E
Transporting financial documents; 601 KAR 1:170
Transporting hazardous materials; 601 KAR 1:025
Vehicle identification; 601 KAR 1:160 & E
Motorcycle Safety
Headgear, eye protective devices; 601 KAR 14:010
Motor Vehicle Tax
Dealer plates; 601 KAR 9:125
FOP special license plates; 601 KAR 9:145
Temporary plates; 601 KAR 9:140
Use license, records, taxes; 601 KAR 9:074

VITAL STATISTICS
(See, Health Services)

VOCATIONAL EDUCATION
(See Workforce Development)
Administration
Repealer; 705 KAR 1:001
Facilities, Equipment
Standards; 705 KAR 3:140
Fiscal Management
Area centers, local departments; 705 KAR 2:120
Instructional Programs
Cooperative program; 705 KAR 4:040
FFA leadership training center; 705 KAR 4:080
Secondary program standards; 705 KAR 4:230
Work experience program; 705 KAR 4:050

VOCATIONAL REHABILITATION
Repealer; 706 KAR 1:001
Administration
  Appeal procedures; 781 KAR 1:010 & E
  Carl D. Perkins Center; 781 KAR 1:050 & E
  Colonial Inn Facility; 781 KAR 1:060 & E
  Department operation; 781 KAR 1:020 & E
  Economic need test; 781 KAR 1:030 & E
  Fees for service; 781 KAR 1:070 & E
  Rehabilitation engineering services; 781 KAR 1:040 & E
Independent Living Rehabilitation
  Appeal procedures; 781 KAR 2:010 & E
  Department operation; 781 KAR 2:020 & E

VOTERS
(See, Elections, State Board)

WASTE MANAGEMENT
Hazardous Waste; Generator Standards
  Pretransport requirements; 401 KAR 32:030
  Special conditions; 401 KAR 32:050
Hazardous Waste; Permitting Process
  Application procedures; 401 KAR 38:070
  Approval provisions; 401 KAR 38:500
  General; 401 KAR 38:010
  Groundwater protection, Part B; 401 KAR 38:100
  Miscellaneous units; Part B; 401 KAR 38:230
  Part B application; 401 KAR 38:090
  Permit changes, expiration; 401 KAR 38:040
  Public information procedures; 401 KAR 38:050
  Special permits; 401 KAR 38:060
Hazardous Waste Storage, Treatment, Disposal Facilities; Interim Status Standards
  Facility standards, general; 401 KAR 35:020
  General; 401 KAR 35:010
  Incapacity; 401 KAR 35:130
  Liability requirements; 401 KAR 35:120
  Tanks; 401 KAR 35:190
Hazardous Waste Storage, Treatment, Disposal Facilities; Owner and Operator Standards
  Closure, postclosure; 401 KAR 34:070
  Corporate guarantee; 401 KAR 34:165
  Financial requirements, closure; 401 KAR 34:090
  Financial requirements, postclosure; 401 KAR 34:100
  General; 401 KAR 34:020
  Groundwater protection; 401 KAR 34:060
  Hazardous constituents; 401 KAR 34:360
  Incapacity; 401 KAR 34:130
  Liability requirements; 401 KAR 34:120
  Manifest system, recordkeeping, reporting; 401 KAR 34:050
  Miscellaneous units; 401 KAR 34:250
Land Disposal Restrictions
  General; 401 KAR 37:010
  Halogenated organic compounds; 401 KAR 37:110
  Land disposal prohibitions; 401 KAR 37:030
  Storage prohibitions; 401 KAR 37:050
  Treatment standards; 401 KAR 37:040
Solid Waste Facilities
  New/modified permit moratorium; 401 KAR 47:132E
  Waste diversions; 401 KAR 47:136 & E
  Waste limitations; 401 KAR 47:134 & E
Underground Storage Tanks
  Definitions; 401 KAR 42:011
  Financial responsibility; 401 KAR 42:090
  General operating requirements; 401 KAR 42:030
  Out-of-service systems, closure; 401 KAR 42:070
  Performance standards; 401 KAR 42:020
  Registration fees; 401 KAR 42:200
  Release detection; 401 KAR 42:040
  Release reporting, investigation, confirmation; 401 KAR 42:050
  Release response, corrective action; 401 KAR 42:060

WASTE MANAGEMENT (cont'd)
Waste Management Facilities
  Spent lead-acid batteries; 401 KAR 36:070

WATER
Public Water Supply
  Bottled water; 401 KAR 8:700 & E
  Corrosivity monitoring; 401 KAR 8:350 & E
  Definitions; 401 KAR 8:010 & E
  Disinfection, filtration; 401 KAR 8:150 & E
  Disinfection by-products; 401 KAR 8:500 & E
  Fees; 401 KAR 8:050 & E
  General provisions; 401 KAR 8:020 & E
  Inorganic chemical; 401 KAR 8:250 & E
  Laboratory certification; 401 KAR 8:040 & E
  Lead; 401 KAR 8:300 & E
  Monitoring, microbiological, turbidity; 401 KAR 8:200 & E
  New or modified facilities; 401 KAR 8:100 & E
  Organic chemicals; 401 KAR 8:400 & E
  Public notification; 401 KAR 8:070 & E
  Radionuclides; 401 KAR 8:550 & E
  Secondary standards; 401 KAR 8:600 & E
  Supplemental fluoridation; 401 KAR 8:650 & E
  Synthetic organic chemicals; 401 KAR 8:440 & E
  Treatment, distribution systems; 401 KAR 8:030 & E
  Variances, exemptions; 401 KAR 8:060 & E
  Volatile organic chemicals; 401 KAR 8:420 & E
Sanitary Engineering
  Water well drillers; 401 KAR 6:320 & E

WORKFORCE DEVELOPMENT
Adult and Technical Education
  Adult education; 780 KAR Chapter 9
  Facilities and equipment; 780 KAR Chapter 7
  General administration; 780 KAR Chapter 1
  Instructional programs; 780 KAR Chapter 4
  Management of the Kentucky tech system; 780 KAR Chapter 2
  Personnel system for certified and equivalent employees; 780 KAR Chapter 3
  Unclassified personnel; 780 KAR Chapter 6
  Veteran's approval agency; 780 KAR Chapter 5
  Vocational & teacher education; 780 KAR Chapter 8
Vocational Rehabilitation
  Administration; 781 KAR Chapter 1
  Independent living rehabilitation; 781 KAR Chapter 2

WORKPLACE STANDARDS
(See Occupational Safety and Health)

YOUTH CAMPS
(See Health Services)