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MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is **tentatively** scheduled on February 7-8, 1991. See **tentative** agenda on pages 2375-2376 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 - February 7, 1991
(Room 327, Capitol @ 2 p.m.)

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

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201 KAR 11:095. Closing statements; rental management agreements.
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401 KAR 47:134 & E. Limitations on amount of waste accepted by residential landfills. (Amended After Hearing)
401 KAR 47:136 & E. Diversion of waste. (Amended After Hearing)

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Department for Human Services

Communicable Diseases

902 KAR 2:150. Human Immunodeficiency Virus education, initial professional licensure. (Amended After Hearing)
902 KAR 2:160. Human Immunodeficiency Virus education, continuing education for professionals. (Amended After Hearing)

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902 KAR 13:080. Authorized procedures.
902 KAR 13:120. Emergency medical techincian automatic and semiautomatic defibrillation training program.

State Health Plan

902 KAR 17:010 & E. State health plan.

Health Services and Facilities

902 KAR 20:300 & E. Operation and services: nursing facilities.
902 KAR 20:310 & E. Facility specifications; nursing facility.
902 KAR 20:320 & E. Psychiatric residential treatment facility operation and services. (Amended After Hearing)
902 KAR 20:330 & E. Psychiatric residential treatment facilities. (Not Amended After Hearing)

Department for Social Insurance

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

Department for Social Services

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905 KAR 1:300. Standards for child-caring facilities.
905 KAR 1:310. Standards for child-placing agencies. (Repeals 905 KAR 1:005.)

Departmant for Medicaid Services

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907 KAR 1:022 & E. Nursing facility and intermediate care facility for the mentally retarded services. (Repeals 907 KAR 1:024.)
907 KAR 1:025 & E. Payments for nursing facility and intermediate care facility for the mentally retarded services. (Repeals 907 KAR 1:036.)
907 KAR 1:095. Payments for nurse-midwife services.
907 KAR 1:102 & E. Advanced registered nurse practitioner services.
907 KAR 1:104 & E. Payments for advanced registered nures practitioner services.
907 KAR 1:430. Incorporation by reference of the home health services manual.

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500 KAR 9:015. Model policy for forfeiture of assets by law enforcement agencies.
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501 KAR 6:030. Kentucky State Reformatory.
501 KAR 6:090. Frankfort Career Developement Center.
501 KAR 6:130 & E. Western Kentucky Correctional Complex.

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704 KAR 4:020. Comprehensive school health.
Student Services
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704 KAR 7:055. Corporal punishment of pupils. (Not Amended After Hearing)
704 KAR 7:080. Ride to the Center for the Arts Prgram Fund.

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Department of Insurance

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Department of Housing, Buildings and Construction

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Plumbing
815 KAR 20:020. Parts or materials list.
815 KAR 20:120. Water supply and distribution.

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 90 days from publication or upon replacement or repeal.)

STATEMENT OF EMERGENCY
501 KAR 6:020E

In order to continue to operate the Corrections Cabinet in accordance with KRS Chapter 196, the Corrections Cabinet needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because the effected cabinet policies must be revised immediately to allow the Corrections Cabinet to amend a policy and procedure for the Controlled Intake Program (CPP 27-20-01) to improve the methods for the identifying, interviewing and transporting controlled intake inmates who are eligible to meet the parole board in the community. Also, the security levels of the the private contract facilities and the Western Kentucky Correctional Complex have been upgraded. The remaining policies were revised to include technical word changes required by LRC. This emergency regulation will be replaced by the ordinary administrative regulation filed with LRC on December 14, 1990 in accordance with KRS Chapter 13A.

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

CORRECTIONS CABINET

501 KAR 6:020E. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
EFFECTIVE: December 18, 1990
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 18, 1990 at 2 p.m.

STATEMENT OF EMERGENCY
501 KAR 6:130E

In order to continue to operate the Corrections Cabinet in accordance with KRS Chapter 196, the Western Kentucky Correctional Complex needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because the effected institutional policies must be implemented to allow the Western Kentucky Correctional Complex to submit a series of new and revised policies to prepare the institution for an upcoming national accreditation audit. Additionally, these policies have been revised to reflect the transition of this institution from a minimum security farm center to a medium security correctional complex. These policies are needed to bring the Western Kentucky Correctional Complex into compliance with standards set by the American Correctional Association. This emergency regulation will be replaced by the ordinary administrative regulation filed with LRC on December 14, 1990 in accordance with KRS Chapter 13A.

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

CORRECTIONS CABINET

501 KAR 6:130E. 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
EFFECTIVE: December 18, 1990
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 18, 1990 at 2 p.m.

STATEMENT OF EMERGENCY
806 KAR 18:040E

This emergency administrative regulation establishes minimum standards for health insurance programs set up by institutions of higher education pursuant to KRS 304.18-115. The compulsory health insurance requirement for KRS 304.18-115 becomes effective for students who enroll in institutions of higher education as of September 1, 1991. That enrollment process is already taking place, and, therefore, institutions of higher education need guidance as to the minimum standards for their health insurance programs. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on December, 1990.

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

PUBLIC PROTECTION & REGULATION CABINET
Department of Insurance

806 KAR 18:040E. Health insurance for students of institutions of higher education.

RELATES TO: KRS 304.18-115
STATUTORY AUTHORITY: KRS 304.2-110, 304.18-115
EFFECTIVE: December 14, 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. 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
GARY S. COX, Executive Director
Council on Higher Education
APPROVED BY AGENCY: December 10, 1990
FILED WITH LRC: December 14, 1990 at 2 p.m.

STATEMENT OF EMERGENCY
902 KAR 17:010E

Senate Bill 68 and Senate Bill 265 directed certain changes be made to the State Health Plan. This document is reflective of those legislatively mandated changes which became effective July 13, 1990. It is imperative that the new State Health Plan be incorporated by reference on an emergency basis in order that the Commission for Health Economics Control in Kentucky (CHECK) have revised review criteria and standards reflecting these statutory changes in its review of applications for certificates of need as required by the 1990 General Assembly. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler on or about December 14, 1990. This administrative regulation is being refiled at this time for reason that the December 6, 1990 deadline for filing the statement of consideration for the regular regulation was not met.

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

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 17:010E. State health plan.

RELATES TO: KRS 216B.040(2)(a)
STATUTORY AUTHORITY: KRS 194.050, 194.090(2)(a) [1986 Acts Chapter 474]
EFFECTIVE: December 18, 1990
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 18, 1990 at 2 p.m.

STATEMENT OF EMERGENCY
902 KAR 20:300E

This emergency regulation implements a new licensure category of long-term residential nursing care entitled "nursing facilities". This regulation is necessary to provide facilities licensure standards that mirror federal certification standards 42 CFR Part 405. These federal standards went into effect October 1, 1990 and these licensure standards need to be implemented as quickly as possible after this date. This regulation is being refiled because the statement of consideration could not be filed in a timely manner. The emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler before December 15, 1990.

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

CABINET FOR HUMAN RESOURCES
Office of Inspector General

902 KAR 20:300E. Operation and services; nursing facilities.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990
STATUTORY AUTHORITY: KRS 216B.042 and 216B.105
EFFECTIVE: December 18, 1990
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
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STATEMENT OF EMERGENCY
902 KAR 20:310E

This emergency regulation implements a new licensure category of long-term residential nursing care entitled "nursing facilities". This regulation is necessary to provide facilities licensure standards that mirror federal certification standards 42 CFR Part 405. These federal standards went into effect October 1, 1990 and these licensure standards need to be implemented as quickly as possible after this date. This regulation is being refiled because the statement of consideration could not be filed in a timely manner. The emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler before December 15, 1990.

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

CABINET FOR HUMAN RESOURCES
Office of Inspector General

902 KAR 20:310E. Facility specifications; nursing facility.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)
STATUTORY AUTHORITY: KRS 216B.042, 216B.105
EFFECTIVE: December 18, 1990
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 7, 1990
FILED WITH LRC: December 18, 1990 at 2 p.m.

STATEMENT OF EMERGENCY
904 KAR 2:006E

This emergency administrative regulation allows for changes to the Aid to Families with Dependent Children Unemployed Parent (AFDC-UP) Program as a result of P.L. 101.508. 42 USC 607(b)(1)(B) is amended to add provision (v) which states that the needs of the sanctioned individual and those of the second parent (unless participating in the Job Opportunities and Basic Skills (JOBS) Program) will be removed from the AFDC case for failure to register for work in a non-JOBS area. This provision became effective retroactive to October 1, 1990. 42 USC 607(d)(1) is amended to add provision (C) which states that participation in the Community Work Experience Program (CWEP) and Work Incentive (WIN) Program prior to October 1, 1990, qualify as quarters of work in the AFDC-UP program. This provision became effective with passage in November 1990. Failure to implement these provisions may result in loss of federal funding for this program. This emergency administrative regulation removes provisions of the Job through Education and Training (JET) Program in its entirety as the JET Program ended effective October 1, 1990, due to the implementation of the JOBS Program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler for the January 1991 filing.

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

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

904 KAR 2:006E. Technical requirements; AFDC.

RELATES TO: KRS 205.010, 205.200(2), (3), 45 CFR 205.52, 205.10, 232.11-12, 232.40-48, 233.10, 233.40, 233.50, 45 CFR 233.90, 233.100, 250

STATUTORY AUTHORITY: KRS 194.050, 205.200(2), (3)

EFFECTIVE: January 2, 1991

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children (AFDC) in accordance with Title IV-A of the Social Security Act. KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by regulations in conformity with the Social Security Act and federal regulations. This regulation sets forth the technical requirements of residence, deprivation, living with a relative, age, one (1) category of assistance, work registration, job opportunities and basic skills (JOBS) program participation, cooperation in child support enforcement activities and potential entitlement for other programs for eligibility for AFDC.

Section 1. Definitions. (1) "Assessment" means the ongoing evaluation of an individual's

educational and vocational potential.
(2) "Barriers" are any hardships the individual shall overcome to participate in education, training or employment.
(3) "Case manager" means the Department for Social Insurance (DSI) individual who:
(a) Determines ongoing AFDC or medical assistance (MA) or food stamp (FS) eligibility and benefit levels for all case action in the household of a JOBS participant;
(b) Aids the JOBS participant by brokering services for the participant;
(c) Identifies and resolves barriers to the extent possible; and
(d) Delivers JOBS related services to the participant.
(4) "Conciliation" is a process in which participation problems in the JOBS program can be resolved.
(5) "JOBS" means a program which assists recipients of AFDC in obtaining the necessary education and training that will lead to gainful employment and self-support.
(6) "Target population" means that group composed of each individual who:
(a) Is receiving AFDC, and who has received AFDC for any thirty-six (36) of the sixty (60) months immediately preceding the most recent month for which application has been made;
(b) Makes application for AFDC and has received AFDC for any thirty-six (36) of the sixty (60) months immediately preceding the most recent month for which application has been made;
(c) Is a custodial parent under the age of twenty-four (24) who:
1. Has not completed a high school education and, at the time of application for AFDC, is not enrolled in high school or a high school equivalency course of instruction; or
2. Had little or no work experience in the preceding year; or
(d) Is a member of a family in which the youngest child is within two (2) years of being ineligible for AFDC because of age.

Section 2. Residence and Citizenship. (1) Residence. A resident is anyone who [is]:
(a) Is living in the state;
(b) Entered the state with a job commitment or seeking employment; and
(c) Is not receiving AFDC benefits from another state.
(2) Citizenship. AFDC shall be provided only to:
(a) Citizens;
(b) Aliens lawfully admitted for permanent residence; or
(c) Aliens otherwise permanently residing in the United States under color of law.

Section 3. Deprivation. (1) To be eligible for AFDC, a child shall be in need and shall be deprived of parental support of a natural or adoptive parent or care due to:
(a) Death;
(b) Continued absence from the home;
(c) Physical or mental incapacity; or
(d) Effective October 1, 1990, unemployment.
(2) A married child living with his spouse in the home of his parents is not deprived of parental support or care.
(3) A married child living in the home of his parents but divorced or legally separated from his spouse is deprived of parental support if he is dependent on the parent and a parent is:
(a) Dead;
(b) Incapacitated;
(c) Unemployed; or
(d) Continually absent from the home.
(4) Continued absence from the home.
(a) To be eligible for AFDC, a needy child shall be physically separated from the parent and:
1. The nature of the absence of the parent interrupts or terminates the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and
2. The known or indefinite duration of absence precludes counting on the parent's performance of his function in planning for the present support or care of the child.
(b) Absence may be voluntary or involuntary.
1. Voluntary absence includes:
a. Divorce;
b. Legal separation;
c. Marriage annulment;
d. Desertion of thirty (30) days or more;
e. Forced separation of seven (7) days or more; or
f. Birth out-of-wedlock.
2. Involuntary absence includes:
a. Commitment to a penal institution for thirty (30) days or more;
b. Long-term hospitalization;
c. Deportation; or
d. Single parent adoption.
(c) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.
(5) Incapacity.
(a) All determinations regarding whether a child has been deprived of parental support or care by reason of the physical or mental incapacity of a natural or adoptive parent shall be in conformance with federal regulations [found at 45 CFR §233.90(c)(1)(iv)] and the criteria set forth in this subsection.
(b) Each determination shall be based on a full consideration and assessment of all medical, social, and economic factors involving a particular claimant.
(c) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in a parent's inability to support or care for the child.
1. Incapacity exists in each case when the following criteria are met:
a. It is medically determined that one (1) parent has a physical or mental defect, illness or impairment which was:
(i) Present at the time of application; and
(ii) Which has continued or is expected to last for a period of at least thirty (30) calendar days. This may include a period in which the claimant is undergoing planned diagnostic studies or evaluation of rehabilitation potential; and
b. It is determined by nonmedical evaluation that such defect, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.
2. Factors to be considered in making the medical determination shall include:
a. The claimant's medical history and

subjective complaints regarding an alleged physical or mental defect, illness or impairment; and

b. Competent medical testimony relevant to:

(i) Whether a physical or mental defect, illness or impairment exists;

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

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

3. Factors to be considered in making the nonmedical evaluation shall include:

a. The claimant's:

(i) Age;

(ii) Employment history;

(iii) Vocational training;

(iv) Educational background; and

(v) Subjective complaints regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

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

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

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

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

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

5. A written report shall be made of the determination under this subsection.

6. Each claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing as provided in 904 KAR 2:055.

(6) Unemployment. The determination that a child is deprived of parental support due to the unemployment of a parent shall be based on the determination that the principal wage earner meets the criteria of unemployment and has a prior labor market attachment.

(a) Principal wage earner (PWE). The PWE is the parent who earned the greater amount of income in the twenty-four (24) months immediately preceding the month of application.

1. If the agency is unable to secure primary evidence of earnings to determine which parent is the PWE, the agency shall designate the PWE using the best evidence available.

2. If both parents earned identical amounts of income, or no income, the agency shall designate the parent meeting the criteria of unemployment, as specified in subsection (4)(b) of this section.

3. Earnings of each parent shall be considered in determining the PWE regardless of when their relationship began.

4. PWE designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(b) Unemployment. A parent shall be considered to be unemployed if:

1. Employed less than 100 hours in a calendar month; or

2. Employment exceeds 100 hours in a particular month, but the work is intermittent and the excess is of a temporary nature. This would be evidenced by the fact that the parent was under the 100 hour standard in the prior two (2) months and is expected to be under the 100 hour standard in the following month.

(c) Prior labor market attachment (PLMA).

1. PLMA is met if the parent:

a. Earned not less than fifty (50) dollars during each of six (6) or more calendar quarters ending on March 31, June 30, September 30 or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of the application;

b. Within twelve (12) months prior to application, received unemployment compensation; or

c. Is currently receiving unemployment compensation or if potentially eligible, has made application for unemployment insurance benefits.

2. In determining whether or not criteria in subsection (4)(c)1a of this section is met, the following shall be taken into consideration:

a. Participation in CWEP or WIN prior to October 1, 1990, and in JOBS after October 1, 1990, [a work or training program] shall be considered as earning an income in determining PLMA.

b. Full-time attendance, as defined by the school or institution, in educational activities may be substituted for two (2) of the six (6) calendar quarters.

c. Gross income from self-employment and farming qualify as earned income in determining prior labor market attachment. The self-employed individual does not have to realize a profit to meet this requirement.

(d) Restrictions. Unemployment shall not exist if the PWE:

1. Is on strike;

2. Is temporarily unemployed:

a. Due to weather conditions or lack of work;

b. If there is a job to return to; and

c. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

3. Is unavailable for full-time employment;

4. Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

5. Has not met the criteria of unemployment for at least thirty (30) days;

6. Has not applied for unemployment benefits, if potentially eligible;

7. Is not:

a. Registered for work under Section 8 of this regulation; or

b. Subject to JOBS, under Section 9 of this regulation; or

8. Has refused a bona fine offer of employment or training for employment without good cause in the thirty (30) days prior to AFDC-UP eligibility or during the course of receipt of AFDC-UP benefits. Good cause exists if criteria specified in 904 KAR 2:016, Section 4(4)(a)1, 2, 3, or 4 is met.

Section 4. Living with a Specified Relative. To be eligible for AFDC a needy child shall be living in the home of a relative as follows:

(1) A blood relative, including father, mother, grandfather, grandmother, brother, sister, uncle, aunt, nephew, niece, first cousin.
(2) Also relatives of the half-blood and preceding generations as denoted by prefixes of grand, great or great-great; a stepfather, stepmother, stepbrother, stepsister.
(3) Any person listed above if parent has had paternity established through the administrative determination process. An administrative determination of paternity is limited to situations in which the following types of evidence are present:
(a) A birth certificate listing the alleged parent; or
(b) Legal documents such as:
1. Hospital records;
2. Juvenile court records;
3. Wills; and
4. Other court records which clearly indicate the relationship of the alleged parent or relative; or
(c) Receipt of statutory benefits as a result of the alleged parent's circumstances; or
(d) A sworn statement or affidavit of either parent acknowledging paternity plus one (1) of the following:
1. School records;
2. Bible records;
3. Immigration records;
4. Naturalization records;
5. Church documents, such as baptismal certificates;
6. Passport;
7. Military records;
8. U.S. Census records; or
9. Sworn statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.
(e) Rebuttal of paternity.
1. Effective April 1, 1987, in cases in which the parent or, in the absence of the parent, the caretaker relative alleges the evidence present in paragraphs (a) or (b) of this subsection is erroneous and provides substantiation of the erroneous information, the parent or caretaker relative shall provide a sworn statement or affidavit acknowledging the erroneous information and containing the correct information on the actual alleged parent.
2. Presence of the sworn statement or affidavit will serve as rebuttal to the evidence present in paragraphs (a) or (b) of this subsection and a determination of paternity will not be acknowledged.
(4) Adoptive parents as well as the natural and other legally adopted children and other relatives of such parents.
(5) Husband or wife of any persons listed above even if the marriage may have terminated, providing termination occurred after the birth of the child.
(6) If the parent continues to exercise control over the child, a child is considered as living in the home even when temporarily absent for:
(a) Medical care;
(b) Attendance at boarding school;
(c) College or vocational school;
(d) Emergency foster care; or
(e) Short visits with friends or relatives.

Section 5. Age and School Attendance. (1) A child may be eligible for AFDC from birth to age eighteen (18).
(2) A child may be eligible to age nineteen (19) if:
(a) A full-time student in a secondary school; or
(b) The equivalent level of vocational or technical training; and
(c) Expected to complete the program prior to or during the month of their 19th birthday.
(3) Full- and part-time is defined in 904 KAR 2:016, standards for need and amount; AFDC.
(4) Unless he has indicated an intention not to reenter school, a child is considered in regular attendance in months in which he is not attending because of:
(a) Official school or training program vacation;
(b) Illness;
(c) Convalescence; or
(d) Family emergency.

Section 6. One Category of Assistance. (1) A child or adult relative shall not be eligible for AFDC if receiving supplemental security income (SSI).
(2) If a child who receive SSI meets the AFDC requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for AFDC if all other eligibility factors are met.

Section 7. Strikers. (1) A family shall be ineligible for benefits for any month in which the natural or adoptive parent, with whom the child is living is, on the last day of such month, participating in a strike; and
(2) No individual shall be considered eligible for benefits for any month if, on the last day of such month, such individual is participating in a strike.
(3) Strike shall be defined to include a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

Section 8. Work Registration. (1) In a case based on the deprivation of unemployment, the PWE shall register for work with the DES if:
(a) He resides in a non-JOBS county; or
(b) He resides in a JOBS county and is exempt from participation as specified in Section 9(1)(e) of this regulation.
(2) Failure of the PWE to register for work shall result in removal of the needs of the sanctioned individual and the second parent, unless the second parent has volunteered or is participating in JOBS [cause the case to be ineligible].

Section 9. Job Opportunities and Basic Skills (JOBS) Training Program. (1) Exemptions. Effective October 1, 1990, all AFDC recipients are required to participate in the JOBS program if the program is available in the county of residence unless the recipient:
(a) Is a child who:
1. Is under age sixteen (16); or
2. Attends, full time, an elementary secondary, vocational or technical school (unless he was enrolled in school through the JOBS program);
(b) Is ill and the illness or injury is serious enough to temporarily prevent entry into

employment or training;

(c) Is incapacitated to the extent that the physical or mental impairment would prevent the recipient from participating in the JOBS program. This may include a period of recuperation after child birth if prescribed by a woman's physician;

(d) Is sixty (60) years old or older;

(e) Resides in a county which offers the JOBS program but in a location in which travel time to the JOBS activity would exceed two (2) hours round trip by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility;

(f) Is needed in the home because another member of the household requires the individual's presence due to illness or incapacity;

(g) Is working at least thirty (30) hours per week;

(h) Is pregnant and the child is expected to be born within the following six (6) month period;

(i) Is the parent or other relative who is personally providing care for a child under age three (3), except as specified in subsection (5)(c) of this section;

(j) Is a full-time VISTA volunteer.

(2) Volunteers. All persons in active JOBS counties who are exempt as specified in subsection (1) of this section may volunteer to participate in the JOBS program.

(a) The DSI shall give first priority for JOBS services to volunteers within the target population to be served.

(b) A volunteer who is exempt, as specified in subsection (1) of this section and who stops participating without good cause, shall lose priority status for JOBS services if he volunteers at a later time.

(c) A volunteer who is not exempt and who stops participating without good cause shall be subject to sanctions, as specified in subsection (10) of this section.

(3) Components. All JOBS counties shall offer the following services and activities:

(a) Education is provided:

1. Below the postsecondary level:

a. High school or equivalent;

b. Basic or remedial education; and

c. English as a second language; or

2. At the postsecondary level if:

a. The occupational assessment indicates that the participant has the aptitude to perform a specific job for which this education and training is required;

b. The participant has or is capable of achieving the basic literacy skills required by the occupation; and

c. Jobs are available in the specific occupation for which education and training is needed.

(b) Job skills training which includes vocational training for a participant in technical job skills and equivalent knowledge and abilities in a specific occupational area.

(c) Job readiness activities that help prepare participants for work by familiarizing them with workplace expectations, attitudes and appropriate behavior.

(d) Job development and job placement activities for soliciting public and private employers' job openings, marketing participants, and securing job interviews for participants.

(4) Optional components. All JOBS counties shall offer job search, which provides group and individual assistance and training with job-seeking activities, and at least one (1) of the following components:

(a) On-the-job training in which a JOBS participant is hired by a private or public employer and receives job training or skills essential to the full and adequate performance of that job;

(b) Community work experience program which provides unpaid work experience and training to assist participants to move promptly into regular public or private employment.

(c) Work supplementation in which <u>JOBS</u> [AFDC] funds are used to develop and subsidize jobs for AFDC recipients. A [portion of the] participant's AFDC grant shall be reduced and <u>that portion</u> paid to the employer instead of to the participant to subsidize the individual's wages. This component shall be implemented effective January 1, 1991.

(5) JOBS participation requirements.

(a) Assessment. When an AFDC recipient has been identified as a JOBS participant, the individual shall be referred to a JOBS case manager. The case manager shall make an assessment of the individual's employability. The assessment shall include consideration of basic skills, work skills, occupational skills, and barriers. The assessment shall be based on:

1. Education, child care and other supportive service needs;

2. The individual's proficiencies, skills deficiencies, and prior work experience;

3. The needs of the family of the participant;

4. Any other relevant factors.

(b) Employability plan. Based on the findings of the assessment, the agency and participant shall jointly develop an employability plan. This plan shall contain:

1. An employment goal for the participant;

2. Services to be provided by the agency (including child care);

3. JOBS activities to be undertaken to achieve the employment goal;

4. Other needs of the family.

(c) Special participation requirements for education.

1. An AFDC parent under age twenty (20) who resides in a JOBS county shall be required to participate in educational activities if:

a. The parent is not otherwise exempt;

b. The parent lacks a high school diploma or has basic skills in reading or math below the 8.9 grade level.

2. For purposes of this requirement, the exemption contained at subsection (1)(i) of this section shall not qualify the participant for exemption from JOBS educational activities.

3. The agency may require a parent aged eighteen (18) or nineteen (19) to participate in work or training activities instead of education if:

a. The parent fails to make good progress in successfully completing educational activities; or

b. Prior to any assignment of the individual to educational activities it is determined, based on an educational assessment and the employment goal established in the individual's employability plan, that participation in educational activities is inappropriate for the parent.

(d) Participation for parents with children

under age six (6). Participants with children under age six (6) who are not required to participate in education (as specified in subsection (5)(c) of this section) shall not be required to participate in the JOBS program for more than twenty (20) hours per week.

(6) Self-initiated JOBS activities. Self-initiated JOBS activities refer to approved activities of individuals who of their own accord began education or training activities. These individuals shall be in good standing at an institution of higher education or school or other entity offering a course of vocational or technical training. Activity below the postsecondary level shall be included if it is determined to be appropriate for the participant's employability plan. Both exempt and nonexempt individuals may be approved for self-initiated education or training for their JOBS activity. The participant shall be attending:

(a) At least half time, as defined by the institution;

(b) A JTPA-funded program, if in training;

(c) A public source or private institution that is licensed by the Kentucky Board for Proprietary Education or recognized by the appropriate regulatory agency or licensing body for the state in which the training is located; or

(d) Other education or training which would otherwise be an approved JOBS activity, for example:

1. GED;
2. Literacy;
3. Other approved education attended less than half time.

(7) Good and satisfactory progress.

(a) Each participant in an education or training component shall meet good and satisfactory progress requirements. Good and satisfactory progress criteria for all JOBS educational activities and approved self-initiated education is established by the educational institution. Good and satisfactory progress shall be measured and reported to the DSI at the following intervals:

1. Literacy, adult basic education, or general educational development. Good and satisfactory progress is measured at the end of seventy-five (75) hours or the 12th month of instruction, whichever comes first.

2. High school. Good and satisfactory progress shall be measured at the end of each semester or quarter.

3. Technical. Good and satisfactory progress shall be measured at regularly scheduled intervals, as defined by the institution.

4. Proprietary school. Good and satisfactory progress shall be measured at the end of each regularly scheduled grading period as defined by the institution, never to exceed a twelve (12) month period.

5. College. Good and satisfactory progress shall be measured at the end of a semester or quarter.

6. DES components. Good and satisfactory progress shall be measured on a monthly basis.

(8) Conciliation. A conciliatory meeting shall be conducted in the following instances:

(a) At the request of a JOBS participant;

(b) At the request of a component provider; or

(c) When a situation is identified which could result in a sanction (as specified in subsection (10) of this section).

(d) The DSI, the DES, or both agencies jointly shall conduct the conciliatory meetings. During the meetings, the agency shall determine if additional services are needed to assist with JOBS participation. Participation shall be monitored for thirty (30) days following the initial meeting to ensure that the dispute has been resolved. The thirty (30) day period may be extended for an additional thirty (30) days, if necessary.

(e) At the conclusion of the conciliation period, the participant shall be notified in writing of the results of the conciliation.

(9) Good cause.

(a) Good cause for noncompliance in the JOBS program or refusal to accept employment shall be found if:

1. The participant is personally providing care for a child under age six (6) and employment or JOBS participation would require the individual to work more than twenty (20) hours per week;

2. Necessary child care is not available;

3. Employment would result in a net loss of cash income;

4. The individual is unable to engage in employment or training for mental or physical reasons including participation in a drug and alcohol rehabilitation program;

5. Unavailability of transportation (including unavailability due to costs which exceed the reimbursement) with no readily accessible alternative means of transportation available;

6. Travel time to the work site or JOBS component site exceeds two (2) hours round trip daily;

7. Illness of another household member requiring the presence of the participant;

8. The participant is temporarily incarcerated;

9. Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin or political beliefs occurs;

10. Work demands or conditions render continued employment unreasonable. Examples are:

a. Consistently not being paid on schedule; or

b. The presence of a risk to the individual's health or safety;

11. Wage rates are decreased subsequent to acceptance of employment;

12. The participant accepts a better job which, because of circumstances beyond the control of the recipient, does not materialize;

13. A household emergency occurs, such as:

a. Death of a member of the immediate family;

b. Entry into a spouse abuse center;

c. Natural disasters;

d. Court appearance;

e. Victim of crime; or

f. Flooded basement; or

14. The participant receives temporary military assignment.

(b) The duration of good cause criteria may vary according to individual circumstances.

(10) Sanctions.

(a) When an AFDC recipient fails to comply with the requirements of the JOBS program, he shall be subject to JOBS and AFDC sanctions. Failure to comply shall be found when the participant:

1. Fails without good cause to participate in the required interview, assessment, and employability plan activities;

2. Fails without good cause to participate in the program;

3. Refuses without good cause to accept

employment; or
4. Terminates employment or reduces earnings without good cause.
(b) Persons who have failed to comply without good cause shall be sanctioned, as follows:
1. The participant is excluded from JOBS activities and services;
a. For the first failure to comply, until the failure to comply ceases;
b. For the second failure to comply, until the failure to comply ceases, or three (3) months, whichever is longer; and
c. For any subsequent failure to comply, until the failure to comply ceases, or six (6) months, whichever is longer.
2. In determining the amount of the AFDC grant, the agency shall not take into account the needs of the sanctioned individual, beginning with the first administratively feasible month after JOBS sanctions begin. In a case based on unemployment, the agency shall not take into account the needs of the sanctioned individual and [or] the second parent, unless the second parent is participating in JOBS.
3. A sanctioned individual shall participate in a designated activity for two (2) weeks before the failure to comply is considered to have ceased. At that time, the sanctions shall be terminated.

[Section 10. Jobs Through Employment and Training (JET). (1) Effective June 1, 1989, unless exempt from work registration, an individual who has applied for or is receiving AFDC shall be ineligible for benefits if he refuses to participate in the JET Program without good cause. The JET program shall close effective September 30, 1990. During the month of October 1990, JET participants in an education or skills training component shall continue their participation as a self-initiated participant in the JOBS program.]
[(2) Individuals exempt from JET are as follows:]
[(a) Individuals who are ill, disabled, or elderly;]
[(b) Individuals needed in the home to care for a sick or disabled person;]
[(c) Individuals working thirty (30) hours or more per week;]
[(d) A child under age sixteen (16) or attending school full time;]
[(e) A woman in at least the seventh month of pregnancy;]
[(f) Individuals living in a "remote" (non-JET) county;]
[(g) A parent or caretaker relative of a child under age six (6) who personally provides full-time care of the child with only very brief and infrequent absences from the home. Brief and infrequent absences without considering time traveled to and from work/school are defined as:]
[1. Employment by the caretaker relative of less than thirty (30) hours per week;]
[2. Less than full-time school attendance (or for college attendance, enrollment) by the caretaker relative;]
[3. Less than full-time school attendance (or for college attendance, enrollment) and less than fifteen (15) hours per week employment by the caretaker relative;]
[4. Attendance by the child under age six (6) in nursery school;]
[5. Additional brief and infrequent absences include:]
[a. Visits by the child under age six (6) with relatives, friends, the absent parent, neighbors, etc.;]
[b. Visits by the caretaker relative with relatives, friends, neighbors, etc.;]
[c. Routine shopping and errands;]
[d. Doctor's visits; and]
[e. Short-term hospitalization (less than thirty (30) days.]
[6. If a parent or other caretaker relative is absent from the child for reasons other than these listed, the absence is not considered brief and infrequent.]

Section 10. [11.] Cooperation in Child Support Enforcement Activities. (1) Inclusion of a specified relative in the AFDC budget is dependent upon his cooperation in child support activities and refusal, except for "good cause," results in ineligibility of the relative with AFDC payments on behalf of the child made to a protective payee.
(2) If, after exclusion from the grant for failure to cooperate, the individual states that he is willing to cooperate and wishes to be reinstated, a supplemental application must be completed. If eligibility criteria are met, the individual will be added to the grant effective with the month of application and the protective payee will be removed.
(3) The Cabinet for Human Resources shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate.
(4) The applicant or recipient shall be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:
(a) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the child; or
(b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself to such an extent that it would reduce his capacity to care for the child(ren) adequately; or
(c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or
(d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction; and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or
(e) The applicant or recipient is being assisted by a public or licensed private social agency to resolve whether to keep the child or release him for adoption and discussion has not gone on for more than three (3) months and the cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.
(5) Specific requirements in determining the existence of good cause and the time limits for providing substantiation of claims are made.

Section 11. [12.] Potential Entitlement for other Programs. (1) All applicants or recipients shall apply for any benefit [or benefits] if potential entitlement exists.

(2) Failure to apply results in ineligibility for AFDC.

Section 12. [13.] Furnishing of Social Security Account Numbers. All applicants or recipients shall furnish social security account numbers.

Section 13. [14.] Assignment of Rights to Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any child support owed for the child not to exceed the amount of AFDC payments made to the recipient.

Section 14. [15.] Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any medical support owed for the child not to exceed the amount of medical assistance payments made on behalf of the recipient.

Section 15. [16.] Material Incorporated by Reference. (1) Forms necessary for participation in the JOBS program are being incorporated effective October 1, 1990.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: December 20, 1990
FILED WITH LRC: January 2, 1991 at 3 p.m.

STATEMENT OF EMERGENCY
904 KAR 2:015E

This emergency administrative regulation revises the cost-of-living adjustments to state supplementation recipients by increasing the amounts as follows:

a. Recipients in personal care homes receive a $35 increase per month.

b. Recipients in family care homes receive a $26 increase per month.

c. Recipients in caretender situations receive the following increases:

Single individual - $23
Couple (one requiring care) - $33
Couple (both requiring care) - $35

This emergency administrative regulation adds these cost-of-living increases to be effective January 1, 1991. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

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

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

904 KAR 2:015E. Supplemental programs for the aged, blind and disabled.

RELATES TO: KRS 205.245, 20 CFR 416.2095, 20 CFR 416.2096

STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: January 7, 1991
NECESSITY AND FUNCTION: The Cabinet for Human Resources is responsible under Title XVI of the Social Security Act as amended by Public Law 92-603 to administer a state funded program of supplementation to all December, 1973, recipients of aid to the aged, blind and disabled, referred to as AABD, disadvantaged by the implementation of the Supplemental Security Income Program, referred to as SSI. KRS 205.245 provides not only for the mandatory supplementation program but also for supplementation to other needy aged, blind and disabled persons. The cabinet shall operate a supplement program for certified personal care homes (PCH) which accept state supplementation recipients and have a thirty-five (35) percent mentally ill or mentally retarded (MI or MR) population in all of the PCH's occupied licensed personal care beds. Personal care services are described in 902 KAR 20:036. This regulation sets forth the provisions of the supplementation program.

Section 1. Mandatory State Supplementation. Mandatory state supplementation payments shall be equal to the difference between the AABD payment for the month of December, 1973, plus any other income available to the recipient as of that month and the total of the SSI payment and other income. Also included are those former aged, blind or disabled recipients ineligible for SSI due to income but whose special needs entitled them to an AABD payment as of December, 1973. Mandatory payments shall continue until the needs of the recipient as recognized in December, 1973, have decreased or income has increased to the December level.

(1) The mandatory payment is increased only when income as recognized in December, 1973, decreases, the SSI payment is reduced but the recipient's circumstances are unchanged, or the standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(2) In cases of man and wife, living together, income changes after September, 1974, will result in increased mandatory payment only if total income of the couple is less than December, 1973, total income.

Section 2. Optional State Supplementation. Optional state supplementation is available to those persons meeting technical requirements and resource limitations of the aged, blind or disabled medically needy program as contained in 907 KAR 1:011 and 907 KAR 1:004 (except when specified in 904 KAR 2:015) who require special living arrangements and who have insufficient income to meet their need for care. Special living arrangements include residence in a personal care home as defined in 902 KAR 20:036 or family care home as defined in 902 KAR 20:041 or situations in which a caretaker must be hired to provide care other than room and board. A supplemental payment is not made to or on behalf of an otherwise eligible individual when the caretaker service is provided by the spouse, parent (of an adult disabled child or a minor child), or adult child (of an aged or disabled parent) who is living with the otherwise eligible individual. When this circumstance exists and a person living outside the home is hired to provide caretaker services, the

supplemental payment may be made. Application for SSI, if potential eligibility exists, is mandatory.

Section 3. Resources Considerations. In determining countable resources and the effect of resources on eligibility, the following policies are applied.

(1) Consider resources according to policies for the medically needy as contained in 907 KAR 1:004, except as noted in subsection (2) of this section.

(2) The upper limit for resources for an individual and for a couple is set at $1,700 and $2,550, respectively, effective January 1, 1986; at $1,800 and $2,700, respectively, effective January 1, 1987; at $1,900 and $2,850, respectively, effective January 1, 1988; and at $2,000 and $3,000, respectively, effective January 1, 1989.

(3) Resources determined in accordance with subsection (1) of this section to be in excess of excluded amounts must be considered countable resources when determining whether the individual or couple exceeds the upper limits specified in subsection (2) of this section. If resources exceed the upper limits, the individual or couple is ineligible.

Section 4. Income Considerations. Establish the amount of income according to policies for the medically needy in 907 KAR 1:004. In determining the amount of optional supplementation payment, total net income of the applicant or recipient, or applicant or recipient and spouse, including any payments made to a third party in behalf of an applicant or recipient, is deducted from the standard of need with the following exceptions:

(1) Income of the ineligible spouse is conserved for the needs of the ineligible, non-SSI spouse or minor dependent children in the amount of one-half (1/2) of the SSI standard for an individual for each person adjusted by deduction of sixty-five (65) dollars and one-half (1/2) of the remainder from monthly earnings of spouse. Income of the eligible individual is not conserved for the needs of the ineligible spouse or minor dependent children. When conserving for the needs of the minor dependent children, income of the children shall be appropriately considered so that the amount conserved does not exceed the allowable amount. When the eligible individual and spouse each have earnings, the earnings shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(2) If one (1) member of a couple is institutionalized and the SSI spouse maintains a home, income in the amount of the SSI standard for one (1) is conserved for the spouse.

Section 5. Standard of Need. (1) The standard, based on living arrangement, from which income as computed in Section 4 of this regulation is deducted to determine the amount of optional payment is as follows:

(a) Personal care home: not less than $690 [655], effective January 1, 1991 [7/90];

(b) Family care home: not less than $510 [484], effective January 1, 1991 [1/1/90];

(c) Caretaker.

1. Single individual, or eligible individual with ineligible spouse (one who is not aged, blind, or disabled): not less than $440 [417], effective January 1, 1991 [1/1/90];

2. Married couple, both eligible (aged, blind, or disabled), with one (1) requiring care: not less than $638 [605], effective January 1, 1991 [1/1/90];

3. Married couple, both eligible and both requiring care: not less than $682 [647], effective January 1, 1991 [1/1/90].

(2) In couple cases, both eligible, the couple's income is combined prior to comparison with the standard of need, and one-half (1/2) of the deficit is payable to each.

(3) The standard includes forty (40) dollars personal needs allowance which shall be retained by the client.

Section 6. Temporary Stay in a Medical Institution. A recipient of optional or mandatory state supplementation shall have continuation of state supplementation benefits during a temporary stay in a hospital, psychiatric hospital, skilled nursing facility or intermediate care facility.

Section 7. Residency. (1) To be eligible, an applicant or recipient shall be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law. An alien shall have been admitted for permanent residence. The applicant or recipient shall also be a resident of Kentucky. Generally, this means the individual shall be residing in the state for other than a temporary purpose; however, there are exceptions with regard to applicants for or recipients of a state supplementary payment and institutionalized individuals. The residency criteria specified in federal regulations at 42 CFR 435.403 shall be applicable except as specified in Section 6 of this regulation.

(2) Supplemental payments may be made to Kentucky residents residing outside the state only when the individual has been placed in the other state by this state. In these situations, the other requirements for eligibility shown in other sections of this regulation shall be applicable, except that with regard to the requirement shown in Section 6 of this regulation, the licensure shall be in accordance with a similar licensure act of the other state. If there is no similar licensure act in the other state, the payment may be made only if this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131. To be eligible for a supplemental payment while placed out-of-state the individual shall require the level of care provided in the out-of-state placement, there shall be no suitable placement available in Kentucky, and the placement shall be preauthorized by staff of the Department for Social Insurance.

(3) When determining residency, ability of the individual to indicate intent (to become a Kentucky resident) shall be considered if the individual is institutionalized. The individual is considered incapable of indicating intent if:

(a) His I.Q. is forty-nine (49) or less or he has a mental age of seven (7) or less, based on tests acceptable to the department; or

(b) He is judged legally incompetent; or

(c) Medical documentation, or other documentation acceptable to the state, supports a finding that he is incapable of indicating

intent.

(4) An individual is institutionalized if he is residing in a facility providing some services other than room and board. Personal care facilities are considered to be institutions.

(5) For any noninstitutionalized individual under age twenty-one (21) whose eligibility for a supplemental payment is based on blindness or disability, his state of residence is Kentucky if he is actually residing in the state.

(6) For any noninstitutionalized individual age twenty-one (21) or over, his state of residence is Kentucky if he is residing in the state and has the intention to remain permanently or for an indefinite period (or, if incapable of indicating intent, is simply residing in the state).

(7) For any institutionalized individual living in Kentucky who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence is Kentucky if:

(a) The state of residence of the individual's parents, or his legal guardian if one has been appointed, is Kentucky; or

(b) The state of residence of the parent applying for the supplemental payment on behalf of the individual is Kentucky, when the other parent lives in another state and there is no appointed legal guardian.

(8) For any institutionalized individual living in Kentucky who became incapable of indicating intent at or after age twenty-one (21), the state of residence is Kentucky if he was living in Kentucky when he became incapable of indicating intent. If this cannot be determined, the state of residence is Kentucky unless he was living in another state when he was first determined to be incapable of indicating intent.

(9) For individuals subject to determinations of residency pursuant to subsections (7) and (8) of this section, the state of residency is Kentucky when the individual is residing in Kentucky, and a determination of residency applying those criteria does not show the individual to be a resident of another state.

(10) For an individual subject to a determination of residency pursuant to subsections (7) and (8) of this section, the state of residence is Kentucky when Kentucky and the state which would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status; i.e., when a similarly situated individual in either state would by written agreement between the states be considered a resident of the state in which he is actually residing.

(11) For other institutionalized individuals (i.e., those individuals who are both age twenty-one (21) or over and capable of indicating intent), the state of residence is Kentucky if the individual is residing in Kentucky with the intention to remain permanently or for an indefinite period.

(12) Except in subsections (3) through (11) of this section, any individual placed by the cabinet in an institution in another state may, with appropriate preauthorization, be considered a resident of Kentucky, and any individual placed in an institution in Kentucky by another state may not be considered a resident of Kentucky.

(13) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky so long as he continues to reside in Kentucky. An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(14) An individual eligible for and receiving a supplemental payment in October, 1979, shall be considered a Kentucky resident through July 4, 1984, even if he does not meet the residency requirements specified in this section, so long as the individual continues to reside in Kentucky and his receipt of supplementary payments has not since October, 1979 been interrupted by a period of ineligibility.

(15) Except in the preceding provisions of this section, a former Kentucky resident who becomes incapable of indicating intent while residing out of this state may be considered a Kentucky resident if he returns to this state and he has a guardian, parent or spouse residing in this state. This individual may not be considered a Kentucky resident on the basis of this subsection whenever, subsequent to that time, he leaves this state to reside in another state except when the provisions of subsection (11) of this section are met. An individual leaving the state may, however, reestablish Kentucky residency by returning to the state if he has a guardian, parent or spouse residing in this state.

(16) No aged, blind, or disabled person shall be eligible for state supplementation while residing in a personal care home or family care home unless such home is licensed under KRS 216B.010 to 216B.131.

Section 8. Mentally Ill or Mentally Retarded Supplement. Certified PCH may qualify for quarterly supplement payments of fifty (50) cents per diem for each state supplementation recipient in their care as of the first calendar day of each qualifying month. In order to qualify, PCH shall meet the following criteria:

(1) The PCH shall be licensed in accordance with KRS 216B.010 to 216B.131.

(2) The PCH shall care for residents who have a primary or secondary diagnosis of mental retardation (such as mild or moderate, or other ranges of retardation whose needs can be met in a personal care home) or mental illness (excluding such diagnoses as organic brain syndrome, senility, chronic brain syndrome, Alzheimer's). An individual whose medical history includes a previous hospitalization in a psychiatric facility shall meet the criteria of mental illness, regardless of the present diagnosis.

(3) The PCH shall care for a thirty-five (35) MI or MR percent population in all of its occupied licensed PCH beds.

(4) The PCH shall not be eligible for payments during the time it is rated by the Office of Inspector General as "conditional". Rating requirements are specified in KRS 216.550 and 900 KAR 2:030.

(5) The PCH shall have a licensed nurse or certified medication technician (CMT) on duty for at least four (4) hours during the first or second shift. The PCH may not decrease licensed nurse or CMT staffing hours in effect prior to July 1990, as a result of this minimum requirement.

(6) The PCH shall file an application with the Department for Social Insurance (DSI) by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter. Quarters shall begin in January, April, July and October. Once certified, eligibility continues as long as criteria continues to be met.

(7) For state fiscal year (SFY) 1991 implementation only, PCH interested in being certified for the MI or MR supplement shall file a letter of intent with DSI by July 31, 1990. To assure adequate time for the MI or MR training and certification process for both the cabinet and the PCH, the letter of intent shall secure money for the first and second quarters of SFY 1991.

(8) The PCH shall provide DSI with its tax identification number and address annually and with a monthly report of all residents of the PCH (including resident's social security number) who were residents of the PCH on the first day of the month. In order to maintain confidentiality, the PCH shall annotate the monthly listing with a star which indicates a resident has a MI or MR diagnosis and note with a check mark those residents who receive state supplementation but are not mentally ill or mentally retarded. A star and a check mark shall indicate the resident is both MI or MR and a recipient of state supplementation. The monthly report shall be used for certification, payment, and audit purposes. The monthly report shall be postmarked to DSI by the fifth working day of the month. For implementation in SFY 1991, facilities which file a timely letter of intent with DSI shall file the monthly reports for July and August, 1990, on or before August 15, 1990.

(9) The PCH shall notify DSI when its MI or MR percentage goes below thirty-five (35) percent for all personal care residents. Facilities may be randomly audited to verify percentages and payment accuracy.

Section 9. Training. The PCH licensed nurse or CMT shall attend MI or MR training provided through the Department for Mental Health and Mental Retardation Services. Other staff may be trained in order to assure the facility always has at least one (1) certified staff employed for certification purposes.

(1) MI or MR training shall be provided through a one (1) day workshop. Training will cover at least the following:

(a) Importance of proper medication administration.

(b) Side affects and adverse medication reactions especially with regard to psychotropics.

(c) Signs and symptoms of an acute onset of a psychiatric episode.

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bi-polar disorder, mental retardation, etc.

(e) Guidance in the area of supervision versus patient rights for the MI or MR population.

(f) How to provide necessary activities to meet the needs of mentally ill or mentally retarded residents.

(2) Initial training shall include the licensed nurse or CMT and may include the owner or operator. These individuals shall be trained in the quarter during which the application is filed. For implementation in SFY 1991 only, the initial training shall take place in the quarter during which the letter of intent is filed or the following quarter. To assure that a certified staff member is always employed at the facility, a maximum of five (5) may be trained during a year (one (1) additional staff member in each of the quarters following the initial training). If staff turnover results in the loss of the licensed nurse or CMT and five (5) staff have been trained, the PCH shall request in writing to DSI an exemption of the five (5) staff rule. The PCH shall have on staff a licensed nurse or CMT who has received the MI or MR training or is enrolled in the next scheduled MI or MR training workshop at the closest location.

(3) The Department for Mental Health and Mental Retardation Services will provide a certificate to direct care staff who complete the workshop.

(4) DSI shall pay twenty-five (25) dollars for each staff member receiving training up to the maximum of five (5) staff per year, in accordance with 904 KAR 2:050.

Section 10. MI or MR Certification. The Office of the Inspector General, Division of Licensing and Regulation, shall visit PCH to certify their eligibility to participate in the MI or MR supplement. The PCH's initial MI or MR certification may be separate from the annual survey. However, after the initial MI or MR certification, the certification shall be in effect until the subsequent licensure survey, which can be greater than or less than twelve (12) months.

(1) Written notification to DSI from the PCH shall be postmarked within five (5) working days after staff have completed the training workshop. DSI shall notify the Division of Licensing and Regulation that the facility is ready to be certified.

(2) The Division of Licensing and Regulation shall review records, observe and interview residents and staff during the certification process. The Division of Licensing and Regulation shall review records to assure the following criteria is met:

(a) Certification is on file at the PCH to verify staff training by the Department for Mental Health and Mental Retardation Services.

(b) The PCH's certified staff have trained all other direct care staff through in-service training or orientation regarding the information obtained at the MI or MR training workshop. The PCH shall maintain documentation of attendance at the in-service training for all direct care staff.

(c) Activities are being regularly provided and meet the needs of the residents. When residents do not attend group activities, activities shall also be designed to meet the needs of individual residents, for example, reading or other activity which may be provided on an individual basis. Individualized care plans are not required to meet this criteria.

(d) Medication administration meets licensure requirements and licensed nurse or CMT demonstrates a knowledge of psychotropic drug side affects.

(3) The Division of Licensing and Regulation shall be provided the MI or MR training package to assure survey staff are aware of what has been taught for MI or MR certification purposes.

(4) The Division of Licensing and Regulation shall also review the PCH copy of the listing

submitted to DSI prior to performing their record review during the MI or MR certification process.

(5) If thirty-five (35) percent MI or MR population is met on the day of the visit, the PCH shall be deemed to have an ongoing qualifying percentage effective with month of request for certification. This certification shall be in effect until next annual survey which can be greater than or less than twelve (12) months. The PCH is responsible for notifying DSI, within ten (10) working days, when the MI or MR population goes below thirty-five (35) percent of all occupied personal care beds in the facility.

(6) The Office of the Inspector General, Division of Licensing and Regulation, shall provide a form to DSI monthly identifying certified PCH eligible for MI or MR supplement. This information shall be provided by the fifth working day of each month for the prior month.

(7) The Office of Inspector General, Division of Licensing and Regulation, shall inform DSI monthly of PCH which receive a conditional rating. This information shall be provided by the fifth working day of each month for the prior month.

Section 11. Hearings and Appeals. Applicants or recipients of benefits under programs described herein who are dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 904 KAR 2:055.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: December 20, 1990
FILED WITH LRC: January 7, 1991 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:020E

This emergency administrative regulation is being amended to revise the pharmacy payment system to provide for the following changes: to use as a cost parameter in determining the estimated acquisition cost the Average Wholesale Price (AWP) minus ten (10) percent; the cabinet shall no longer establish and use the state maximum allowable cost as a parameter in determining the estimated acquisition cost; to use direct pricing as in effect prior to October 1, 1990 with the estimated acquisition cost of the drug being the lower of the direct price or the AWP minus ten (10) percent; for nursing facility residents meeting Medicaid patient status there shall be no more than one (1) dispensing fee allowed per calendar month, except for the 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 be paid within a calendar month; for outpatients and individuals not meeting Medicaid patient status criteria in nursing facilities, dispensing fees for legend intravenous solutions shall be limited to no more than four (4) per calendar month; the special unit dose pricing (as a dispensing fee add-on) has been reduced from four (4) cents to two (2) cents per unit dose for unit dose drugs packaged in unit dose form by the manufacturer and from six (6) cents to four (4) cents per unit dose for unit dose drugs packaged in unit dose form by the pharmacist; and to provide for use of a tape pricing service (Medi-Span, Inc.). These actions are necessary to comply with federally mandated upper limits for drugs which must be implemented on an emergency basis to avoid potential federal sanctions which will have the effect of reducing program expenditures. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on December 17, 1990 as follows: to use as a cost parameter in determining the estimated acquisition cost the Average Wholesale Price (AWP) minus ten (10) percent; the cabinet shall no longer establish and use the state maximum allowable cost as a parameter in determining the estimated acquisition cost; to use direct pricing as in effect prior to October 1, 1990 with the estimated acquisition cost of the drug being the lower of the direct price or the AWP minus ten (10) percent; for nursing facility residents meeting Medicaid patient status there shall be no more than one (1) dispensing fee allowed per calendar month, except for the 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 be paid within a calendar month; and the special unit dose pricing (as a dispensing fee add-on) has been reduced from four (4) cents to two (2) cents per unit dose for unit dose drugs packaged in unit dose form by the manufacturer and from six (6) cents to four (4) cents per unit dose for unit dose drugs packaged in unit dose form by the pharmacist. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about December 26, 1990.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:020E. Payment for drugs.

RELATES TO: KRS 205.550, 205.560
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: December 28, 1990
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 and effective for services provided through December 25, 1990. The SMAC shall not be used for services provided on or after December 26, 1990.

(b) Effective with regard to services provided through December 25, 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 26, 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 FMAC, or AWP minus ten (10) 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) Effective with regard to services provided through December 25, 1990, 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. Effective with regard to services provided on or after December 26, 1990, if an AWP is not listed, reimbursement shall be the lesser of the 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) (AWP minus ten (10) percent or direct price as appropriate) 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 one (1) [two (2)] dispensing fee[s] 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 allowed [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 and no more than four (4) dispensing fees shall be allowed per drug within a calendar month for legend intravenous 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) Effective with regard to services provided through December 25, 1990, 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. Effective with regard to services provided on or after December 26, 1990, 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 two (2) cents per unit dose for unit dose drugs packaged in unit dose form by the manufacturer and four (4) 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 19, 1990
FILED WITH LRC: December 28, 1990 at 9 a.m.

STATEMENT OF EMERGENCY
907 KAR 1:022E

The cabinet promulgated a regulation to be effective on October 1, 1990. Following a public hearing, the statement of consideration was not filed in a timely manner. To provide for continuation of agency policy it is necessary to file this emergency administrative regulation. This emergency administrative regulation is being proposed to comply with nursing home reform requirements contained in the Omnibus Budget Reconciliation Act (OBRA) of 1987. Failure to implement on the statutorily mandated date, October 1, 1990, could result in the imposition of severe fiscal sanctions against the state. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on October 5, 1990. This regulation is amended to provide that a hospital swing bed shall not be required to meet OBRA standards for participation in the Medicaid Program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about December 11, 1990.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:022E. [Skilled] Nursing facility and intermediate care facility for the mentally retarded services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: December 17, 1990
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 13961 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 17, 1990 at 4 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:025E

The cabinet promulgated a regulation to be effective on October 1, 1990. Following a public hearing, the statement of consideration was not filed in a timely manner. To provide for continuation of agency policy it is necessary to file this emergency administrative regulation. This emergency administrative regulation is being proposed to implement the requirements contained in the Omnibus Budget Reconciliation Act (OBRA) of 1987 for payment of costs nursing facilities must incur to comply with nursing home reform provisions. This regulation must be implemented on an emergency basis to meet the statutorily mandated effective date of October 1, 1990; failure to implement in a timely manner could result in the imposition of severe fiscal sanctions against the state. This emergency

administrative regulation does not differ from the emergency regulation filed with the Regulations Compiler on October 5, 1990. The emergency administrative regulation is being promulgated because of not meeting the deadline for filing a statement of consideration on the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about December 11, 1990.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:025E. 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
EFFECTIVE: December 17, 1990
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 tne 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 7, 1990
FILED WITH LRC: December 17, 1990 at 4 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:102E

The cabinet promulgated a regulation to be effective on October 1, 1990. Following a public hearing, the statement of consideration was not filed in a timely manner. To provide for continuation of agency policy it is necessary to file this emergency administrative regulation. This emergency administrative regulation is being proposed to comply with Section 1905(a) of the Social Security Act which mandates coverage of services provided by certified family nurse practitioners and certified pediatric nurse practitioners to Medicaid recipients. Failure to implement these services in an expeditious manner would be detrimental to Medicaid recipients who could receive and benefit from the services. This emergency administrative regulation does not differ from the emergency regulation filed with the Regulations Compiler on October 5, 1990. The emergency administrative regulation is being promulgated because of not meeting the deadline for filing a statement of consideration on the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about December 11, 1990.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:102E. Advanced registered nurse practitioner services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a, b, c, d
EFFECTIVE: December 17, 1990
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 17, 1990 at 4 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:104E

The cabinet promulgated a regulation to be effective on October 1, 1990. Following a public hearing, the statement of consideration was not filed in a timely manner. To provide for continuation of agency policy it is necessary to file this emergency administrative regulation. This emergency administrative regulation is being proposed to comply with Section 1905(a) of the Social Security Act which mandates payment of services provided by certified family nurse practitioners and certified pediatric nurse practitioners to Medicaid recipients. Failure to implement these services in an expeditious manner would be detrimental to Medicaid recipients who could receive and benefit from the services. This emergency administrative regulation does not differ from the emergency regulation filed with the Regulations Compiler on October 9, 1990. The emergency administrative regulation is being promulgated because of not meeting the deadline for filing a statement of consideration on the ordinary administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler on or about December 11, 1990.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:104E. 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
EFFECTIVE: December 17, 1990
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 17, 1990 at 4 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:150E

This emergency administrative regulation is being amended to increase rates to provide for uncompensated cost of the providers. This action must be taken on an emergency basis to assure

continuation of necessary services to Medicaid recipients. This emergency administrative regulation shall be replaced by an ordinary administration regulation filed with the Regulations Compiler about January 8, 1991.

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:150E. Payments for alternative home and community based services for the mentally retarded.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a, b, c, d, n; 42 CFR 441 Subpart G
EFFECTIVE: January 11, 1991
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 payment provisions relating to home and community based services provided to the mentally retarded as an alternative to intermediate care facility services for the mentally retarded.

Section 1. Coverage. The Cabinet for Human Resources shall reimburse participating providers of alternative intermediate services for the mentally retarded (AIS/MR) for services rendered to eligible medical assistance recipients who meet patient status criteria for intermediate care for the mentally retarded, and who are authorized for the AIS/MR service by the cabinet. The covered service elements shall be those services [are] described and defined in 907 KAR 1:140, Alternative home and community based services for the mentally retarded, and services must be provided in accordance with the terms and conditions described therein. Payments shall [may] not exceed the limits specified in Section 3 of this regulation.

Section 2. Payment Amounts. (1) Residential services, including residential (home) training, personal care, and homemaker/home health aide, shall be paid for at the rate of forty-nine (49) [forty (40)] dollars per day.

(2) Case management services shall be paid for at the rate of fifty (50) [forty (40)] dollars per hour.

(3) Habilitation services shall be paid for at the rate of forty-eight (48) [forty (40)] dollars per hour; however, medical services and/or items (e.g., dentures, eyeglasses, hearing aids, etc.) prescribed for a recipient by an appropriate specialist as necessary to the client's habilitation but not otherwise covered by the medical assistance programs shall be paid for on the basis of reasonable cost. Minor home physical adaptations shall be paid for on the basis of reasonable cost not to exceed $1,500 per client per patient year. The "patient year" for a client begins on the first day of admittance of the client to the AIS/MR program, with a new patient year beginning for that client on that same day in each succeeding calendar year.

(4) [Effective June 1, 1987, all] Day habilitation services shall be paid for at the rate of six (6) [five (5)] dollars per hour.

(5) In-home support services shall be paid for at the following rates:

(a) In-home training services shall be paid for at the rate of forty-eight (48) [forty (40)] dollars per hour.

(b) Homemaker/home health aide support services shall be paid for at the rate of twenty-four (24) [twenty (20)] dollars per hour.

(c) Personal care services shall be paid for at the rate of twenty-four (24) [twenty (20)] dollars per hour.

(6) Respite care (twenty-four (24) hours or more) shall be paid for at the rate of forty (40) [thirty-two (32)] dollars per day. Respite care (less than twenty-four (24) hours) shall be paid for at the rate of four (4) [three (3)] dollars and fifty (50) cents per hour, with the total not to exceed the upper limit of forty (40) [thirty-two (32)] dollars for one (1) full day of care.

Section 3. Payment limits. (1) Payments shall be made on the above stated rate basis not to exceed the AIS/MR cluster annualized upper limit on payment.

(2) Under this system, an AIS/MR cluster shall [will] receive a total of Medicaid [Title XIX] payments during the year in the amount of the established rates for services rendered Medicaid [Title XIX] eligible recipients, so long as such payments (on a cumulative basis) do not exceed the annualized upper limits (total payment amount) which has been set for the cluster. Each cluster shall [will] also be required to maintain average expenditures per recipient (on a cumulative basis) as described by the Health Care Financing Administration, 42 CFR 441.303(d)(1), and interpreted for the AIS/MR cluster by the Cabinet for Human Resources.

(3) Utilizing the formula described in 42 CFR 441.303(d)(1) as a guideline and applying accumulated statistical data, the cabinet shall [will] set effective April 1 each year the annualized upper limits and averages to be applied to the AIS/MR cluster services for the waiver year April 1 through March 31, applicable for waiver years beginning April 1, 1985 and thereafter.

(4) The cabinet may reduce payment by the percentage amount which will assure that the payments to the cluster do not exceed the annualized upper limit or average expenditures. Reduction factors shall (to the extent possible) be applied in such a manner as to ensure as even flow of reimbursement to the AIS/MR cluster through the year, i.e., generally so as to ensure that the payments for any one (1) month do not exceed by a substantial amount the prorated annual amount.

(5) Any overpayment due the program at the end of the period as a result of exceeding the upper limit shall be recouped by settlement or by withholding payment.

Section 4. Implementation. The amendments to this regulation shall be effective with regard to services provided on or after January 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: January 8, 1991
FILED WITH LRC: January 11, 1991 at 4 p.m.

REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(As Amended)

201 KAR 20:390. Nursing incentive scholarship fund.

RELATES TO: KRS 314.025, 314.026, 314.027
STATUTORY AUTHORITY: KRS 314.131
NECESSITY AND FUNCTION: The nursing incentive scholarship fund program was created by the General Assembly. This regulation implements the administration of the program.

Section 1. Definitions. (1) "Academic year" means, for a registered nursing program, a minimum of two (2) semesters; and for a practical nursing program, the completion of the required program.
(2) "Health facility" as used in this regulation shall have the same meaning as "health facility" as defined at KRS 216B.015(12).
(3) "Resident" as used in this regulation shall be determined pursuant to 13 KAR 2:040.
(4) "Rural area" means a county with less than 50,000 population or a county which is not part of a federally designated metropolitan statistical area.
(5) "Board" means the Kentucky Board of Nursing.
(6) "Committee" means the Nursing Incentive Scholarship Fund Committee.

Section 2. Application. (1) To be eligible for a nursing incentive scholarship, an applicant **shall** [must] be a Kentucky resident, **shall** [must] have applied for admission to an educational institution with an approved program of nursing in Kentucky, **shall** [must] have declared nursing as the major course of study and **shall** [must] have obtained a Kentucky health facility as a sponsor.
(2) An applicant shall complete an application, on a form provided by the board. The application **shall** [must] be received by the board between January 1 and May 1.
(3) The applicant shall send or cause to be sent to the board by May 1 an official high school transcript or equivalent (GED) and official transcripts showing postsecondary work completed.
(4) The applicant shall attach to the application a copy of the Student Aid Report from either the Kentucky Financial Aid Form (KFAF) or the Application for Student Aid (AFSA) for the current year.

Section 3. The Committee. [(1) The committee shall be comprised of six (6) members. The board shall appoint one (1) registered nurse (RN) and one (1) licensed practical nurse (LPN) who are licensed to practice in the Commonwealth. The Kentucky Hospital Association, the Kentucky Primary Care Association and the Kentucky Association of Health Care Facilities shall appoint one (1) representative each. The board shall also appoint one (1) member of the board to the committee who shall act as chair of the committee.]
(1) [(2)] Members of the committee shall serve for one (1) year and may be reappointed.
(2) [(3)] The committee shall meet at least annually by July 15 and more often if necessary to decide on scholarships for the upcoming academic year.
(3) [(4)] The committee shall serve without compensation but may be reimbursed for actual and necessary expenses related to serving on the committee.

Section 4. Criteria for Awards. [(1) The committee shall evaluate qualified applicants, giving preference to low-income, unemployed residents and to LPNs licensed in Kentucky. The committee shall also give preference to those applicants who have agreements with a sponsoring hospital, skilled nursing facility, immediate care facility or primary care center to work in a rural area of the state.]
[(2)] The committee may [also] consider the following criteria in evaluating applicants:
(a) Prior health care work experience or education;
(b) Previous academic achievement as indicated by transcripts;
(c) Current acceptance as a declared nursing major in an educational institution with an approved program of nursing;
(d) Current admission or enrollment in an approved program of nursing.

Section 5. Amount of Award. (1) The committee shall be notified as to the current fund balance prior to making awards.
(2) The committee shall defer awarding a portion of the amount collected in odd-numbered fiscal years to the following fiscal year. The amount of the deferred portion shall be determined as follows: add the number of licensed RNs renewing as of the current year to the number of licensed LPNs who renewed in the previous year. Divide by two (2). Multiply by five (5). Subtract that figure from the amount collected, less administrative costs.
(3) The committee shall first make awards to those recipients who received awards in the previous year and remain eligible to receive awards pursuant to Section 7 of this regulation in the current year.
(4) The committee shall divide the remaining funds among the remaining applicants based **on KRS 314.025(2), 314.026(3), 314.027(2) and** on the criteria considered in Section 4 of this regulation. [The committee shall earmark twenty-five (25) percent of the funds for awards to LPNs seeking RN licensure. However,] If insufficient applications are received from LPNs, those [unexpended earmarked] funds **earmarked pursuant to KRS 314.027(2) and unexpended** shall be used for other applicants.
(5) The maximum award granted each year shall be the highest tuition charged for an academic year for a full-time student by a program of nursing in a public institution in Kentucky by a comparable program. By May 1 of each year, the committee shall determine the highest yearly tuition rate charged by a practical nursing program in a public institution in Kentucky, the highest yearly tuition rate charged by an associate degree registered nursing program in a public institution in Kentucky, and the highest yearly tuition rate charged by a prelicensure baccalaureate degree registered nursing program

in a public institution in Kentucky. In making awards, the committee shall grant the maximum award until all funds for that year have been expended, except for students who will not be enrolled for an entire academic year. In those cases, the award shall be one-half (1/2) the maximum.

Section 6. Procedure for Disbursement of Awards. (1) Prior to actual disbursement of any funds, the educational institution must certify enrollment by the recipient.

(2) Disbursement of funds **shall** [will] be made directly to the school by the board.

(3) All recipients of awards who are enrolled in registered nursing programs **shall** [must] take a minimum of eight (8) credit hours per semester.

Section 7. Continuing Eligibility Criteria. (1) A registered nursing student recipient of a nursing incentive scholarship shall be eligible to continue to receive an award provided successful progression through the program is maintained as evidenced by the following:

(a) The completion of a minimum of eight (8) credit hours per semester;

(b) A cumulative grade point average of 2.0 on a 4.0 scale; and

(c) Verification of successful academic progression from the academic advisor of record on a form supplied by the board.

(2) The amount of the award shall be determined pursuant to Section 5(5) of this regulation.

(3) In order to be eligible to receive a continuing award, the recipient must provide the board by July 1 with the following: a request for continuation, an official transcript for the preceding academic year and a Student Aid Report for the current year.

(4) Award recipients in practical nursing programs are not eligible for continued awards while enrolled in such programs.

Section 8. Disbursement Contract. Prior to disbursement of funds for a particular year, the recipient shall sign a written contract and a promissory note in a form prescribed by the board.

Section 9. Miscellaneous. (1) Verification of employment with the health facility shall be submitted by the sponsor to the board when the recipient's employment commitment begins and when it is completed. Any termination prior to completion shall be reported to the board within thirty (30) days.

(2) If a recipient fails to complete the nursing program in which he is enrolled within the time specified by the program of nursing or if he fails to complete the required employment with the sponsor as specified in the contract, he shall immediately become liable to the board to pay the sum of all scholarships received and accrued interest thereon. **Repayment may be deferred in the case of disability, major illness, or accident which prevents a recipient from completing an approved program of nursing, or being employed by the sponsor.** [, unless the board, in its sole discretion, grants a deferment for cause.]

[(3) Persons liable for repayment of scholarships under this section shall be liable for interest accruing on each contract from the respective dates on which the scholarships were disbursed.]

(3) [(4)] Recipients shall notify the board of any change of name or address.

(4) [(5)] Written notification of demand for repayment shall be sent by the board to the scholarship recipient's last known address and shall be effective upon mailing. The board may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the board. Payments shall first be applied to interest and then to principal on the earliest unpaid contracts.

(5) The forms required by this regulation are included by reference as if fully incorporated herein and shall be on file in the Office of the Board of Nursing, 4010 Dupont Circle, Suite 430, Louisville, Kentucky 40207, and shall be available for public inspection between 8 a.m. and 4:30 p.m. Monday through Friday.

ANGELA J. LASLEY, President
APPROVED BY AGENCY: October 19, 1990
FILED WITH LRC: October 22, 1990 at 10 a.m.

TOURISM CABINET
Department of Parks
(As Amended)

304 KAR 1:050. Metal detectors.

RELATES TO: KRS Chapter 148
STATUTORY AUTHORITY: KRS 148.021
NECESSITY AND FUNCTION: This regulation requires the Department of Parks to enforce restrictive rules, policies and procedures which preclude unnecessary damage to natural areas and other facilities without mitigating the degree of flexibility required to provide proper and adequate service to the visiting public. Upon enactment of this administrative regulation, the Department of Parks will institute policies to efficiently and effectively cover its assigned stewardship mission on behalf of the citizens of the Commonwealth. Because of the great number of patrons visiting the state parks, the Department of Parks finds it necessary to establish a regulation governing the use of metal detectors. This regulation will allow the department to operate efficient, orderly facilities for the benefit of all the visiting public.

Section 1. **Except as provided in Section 2 of this regulation,** the use of metal detectors shall be prohibited in all Kentucky state parks.

Section 2. Park personnel, law enforcement personnel, and utilities may use metal detectors.

RAPIER SMITH, Commissioner
APPROVED BY AGENCY: November 5, 1990
FILED WITH LRC: November 7, 1990 at 10 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Division for Air Quality
(As Amended)

401 KAR 59:023. New medical waste [or hazardous waste] incinerators.

RELATES TO: KRS 224.320, 224.330, 224.340, [224.855,] E.O. 90-68, 40 CFR 60.13 (1990), 40 CFR 60, Appendix A, Methods 1, 2, 3, 5, 6, 6A, 6C, 7, 7E, 9, 10 and 19 (1990), 40 CFR 60, Appendix B, Performance Specifications 1, 2, 3, and 4 (1990)

STATUTORY AUTHORITY: KRS 224.033, 40 CFR 60.13 (1990), 40 CFR 60, Appendix A, Methods 1, 2, 3, 5, 6, 6A, 6C, 7, 7E, 9, 10 and 19 (1990), 40 CFR 60, Appendix B, Performance Specifications 1, 2, 3, and 4 (1990)

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for standards of performance for new medical waste [or hazardous waste] incinerators.

Section 1. Definitions. As used in this regulation, all terms not defined in this section shall have the meaning given them in 401 KAR 50:010.

(1) "Affected facility" means a [any] device for which construction, modification, or reconstruction commenced on or after the effective date of this regulation [December 20, 1989], that combusts material which, if included in the waste stream, would be medical waste [or hazardous waste].

[(2) "ASME" means the American Society of Mechanical Engineers.]

(2) [(3)] "Acid gases" means sulfur dioxide and hydrogen chloride gases emitted from units.

(3) [(4)] "Biologicals" means a biological product used in the prevention or treatment of disease [noxious organisms].

(4) [(5)] "Bubbling fluidized bed incinerator" means a fluidized bed incinerator in which the majority of the bed material remains in the primary combustion zone.

(5) [(6)] "Burnout" means the percent [degree] of matter completely burned in the primary chamber of an affected facility.

(6) [(7)] "Chief facility operator" means the person in direct charge and control of the operation of an affected facility [unit] and who is responsible for daily on-site supervision, technical direction, management, and overall performance of the facility.

(7) [(8)] "Circulating fluidized bed incinerator" means a fluidized bed incinerator in which the majority of the bed material is carried out of the primary combustion zone and is transported back to the primary zone through a recirculation loop.

(8) [(9) "Coal and] "Refuse-derived fuel cofired incinerator" or "[coal and] RDF cofired incinerator" means an incinerator that is designed to fire [coal and] refuse-derived fuel simultaneously with other fuels.

(9) [(10)] "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household and industrial wastes. Commercial solid waste includes waste from medical facilities, schools, and other institutions that is not medical waste.

(10) [(11)] "Contained landfill" has the meaning given it in 401 KAR 30:010.

(11) [(12)] "Continuous emission monitoring system" or "CEMS" means a monitoring system for continuously measuring and recording the emissions of a pollutant from an affected facility.

(12) [(13)] "Daily average" means the average of all hourly emission rates when the affected facility is operating and combusting [processed municipal solid waste,] medical waste, [hazardous waste, or solid waste] measured over a twenty-four (24) hour period between 12 midnight and the following midnight.

(13) [(14)] "Dioxin or furan" means total tetra- through octa-chlorinated dibenzo-p-dioxins and tetra- through octa-chlorinated dibenzofurans.

(14) [(15)] "Ferrous metals" means metals and alloys containing iron. Ferrous metals include, but are not limited to, pieces of scrap metal and household appliances made of iron-containing metals, including stoves, refrigerators, air conditioners, and other appliances. Ferrous metals shall not include whole automobiles or other vehicles or vehicle bodies.

(15) [(16)] "Field-erected" means assembled from components at a final site of operation.

(16) [(17)] "Four (4) hour block average" means the average of all hourly emission rates when the affected facility is operating and combusting medical waste [and hazardous waste] measured over four (4) hour periods of from 12 midnight to 4 a.m., 4 a.m. to 8 a.m., 8 a.m. to 12 noon, 12 noon to 4 p.m., 4 p.m. to 8 p.m., 8 p.m. to 12 midnight.

(17) [(18)] "Hazardous waste" has the meaning given it in KRS 224.005 [means waste that has the characteristics identified in 401 KAR 31:030].

(18) [(19)] "Household battery" means a [any] dry cell battery.

(19) [(20)] "Household solid waste" means solid waste, including garbage and trash generated by single and multiple family residences, hotels, motels, bunkhouses, ranger stations, crew quarters, and recreational areas such as picnic areas, parks, and campgrounds.

(20) [(21)] "Industrial waste" means a [any] liquid, gaseous, or solid waste substance resulting from a [any] process of industry, manufacture, trade, or business, or from the development, processing, or recovery of a natural resource.

(21) [(22)] "Mass burn refractory incinerator" means an incinerator that combusts waste in a refractory wall furnace.

(22) [(23)] "Mass burn rotary waterwall incinerator" means an incinerator that combusts waste in a cylindrical rotary waterwall furnace.

(23) [(24)] "Mass burn waterwall incinerator" means an incinerator that combusts waste in a conventional waterfall furnace.

(24) [(25)] "Maximum unit load" means the maximum one (1) hour load achieved when compliance with all applicable regulations is demonstrated or during a [any] subsequent test demonstrating compliance at a higher unit load.

(25) [(26)] "Medical waste" means:

[(a) Wastes contaminated by patients who are isolated due to communicable disease;]

(a) [(b)] Cultures and stocks of infectious agents, including specimen cultures collected from medical and pathological laboratories,

cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures;

(b) [(c)] Waste human blood and blood products such as serum, plasma, and other blood components;

(c) [(d)] Pathological wastes, such as tissues, organs, body parts, and body fluids that are removed during surgery and autopsy;

(d) [(e)] All discarded sharps, including but not limited to [e.g.,] hypodermic needles, syringes, Pasteur pipettes, broken glass, scalpel blades, scalpels, glass vials, etc., used in patient care, autopsy, embalming, or which have come into contact with infectious agents during use in medical, research, or industrial laboratories;

(e) [(f)] Carcasses and [,] body parts[, and bedding] of animals that were exposed to pathogens in research, in the production of biologicals, or in the in vivo testing of pharmaceuticals; and

(f) [(g)] Other wastes as may be designated by a permit issued by the Division for Air Quality.

(26) [(27)] "Metals" means condensible metals emitted from units. For the purpose of this regulation, particulate matter shall serve as a surrogate for the measurement and control of metals.

(27) [(28)] "Modular excess air incinerator" means an incinerator that combusts waste and that is not field-erected and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

(28) [(29)] "Modular starved air incinerator" means an incinerator that combusts waste and that is not field-ereceted and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

(29) [(30)] "Municipal solid waste" or "MSW" means household solid waste and commercial solid waste. Medical waste shall not be considered to be MSW.

(30) [(31)] "Municipal solid waste incinerator" or "MSWI" means a solid waste incinerator that combusts MSW exclusively.

(31) [(32)] "Multiple-chamber incinerator" means an incinerator consisting of at least two (2) refractory lined combustion chambers (primary and secondary) in series, physically separated by refractory walls, and interconnected by gas passage ports or ducts.

(32) [(33)] "Normal" means a volumetric measurement at thirty-two (32) degrees Fahrenheit and one (1) atmosphere.

(33) [(34)] "Organics" means organic compounds emitted from units and includes dioxins or furans. For the purpose of this regulation, dioxin or furan shall serve as a surrogate for the measurement and control of organics.

(34) [(35)] "Plant" means one (1) or more units at the same location for which construction, modification, or reconstruction is commenced on or after the effective date of this regulation [December 20, 1989].

(35) [(36)] "Plant capacity" means the aggregate unit capacity of all units at a plant for which construction, modification, or reconstruction is commenced on or after the effective date of this regulation [December 20, 1989].

(36) [(37)] "Particulate matter" means total particulate matter emitted from affected facilities.

(37) [(38)] "Particulate matter carry-over" means particulate matter which is passed from the primary chamber of an incinerator into the flue gas stream.

(38) [(39)] "Processed MSW or refuse-derived fuel" or "processed MSW or RDF" means MSW or refuse-derived fuel that has been processed to separate materials for recovery prior to combustion in a solid waste incinerator. MSW or refuse-derived fuel is considered to be processed MSW or RDF if an overall forty (40) percent or greater reduction by weight (annual average) of MSW is achieved through the separation of recoverable materials. A maximum of fifteen (15) [ten (10)] percent reduction (by weight) of the overall MSW shall be attributed to separation of yard waste. The forty (40) percent or greater overall reduction requirement may be achieved by on-site mechanical separation, on-site manual separation, off-site mechanical separation, off-site manual separation, or a curbside source reduction or materials separation (recycling) program, or a combination thereof.

(39) [(40)] "Recoverable materials" means paper, paperboard, ferrous metals, nonferrous metals, glass, plastics, household batteries, and yard waste.

(40) [(41)] "Refuse-derived fuel" or "RDF" means a type of MSW produced by processing MSW through shredding and size classification. This includes all classes of RDF including low density fluff RDF through densified RDF fuel pellets.

(41) [(42)] "RDF spreader stoker" means a steam generating unit that combusts RDF in a semisuspension firing mode using air-fed distributors.

(42) [(43)] "Same location" means the same or contiguous property that is under common ownership or control, including properties that are separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or a [any] combination thereof, including a [any] municipality or other governmental unit, or a [any] quasi-governmental authority (e.g., a public utility district or waste management district).

(43) [(44)] "Shift supervisor" means the person in direct charge and control of the operation of an affected facility [unit] and who is responsible for on-site supervision, technical direction, management, and overall performance of the affected facility during an assigned shift.

(44) [(45)] "Solid waste" has the meaning given it in KRS 224.005.

[(46) "Solid waste incinerator" or "solid waste incinerator unit" or "SWI" or "SWI unit" means any device that combusts solid waste including, but not limited to, field-erected incinerators (with or without heat recovery), modular incinerators (starved air or excess air), boilers (i.e., steam generating units), and furnaces (whether suspension-fired, grate-fired, mass-fired, or fluidized bed-fired).]

(45) [(47)] "Standard" means a volumetric measurement at sixty-eight (68) degrees Fahrenheit and one (1) atmosphere.

(46) [(48)] "Uncontrolled hydrogen chloride emission rate" means the hydrogen chloride emission rate that would occur from combustion of medical waste or other wastes combined with medical [hazardous] waste in the absence of hydrogen chloride emissions control.

(47) [(49)] "Uncontrolled sulfur dioxide emission rate" means the sulfur dioxide emission rate that would occur from combustion of medical waste or other wastes combined with medical [hazardous] waste in the absence of sulfur dioxide emissions control.

(48) [(50)] "Unit" means an affected facility including, but not limited to, field-erected incinerators (with or without heat recovery), modular incinerators (starved air or excess air), boilers (i.e., steam generating units), and furnaces (whether suspension-fired, grate-fired, mass-fired, or fluidized bed-fired).

(49) [(51)] "Unit capacity" means the maximum design charging rate of the waste for an individual unit.

(50) [(52)] "Unit load" means the volume of steam produced, expressed in kilograms per hour (pounds per hour) of steam.

(51) [(53)] "Unprocessed MSW or RDF" means MSW or RDF that has not been processed to separate materials for recovery prior to combustion or for which less than a forty (40) percent reduction by weight (annual average) of MSW is achieved as specified under processed MSW or RDF.

(52) [(54)] "Vehicle batteries" means a [any] wet lead-acid battery.

(53) [(55)] "Waste" has the meaning given it in KRS 224.005.

(54) [(56)] "Waste management district" has the meaning given it in KRS 224.005.

(55) [(57)] "Yard waste" means vegetative matter removed as a result of outdoor maintenance practices from residential and commercial yards, municipal parks, gardens, golf courses, and other similar areas, and includes, but is not limited to, grass trimmings, tree branches, straw, and leaves.

Section 2. Applicability. (1) This regulation shall apply to each affected facility which means each unit for which construction, modification, or reconstruction is commenced on or after the effective date of this regulation [December 20, 1989]. Affected facilities which combine and combust processed MSW, [medical waste,] hazardous waste, or solid waste with medical waste shall comply with this regulation. Affected facilities which combust only [processed] MSW [and solid waste] shall comply with 401 KAR 59:021.

(2) The physical or operational changes made to an existing unit to comply with 401 KAR 61:013 shall not be considered a modification or reconstruction and shall not subject the existing affected facility [unit] to this regulation.

(3) Emission limitations or control requirements imposed by another [any other] regulation of the Division for Air Quality or the Division of Waste Management may impose more stringent requirements than those imposed by this regulation.

(4) The permitting exemption for small incinerators in 401 KAR 50:035, Section 6(2) shall not apply to affected facilities.

(5) Siting criteria. No owner or operator of an affected facility subject to 401 KAR 47:030 shall construct or operate the affected facility in a manner that will violate the requirements of that regulation.

Section 3. Emission Standards. (1) On and after the date on which the initial performance test is completed or required to be completed by Section 6 of this regulation, no owner or operator of an affected facility with a plant capacity of 500 pounds per hour or less shall cause or allow to be discharged into the atmosphere from the affected facility:

(a) Particulate matter in excess of 183 milligrams per dry standard cubic meter (0.08 grains per dry standard cubic foot) of exhaust gas, corrected to seven (7) percent oxygen (dry basis);

(b) Carbon monoxide in excess of **100 parts per million by volume corrected to seven (7) percent oxygen (dry basis)** [the standards for types of incinerators in Appendix A of this regulation];

[(c) Hydrochloric acid (HCl) in excess of twenty (20) percent of the uncontrolled HCl emission rate (eighty (80) percent reduction) (by weight) on an hourly basis or four (4) pounds per hour, [corrected to seven (7) percent oxygen (dry basis),] whichever is less stringent;]

[(d) Dioxin or furan emissions in excess of seventy-five (75) nanograms per normal cubic meter (thirty (30) grains per billion standard cubic feet), corrected to seven (7) percent oxygen (dry basis); or]

(c) [(e)] Visible air contaminants in excess of ten (10) percent opacity.

(2) On and after the date on which the initial performance test is completed or required to be completed by Section 6 of this regulation, no owner or operator of an affected facility with a plant capacity greater than 500 pounds per hour but less than or equal to 250 tons per day, shall cause or allow to be discharged into the atmosphere from the affected facility:

(a) Particulate matter emissions in excess of thirty-four (34) milligrams per dry standard cubic meter (0.015 grains per dry standard cubic foot of exhaust gas), corrected to seven (7) percent oxygen (dry basis);

(b) Carbon monoxide emissions in excess of **100 parts per million by volume corrected to seven (7) percent oxygen (dry basis)** [the standards for types of incinerators in Appendix A of this regulation];

(c) Hydrochloric acid (HCl) emissions in excess of ten (10) percent of the uncontrolled HCl emission rate (ninety (90) percent reduction) (by weight) on an hourly basis or twenty-five (25) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent;

(d) Sulfur dioxide (SO_2) emissions in excess of fifteen (15) percent of the uncontrolled SO_2 emission rate (eighty-five (85) percent reduction) (by weight) on an hourly basis or thirty (30) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent. **Excluded from this provision are emissions from affected facilities which combust only medical waste**;

[(e) Dioxin or furan emissions in excess of seventy-five (75) nanograms per normal cubic meter (thirty (30) grains per billion standard

cubic feet), corrected to seven (7) percent oxygen (dry basis); or]

(e) [(f)] Visible air contaminants in excess of ten (10) percent opacity.

(3) On and after the date on which the initial performance test is completed or required to be completed by Section 6 of this regulation, no owner or operator of an affected facility with a plant capacity greater than 250 [255] tons per day shall cause or allow to be discharged into the atmosphere:

(a) Particulate matter emissions in excess of thirty-four (34) milligrams per dry standard cubic meter (0.015 grains per dry standard cubic foot) of exhaust gas, corrected to seven (7) percent oxygen (dry basis);

(b) Carbon monoxide emissions in excess of **100 parts per million by volume corrected to seven (7) percent oxygen (dry basis)** [the standards for types of incinerators in Appendix A of this regulation];

(c) Hydrochloric acid (HCl) emissions in excess of five (5) percent of the uncontrolled HCl emission rate (ninety-five (95) percent reduction) (by weight) on an hourly basis or twenty-five (25) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent;

(d) Sulfur dioxide (SO_2) emissions in excess of fifteen (15) percent of the uncontrolled SO_2 emission rate (eighty-five (85) percent reduction) (by weight) on an hourly basis or thirty (30) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent**. Excluded from this provision are emissions from affected facilities which combust only medical waste**;

[(e) Dioxin or furan emissions in excess of thirty (30) [five (5)] nanograms per normal cubic meter (fourteen (14) [(two (2)] grains per billion standard cubic feet), corrected to seven (7) percent oxygen (dry basis); or]

(e) [(f)] Visible air contaminants in excess of ten (10) percent opacity; or

(f) [(g)] Nitrogen oxides emissions in excess of 120 parts per million by volume, corrected to seven (7) percent oxygen (dry basis).

Section 4. Standards for Operating Practices. (1) No owner or operator of an affected facility that generates steam shall cause the facility to operate at a load level greater than 100 percent of the maximum unit load. An owner or operator of an affected facility who wishes to operate at a load level greater than the maximum unit load may do so by conducting all applicable compliance tests to establish a higher maximum unit load.

(2) No owner or operator of an affected facility shall burn medical waste [or hazardous waste] except in a multiple-chamber incinerator with a solid hearth, or in a device found to be equally effective for the purpose of air contaminant control as determined by the cabinet.

(3) Temperature and residence time requirements for affected facilities equipped with a secondary chamber, while the affected facility is combusting medical waste: [.]

(a) The incinerator secondary chamber shall be maintained at a [minimum] temperature of 982 **± (plus or minus) 93** degrees Celsius (1800 ± **(plus or minus) 200** degrees Fahrenheit);

(b) The minimum secondary chamber residence time shall be **one and zero-tenths (1.0)** [two and zero-tenths (2.0)] seconds; and

(c) The incinerator shall have interlocks or other process control devices to prevent operation of the incinerator until the conditions in paragraphs (a) and (b) of this subsection and subsection (4) of this section are assured.

(4) No owner or operator of an affected facility other than a facility using a wet scrubber as a particulate matter control device shall allow the temperature of the flue gases entering the particulate matter control device inlet to exceed 149 degrees Celsius (300 degrees Fahrenheit) while the affected facility is combusting medical waste.

(5) Owners or operators of affected facilities that choose to combine and combust processed MSW or RDF, [medical waste,] hazardous waste, or [and] solid waste with medical waste in a unit shall comply with:

(a) The emission standards of Section 3 of this regulation and operating practices of this section; and

(b) 401 KAR 59:021, Section 8[, 10, and 11] regarding material separation (percent reduction) for the portion of the waste that is MSW or RDF.

[(c) An owner or operator of an affected facility who knowingly or willfully avoids the material separation requirements of 401 KAR 59:021 shall be liable for permit revocation in accordance with 401 KAR 50:060.]

(6) Owners or operators of affected facilities may combust processed MSW or RDF, or solid waste which has not been combined with medical waste [or hazardous waste] in a unit and shall comply with 401 KAR 59:021.

(7) Owners or operators of affected facilities shall cause ash from affected facilities to be tested to determine the toxicity of the ash, using tests required in Title 401, Chapter 31. Ash which is determined to be hazardous waste shall be disposed of according to the regulations of the Division of Waste Management. Ash which is determined to not be hazardous waste [Ash from the combustion of hazardous waste exclusively, or in combination with medical waste, solid waste, processed MSW or RDF, shall be disposed of in accordance with Title 401, Chapter 34. Ash from the combustion of medical waste exclusively, or in combination with solid waste, or processed MSW,] shall be disposed of in a [contained] landfill **permitted by the Division of Waste Management**.

(8) Owners or operators of affected facilities that receive medical waste from generators that are noncontiguous to the incineration site shall comply with the operating requirements for contained landfills in 401 KAR 48:090, Section 2.

(9) Owners or operators of affected facilities shall comply with the design requirements for contained landfills in 401 KAR 48:070, Section 15.

Section 5. Operator [Certification and] Training. (1) [Within twenty-four (24) months from the date that ASME adopts a certification program for municipal solid waste combustor (incinerator) unit operators,] Each chief facility operator and shift supervisor of an affected facility shall successfully complete the U.S. EPA's "Hospital Incinerator Operator Training Course" [obtain and keep current either a provisional or operator certification from ASME].

(2) No [The] owner or operator of an affected facility shall cause or allow a unit to be operated unless the chief facility operator or shift supervisor who successfully completed the training course identified in subsection (1) of this section is [an ASME certified shift supervisor to be] on duty at the affected facility at all times during period of unit operation. [This requirement shall take effect twenty-four (24) months after the date that ASME adopts a certification program for municipal solid waste combustor (incinerator) unit operators.]

(3) The owner or operator of an affected facility shall develop and update on an annual basis a site-specific operation manual that shall at a minimum, address the following elements:

(a) Summary of the applicable standards under this regulation;

(b) Description of basic combustion theory applicable to a unit;

(c) Procedures for receiving, handling, and feeding the waste;

(d) Unit start-up, shutdown, and malfunction procedures;

(e) Procedures for maintaining proper combustion air supply levels;

(f) Procedures for operating the unit within the standards established under this regulation;

(g) Procedures for responding to periodic upset or off-specification conditions;

(h) Procedures for minimizing particulate matter carry-over;

(i) Procedures for monitoring [the degree of] burnout;

(j) Procedures for handling ash;

(k) Procedures for monitoring unit emissions; and

(l) Reporting and recordkeeping procedures.

(4) The owner or operator of an affected facility shall establish a program for reviewing the operating manual annually with each person who has responsibilities affecting the operation of an affected facility including, but not limited to, chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane or load handlers.

(5) The initial review of the operating manual, as specified under subsection (4) of this section, shall be conducted prior to assumption of responsibilities affecting unit operation by a [any] person required to undergo training under subsection (4) of this section. Subsequent reviews of the manual shall be carried out annually by each person required to undergo training.

(6) The operating manual shall be kept in a readily accessible location for all persons required to undergo training under subsection (4) of this section. The operating manual and records of training shall be available for inspection by the cabinet upon request.

(7) The owner or operator of each affected facility shall maintain documentation to support compliance with this section. The information shall be made available upon request, and shall include, at a minimum, a description of the instruction given, the date of the instruction, [and] the signature of the person receiving the instruction, and copies of the certificates issued to the chief facility operator and shift supervisor documenting successful completion of the training requirement in subsection (1) of this section.

Section 6. Compliance and Performance Testing. Within sixty (60) days after achieving the maximum production rate at which an affected facility will be operated, but not later than 180 days after initial start-up of the facility and at other times as may be required by the cabinet, the owner or operator of an affected facility shall conduct performance tests according to 401 KAR 50:045 and shall furnish the cabinet a written report of the performance tests. This section shall apply at all times, except a period of one (1) hour for the start-up or shutdown of the affected facility and for a period not to exceed three (3) hours during the malfunction of an affected facility. Except as provided in 401 KAR 50:045, the following methods shall be used to determine compliance with Section 3 of this regulation. 40 CFR 60.13, Methods 1, 2, 3, 5, 6, 6A, 6C, 7, 7E, 9, 10, and 19, and Performance Specifications 1, 2, 3, and 4 are adopted without change in Section 8 [10] of this regulation. Kentucky Method[s 23 and] 26, Kentucky Specification 4A, and Kentucky Procedure 1 are incorporated by reference in Section 8 [10] of this regulation. For each performance test, an owner or operator may request that compliance be determined using carbon dioxide measurements corrected to an equivalent of seven (7) percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established during each initial performance test.

(1) Metals [Particulate matter]. The following procedures and test methods shall be used to determine compliance with the standards for metals [particulate matter] in Section 3 of this regulation.

(a) Method 1 shall be used to select sampling sites and the number of traverse points. Method 2 shall be used for determining stack gas velocity and volumetric flow rates.

(b) Method 3 shall be used for gas analysis.

(c) Method 5 shall be used for determining compliance with the particulate matter emission standard. The minimum sample volume shall be one and seven-tenths (1.7) [three and four-tenths (3.4)] cubic meters (sixty (60) [120] cubic feet). The temperature of the sample gas in the probe and filter holder shall be no greater than 120 [160] ± 14°C (248 [320] ± 25 [14]°F). An oxygen or carbon dioxide measurement shall be obtained simultaneously with each Method 5 run.

(d) Both Method 9 and CEMS shall be used for determining compliance with the opacity standard. However, Method 9 results shall take precedence over CEMS data if [in the event of] concurrent readings occur.

(e) The owner or operator of a affected facility with a unit capacity greater than 500 pounds per hour that does not have a wet scrubber, shall install, calibrate, maintain, and operate a CEMS for measuring opacity and shall record the output of the system.

(f) Following the date the initial performance test for the mass emission standard for particulate matter is completed by this section, the owner or operator of an affected facility shall conduct a performance test for particulate matter on an annual basis (no more than twelve (12) calendar months following the previous compliance test).

(g) Following the date the initial performance

test is completed or is required to be completed in this section, compliance with the opacity standard shall be determined by a six (6) minute average of the opacity readings obtained from the CEMS.

[(2) Organics [Dioxin or furan]. The following procedures and test methods shall be used to determine compliance with the standards for organics [dioxin or furan emissions] in Section 3 of this regulation.]

[(a) Kentucky Method 23 shall be used for determining compliance with dioxin or furan emission standards. The sampling time shall be four (4) hours and the sample volume shall be four and zero-tenths (4.0) cubic meters (140 cubic feet).]

[(b) Following the date of the initial performance test or the date on which the initial performance test is required to be completed by this section, the owner or operator of an affected facility shall conduct a performance test for dioxin or furan emissions on an annual basis (no more than twelve (12) calendar months following the previous performance test).]

(2) [(3)] Sulfur dioxide. The following procedures and test methods shall be used for determining compliance with the sulfur dioxide standards in Section 3 of this regulation.

(a) The percentage reduction in the uncontrolled sulfur dioxide emissions ($\%P_{SO2}$) shall be computed using the formula in Appendix A [B] of this regulation.

(b) Methods 6, 6A, or 6C, and 19 shall be used for determining the sulfur dioxide emission rate.

(c) The sulfur dioxide performance test shall be conducted over twenty-four (24) consecutive unit operating hours at maximum unit load. Compliance with the sulfur dioxide standard shall be determined using a daily average.

(d) The owner or operator of an affected facility **subject to Section 3(2)(d) or (3)(d) of this regulation** [with a unit capacity greater than 500 pounds per hour] shall install, calibrate, maintain, and operate a CEMS for measuring sulfur dioxide emissions discharged to the atmosphere and shall record the output of the system.

(e) Following the date of the initial performance test or the date on which the initial performance test is required to be completed by this section, compliance with the sulfur dioxide standard shall be determined based on the arithmetic average of the hourly emission rates during each twenty-four (24) hour daily period measured between 12 midnight and the following midnight using CEMS inlet and outlet data, if compliance is based on a percentage reduction; or outlet data only if compliance is based on an emission limit.

(f) The one (1) hour averages required under paragraph (e) of this subsection shall be expressed in nanograms per hour (pounds per hour) and shall be used to calculate the daily average emission rates. The one (1) hour averages shall be calculated using the data points required in 40 CFR 60.13(h).

(g) For affected facilities which shall install CEMS, the span value of the CEMS at the inlet to the sulfur dioxide control device shall be 125 percent of the maximum estimated hourly uncontrolled sulfur dioxide emissions of the unit, and the span value of the CEMS at the outlet to the sulfur dioxide control device shall be fifty (50) percent of the maximum estimated hourly uncontrolled sulfur dioxide emissions of the unit.

(3) [(4)] Hydrogen chloride. The following procedures and test methods shall be used for determining compliance with the hydrogen chloride standards under Section 3 of this regulation.

(a) The percentage reduction in the uncontrolled hydrogen chloride emissions (P_{HCl}) shall be computed using the formula in Appendix B [C] of this regulation.

(b) Kentucky Method 26 shall be used for determining the hydrogen chloride emission rate.

(c) Following the date of the initial performance test or the date on which the initial performance test is required by this section, the owner or operator of an affected facility shall conduct a performance test for hydrogen chloride on an annual basis (no more than twelve (12) calendar months following the previous performance test).

(4) [(5)] Nitrogen oxides. The following procedures and test methods shall be used to determine compliance with the nitrogen oxides standard under Section 3 of this regulation.

(a) Methods 7 or 7E, and 19 shall be used for determining the nitrogen oxides emission rate.

(b) The owner or operator of an affected facility [with a unit capacity greater than 2000 pounds per hour] subject to the nitrogen oxides standard under Section 3 of this regulation shall conduct an initial performance test for nitrogen oxides as required by this section. The initial performance test for nitrogen oxides shall be conducted over twenty-four (24) consecutive hours of unit operation to determine compliance with the nitrogen oxides standard. CEMS data shall be used if required by paragraph (d) of this subsection. Compliance with the nitrogen oxides standard shall be determined using a daily average.

(c) The owner or operator of an affected facility subject to the nitrogen oxides standard in Section 3 of this regulation [with a unit capacity greater than 2000 pounds per hour] shall install, calibrate, maintain, and operate a CEMS for measuring nitrogen oxides discharged to the atmosphere and shall record the output of the system.

(d) Following the initial performance test or the date on which the initial performance test is required to be completed under this section, compliance with the emission limits for nitrogen oxides required under Section 3 of this regulation shall be determined based on the arithmetic average of the hourly emission rates during each twenty-four (24) hour daily period measured between 12 midnight and the following midnight using CEMS data.

(e) The one (1) hour averages required under paragraph (d) of this subsection shall be expressed in parts per million volume (dry basis) and shall be used to calculate the daily average emission rates under Section 3 of this regulation. The one (1) hour averages shall be calculated using the data points required under 40 CFR 60.13(h).

(5) [(6)] Carbon monoxide. The following procedures shall be used for determining compliance with the carbon monoxide standards under Section 3 of this regulation.

(a) Compliance with the carbon monoxide emission limits listed in Section 3 [Appendix A] of this regulation shall be determined using Method 10.

(b) The owner or operator of an affected facility [with a unit capacity greater than 500 pounds per hour] shall install, calibrate, maintain, and operate a CEMS for measuring carbon monoxide at the incinerator outlet and shall record the output of the system.

(c) Following the initial performance test of the date on which the initial performance test is required to be completed by this section, compliance with the emission limits for carbon monoxide required under Section 3 of this regulation shall be determined based on the arithmetic average of the four (4) hour emission rates measured using CEMS data.

(6) [(7)] The following procedures shall be used for determining compliance with the operating practices under Section 4 of this regulation.

(a) The owner or operator of an affected facility which generates steam shall install, calibrate, maintain, and operate a steam flow meter, shall measure steam flow in kilograms per hour (pounds per hour) steam on a continuous basis, and shall record the output of the monitor. Steam flow shall be calculated in one (1) hour block averages.

(b) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a continuous monitoring system for measuring both secondary chamber temperature and the temperature of the flue gas stream at the inlet to the particulate matter air pollution control device and shall record the output of the device. Temperature shall be calculated in four (4) hour block averages.

(7) [(8)] Additional CEMS or continuous monitoring systems requirements.

(a) CEMS and continuous monitoring data, if required, shall be used to determine compliance with emission standards and operating practice standards.

(b) At a minimum, CEMS or continuous monitoring system data, if required, shall be obtained for ninety (90) percent of the hours per day for ninety (90) percent of the days per month that the unit is operated and combusting medical waste [or hazardous waste].

(c) All valid CEMS or continuous monitoring system data, if required, shall be used in calculating emission rates and percent reductions even if the minimum CEMS or continuous monitoring system data requirements in paragraph (b) of this subsection are not met.

(d) The procedures under 40 CFR 60.13 shall be followed for installation, evaluation, and operation of the CEMS.

(e) If emissions data from the CEMS or continuous monitoring systems are not obtained because of CEMS or monitoring system breakdown, repairs, calibration checks, or [and] zero and span adjustments, emission data shall be obtained by using other monitoring systems as approved by the cabinet or Methods 6, 6A, 6C, 7, 7E, 10, and 19, as appropriate, to provide necessary emission data for a minimum of ninety (90) percent of the hours per day for ninety (90) percent of the days per month the unit is operated and combusting medical waste [or hazardous waste].

(f) CEMS shall conform to the applicable performance specifications in 40 CFR Part 60, Appendix B or Kentucky Specification 4A.

(g) The requirements of Kentucky Procedure 1 shall be met in the operation of CEMS.

Section 7. Reporting and Recordkeeping Requirements. (1) The owner or operator of an affected facility subject to Sections 3 and 4 of this regulation shall maintain records of the following information for each affected facility:

(a) Calendar date that data from performance tests, CEMS, or continuous monitoring systems were obtained.

(b) Emission rates and parameters measured using the units and time bases required for demonstrating compliance.

(c) Identification of the operating periods that the calculated sulfur dioxide, nitrogen oxides, or carbon monoxide emission rates, opacity, or the operating parameters exceeded the applicable standards, with reasons for the exceedances and a description of corrective actions taken.

(d) Identification of operating periods for which sulfur dioxide, nitrogen oxides, or carbon monoxide emissions, opacity, or operational data have not been obtained, including reasons for not obtaining sufficient data and a description of corrective actions taken.

(e) Identification of the times that sulfur dioxide, nitrogen oxides, or carbon monoxide emission, opacity, or operational data have been excluded from the calculation of average emission rates or parameters and the reasons for excluding the data.

(f) The results of daily sulfur dioxide, nitrogen oxides, and carbon monoxide, CEMS drift tests and accuracy assessments as required in Kentucky Procedure 1.

(g) The results of all applicable performance tests conducted to determine compliance with the mass particulate matter[, dioxin or furan,] and hydrogen chloride standards.

(h) Beginning the month after the date of the initial start-up, the amount (by weight) of medical waste [and hazardous waste] received and combusted on a monthly basis at the affected facility.

(2) If processed MSW or RDF is combusted in a unit, the recordkeeping requirements of 401 KAR 59:021, Section 11, regarding material separation shall apply for the portion of the waste that is processed MSW or RDF.

(3) The owner or operator of an affected facility shall submit the initial performance test data, the performance evaluation of the CEMS using the applicable performance specifications in 40 CFR, Part 60, Appendix B, and the maximum unit load within sixty (60) days of completing the test.

(4) The owner or operator of an affected facility shall submit quarterly compliance reports to the cabinet containing the information recorded under subsection (1) of this section and 401 KAR 59:005, Section 3(3) for all records required by this regulation which are applicable to the facility. Both a printed report and computer tape or discs shall be furnished in the format specified by the cabinet. The reports shall be postmarked by the 30th day following the end of each calendar quarter.

(5) Records of CEMS, steam flow, and temperature data shall be maintained for at least two (2) years after date of recording and shall be made available for inspection upon request.

(6) Records showing the names of persons who have completed review of the operating manual and the documentation required by Section 5(7)

[(4)] of this regulation, including the date of the initial review and all subsequent annual reviews, shall be maintained for at least two (2) years after date of manual review and shall be made available for inspection upon request.

(7) A description of the procedures employed for ensuring that unprocessed MSW or RDF is not combusted in an affected facility shall be maintained along with associated records to demonstrate use of the procedures, and shall be made available for inspection upon request.

(8) Documentation demonstrating that ash disposal from an affected facility complies with Section 4(7) of this regulation shall be submitted to the Division of Waste Management in the frequency required by the Division of Waste Management.

[Section 9. Procedures for Public Participation. The public participation procedures of KRS 224.855 shall apply to all affected facilities.]

Section 8. [10.] Reference Materials. (1) The subject matter of this regulation relating to reference methods, CEMS, and testing shall be governed by 40 CFR 60.13 (1990), 40 CFR 60, Appendix A, Methods 1, 2, 3, 5, 6, 6A, 6C, 7, 7E, 9, 10, and 19, and 40 CFR 60, Appendix B, Performance Specifications 1, 2, 3, and 4.

(2) Incorporation by Reference. The following documents from the Kentucky Division for Air Quality are hereby incorporated by reference:

[(a) Kentucky Method 23, effective October [July] 1990;]

(a) [(b)] Kentucky Method 26, effective July 1990;

(b) [(c)] Kentucky Specification 4A, effective July 1990; and

(c) [(d)] Kentucky Procedure 1, effective July 1990.

(3) The documents incorporated by reference in subsection (2) of this section are available for public inspection and copying at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time.

(a) Kentucky Division for Air Quality, 316 St. Clair Mall, Frankfort, Kentucky 40601, (502) 564-3382;

(b) Ashland Regional Office, 3700 13th Street, Ashland, Kentucky 41101, (606) 325-8569;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42101, (502) 843-5475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Hazard, Kentucky 41701, (606) 439-2391;

(f) Owensboro Regional Office, 311 West Second Street, Owensboro, Kentucky 42301, (502) 686-3304; and

(g) Paducah Regional Office, 1390 Irvin Cobb Drive, Paducah, Kentucky 42001, (502) 444-8295.

[APPENDIX A TO 401 KAR 59:023
CARBON MONOXIDE STANDARDS
FOR MEDICAL WASTE INCINERATORS

Incinerator Technology	Carbon Monoxide Emission Limit (ppmv)*
Mass Burn Waterwall	100
Mass Burn Refractory	100
Mass burn Rotary Waterwall	150
Modular Starved Air	50
Modular Excess Air	50
Refuse Derived Fuel Spreader Stoker	150
Bubbling Fluidized Bed Incinerator	100
Circulating Fluidized Bed Incinerator	100
RDF Co-fired Incinerator	150
Other Technologies	150

*Measured at the incinerator outlet in conjunction with a measurement of oxygen concentration, corrected to seven (7) percent oxygen (dry basis) using a four (4) hour block average.]

APPENDIX A [B] TO 401 KAR 59:023
FORMULA FOR PERCENTAGE REDUCTION IN
UNCONTROLLED SULFUR DIOXIDE EMISSIONS

$$\%P_{SO2} = \frac{(E_i - E_o)}{E_i} \times 100$$

Where:

$\%P_{SO2}$ is the percentage reduction in uncontrolled sulfur dioxide emissions.

E_i is the daily uncontrolled sulfur dioxide emission rate.

E_o is the daily sulfur dioxide emission rate measured at the outlet of the acid gas control device.

APPENDIX B [C] TO 401 KAR 59:023
FORMULA FOR PERCENTAGE REDUCTION IN
UNCONTROLLED HYDROGEN CHLORIDE EMISSIONS

$$\%P_{HCl} = \frac{(E_i - E_o)}{E_i} \times 100$$

Where:

$\%P_{HCl}$ is the percentage reduction in uncontrolled hydrogen chloride emissions.

E_i is the daily uncontrolled hydrogen chloride emission rate.

E_o is the daily hydrogen chloride emission rate measured at the outlet of the acid gas control device.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 14, 1990
FILED WITH LRC: September 14, 1990 at 11 a.m.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Division for Air Quality
(As Amended)**

401 KAR 61:013. Existing medical waste [and hazardous waste] incinerators.

RELATES TO: KRS 224.320, 224.330, 224.340, [224.855,] E.O. 90-68

STATUTORY AUTHORITY: KRS 224.033
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. This regulation provides for standards of performance for existing medical waste [and hazardous waste] incinerators.

Section 1. Definitions. As used in this regulation, all terms not defined in this section shall have the meaning given them in 401 KAR 50:010.

(1) "Affected facility" means a [any] device for which construction, modification, or reconstruction commenced before the effective date of this regulation [December 20, 1989], that combusts material which, if included in the waste stream, would be medical waste [or hazardous waste].

(2) "Afterburner" means an auxiliary burner for destroying unburned or partially burned combustion gases after they have passed from the combustion chamber.

(3) "Biologicals" means a biological product used in the prevention or treatment of disease [noxious organisms].

(4) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household and industrial wastes. Commercial solid waste includes waste from medical facilities, schools, and other institutions that is not medical waste.

(5) [(4)] "Hazardous waste" has the meaning given it in KRS 224.005 [means waste that has the characteristics identified in 401 KAR 31:030].

(6) [(5)] "Household solid waste" means solid waste, including garbage and trash generated by single and multiple family residences, hotels, motels, bunkhouses, ranger stations, crew quarters, and recreational areas such as picnic areas, parks, and campgrounds.

(7) [(6)] "Industrial waste" means a [any] liquid, gaseous, or solid waste substance resulting from a [any] process of industry, manufacture, trade, or business, or from the development, processing, or recovery of a natural resource.

(8) [(7)] "Mass burn rotary waterwall incinerator" means an incinerator that combusts waste in a cylindrical rotary waterwall furnace.

(9) [(8)] "Mass burn waterwall incinerator" means an incinerator that combusts waste in a conventional waterwall furnace.

(10) [(9)] "Medical waste" means:

[(a) Wastes contaminated by patients who are isolated due to communicable disease;]

(a) [(b)] Cultures and stocks of infectious agents, including specimen cultures collected from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures;

(b) [(c)] Waste human blood and blood products such as serum, plasma, and other blood components;

(c) [(d)] Pathological wastes, such as tissues, organs, body parts, and body fluids that are removed during surgery and autopsy;

(d) [(e)] All discarded sharps, including but not limited to [e.g.,] hypodermic needles, syringes, Pasteur pipettes, broken glass, scalpels, scalpel blades, glass vials, etc., used in patient care, autopsy, embalming, or which have come into contact with infectious agents during use in medical, research, or industrial laboratories;

(e) [(f)] Carcasses and [,] body parts[, and bedding] of animals that were exposed to pathogens in research, in the production of biologicals, or in the in vivo testing of pharmaceuticals; and

(f) [(g)] Other wastes as may be designated by a permit issued by the Division for Air Quality.

(11) [(10)] "Metals" means condensible metals emitted from units. For the purpose of this regulation, particulate matter shall serve as a surrogate for the measurement and control of metals.

(12) [(11)] "Modular excess air incinerator" means an incinerator that combusts waste and that is not field-erected and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

(13) [(12)] "Modular starved air incinerator" means an incinerator that combusts waste and that is not field-erected and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

(14) [(13)] "Multiple-chamber incinerator" means an incinerator consisting of at least two (2) refractory lined combustion chambers (primary and secondary) in series, physically separated by refractory walls, and interconnected by gas passage ports or ducts.

(15) [(14)] "Municipal solid waste" or "MSW" means household solid waste and commercial solid waste.

(16) [(15)] "Organics" means organic compounds emitted from units and includes dioxins or furans. For the purpose of this regulation, dioxin or furan shall serve as a surrogate for the measurement and control of organics.

(17) [(16)] "Particulate matter" means total particulate matter emitted from affected facilities.

(18) [(17)] "Plant" means one (1) or more units at the same location for which construction, modification, or reconstruction is commenced before the effective date of this regulation [December 20, 1989].

(19) [(18)] "Plant capacity" means the aggregate unit capacity of all units at a plant for which construction, modification, or reconstruction is commenced before the effective date of this regulation [December 20, 1989].

(20) [(19)] "Same location" means the same or contiguous property that is under common ownership or control, including properties that are separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or a [any] combination thereof, including a [any] municipality or other governmental unit, or a [any] quasi-governmental authority (e.g., a public utility district or waste management district).

(21) [(20)] "Uncontrolled hydrogen chloride emission rate" means the hydrogen chloride emission rate that would occur from the

combustion of medical waste [or hazardous waste], or other wastes combined with medical waste [or hazardous waste].

(22) [(21)] "Uncontrolled sulfur dioxide emission rate" means the sulfur dioxide emission rate that would occur from the combustion of medical waste [or hazardous waste,] or other wastes combined with medical waste [or hazardous waste].

(23) [(22)] "Unit" means a [any] device that combusts medical waste [and hazardous waste] including, but not limited to, field-erected incinerators (with or without heat recovery), modular incinerators (starved air or excess air), boilers (i.e., steam generating units), and furnaces (whether suspension-fired, grate-fired, mass-fired, or fluidized bed-fired).

(24) [(23)] "Unit capacity" means the maximum designed charging rate of the waste for an individual unit.

(25) [(24)] "Waste" has the meaning given it in KRS 224.005.

(26) [(25)] "Waste management district" has the meaning given it in KRS 224.005.

Section 2. Applicability. (1) This regulation shall apply to each affected facility which means each unit for which construction, modification, or reconstruction commenced before the effective date of this regulation [December 20, 1989]. Affected facilities which combine and combust MSW, solid waste, or hazardous waste with [, and] medical waste shall be subject to this regulation. Affected facilities which combust only MSW [solid waste] shall be subject to 401 KAR 61:011.

(2) Physical or operational changes made to an existing unit to comply with this regulation shall be considered a modification or reconstruction and shall not subject an existing unit to 401 KAR 59:023.

(3) The permitting exemption for small incinerators in 401 KAR 50:035, Section 6(2) shall not apply to affected facilities.

(4) Siting criteria. No owner or operator of an affected facility subject to 401 KAR 47:030 shall construct or operate the affected facility in a manner that will violate the requirements of that regulation.

Section 3. Emission Standards. (1) On and after the date on which the initial performance test is completed or required to be completed by Section 6 of this regulation, no owner or operator of an affected facility with a plant capacity of 500 pounds per hour or less shall cause or allow to be discharged into the atmosphere from the affected facility:

(a) Particulate matter in excess of **229** [183] milligrams per dry standard cubic meter (**zero and one-tenth (0.1)** [0.08] grains per dry standard cubic foot) of exhaust gas, corrected to seven (7) percent oxygen (dry basis);

(b) Carbon monoxide in excess of **100 parts per million by volume corrected to seven (7) percent oxygen (dry basis)** [the standards for types of incinerators in Appendix A of 401 KAR 59:023];

[(c) Hydrochloric acid (HCl) in excess of twenty (20) percent of the uncontrolled HCl emission rate (eighty (80) percent reduction) (by weight) on an hourly basis or four (4) pounds per hour[, corrected to seven (7) oxygen (dry basis),] whichever is less stringent;]

[(d) Dioxin or furan emissions in excess of seventy-five (75) nanograms per normal cubic meter (thirty (30) grains per billion standard cubic feet), corrected to seven (7) percent oxygen (dry basis); or]

(c) [(e)] Visible air contaminants in excess of ten (10) percent opacity.

(2) On and after the date on which the initial performance test is completed or required to be completed by Section 6 of this regulation, no owner or operator of an affected facility with a plant capacity greater than 500 pounds per hour but less than or equal to 250 tons per day, shall cause or allow to be discharged into the atmosphere from the affected facility:

(a) Particulate matter emissions in excess of **183** [thirty-four (34)] milligrams per dry standard cubic meter (**0.08** [0.015] grains per dry standard cubic foot) of exhaust gas, corrected to seven (7) percent oxygen (dry basis);

(b) Carbon monoxide emissions in excess of **100 parts per million by volume corrected to seven (7) percent oxygen (dry basis)** [the standards for types of incinerators in 401 KAR 59:023, Appendix A];

[(c) Hydrochloric acid (HCl) emissions in excess of ten (10) percent of the uncontrolled HCl emission rate (ninety (90) percent reduction) (by weight) on an hourly basis or twenty-five (25) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent;]

(c) [(d)] Sulfur dioxide (SO_2) emissions in excess of fifteen (15) percent of the uncontrolled SO_2 emission rate (eighty-five (85) percent reduction) (by weight) on an hourly basis or thirty (30) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent. **Excluded from this provision are emissions from affected facilities which combust only medical waste**;

[(e) Dioxin or furan emissions in excess of seventy-five (75) nanograms per normal cubic meter (thirty (30) grains per billion standard cubic feet), corrected to seven (7) percent oxygen (dry basis); or]

(d) [(f)] Visible air contaminants in excess of ten (10) percent opacity.

(3) On and after the date on which the initial performance test is completed or required to be completed by Section 6 of this regulation, no owner or operator of an affected facility with a plant capacity greater than 250 tons per day shall cause or allow to be discharged into the atmosphere:

(a) Particulate matter emissions in excess of **183** [thirty-four (34)] milligrams per dry standard cubic meter (**0.08** [0.015] grains per dry standard cubic foot) of exhaust gas, corrected to seven (7) percent oxygen (dry basis);

(b) Carbon monoxide emissions in excess of **100 parts per million by volume corrected to seven (7) percent oxygen (dry basis)** [the standards for types of incinerators shown in 401 KAR 59:023, Appendix A];

(c) Hydrochloric acid (HCl) emissions in excess of five (5) percent of the uncontrolled HCl emission rate (ninety-five (95) percent reduction) (by weight) on an hourly basis or twenty-five (25) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent;

(d) Sulfur dioxide (SO_2) emissions in excess of fifteen (15) percent of the uncontrolled SO_2 emission rate (eighty-five (85) percent reduction) (by weight) on an hourly basis or thirty (30) parts per million by volume, corrected to seven (7) percent oxygen (dry basis), whichever is less stringent. **Excluded from this provision are emissions from affected facilities which combust only medical waste**;

[(e) Dioxin or furan emissions in excess of thirty (30) [five (5)] nanograms per normal cubic meter (fourteen (14) [two (2)] grains per billion standard cubic feet), corrected to seven (7) percent oxygen (dry basis);]

(e) [(f)] Visible air contaminants in excess of ten (10) percent opacity.

Section 4. Standards for Operating Practices. (1) The requirements for unit operating practices listed in 401 KAR 59:023, Section 4, shall apply to all units, except as provided in subsection (2) of this section.

(2) Owners or operators of affected facilities which have an incinerator without a secondary chamber but are equipped with an afterburner operated at a [minimum] temperature of 982 + (plus or minus) 93 degrees Celsius (1800 ± (plus or minus) 200 degrees Fahrenheit) may choose to meet a more restrictive opacity standard of zero (0) percent in lieu of meeting the secondary chamber requirement while the affected facility is combusting medical waste. All other emission standards listed in 401 KAR 59:023, Section 3 and the operating practices listed in 401 KAR 59:023, Section 4 shall apply.

Section 5. Operator [Certification and] Training. The requirements for operator [certification and] training listed in 401 KAR 59:023, Section 5, shall apply to all units.

Section 6. Compliance and Performance Testing. [(1)] On or before the completion of the compliance timetable in Section 8 of this regulation for an affected facility and at other times as may be required by the cabinet, the owner or operator of an affected facility shall conduct performance tests according to 401 KAR 50:045 and this section and shall furnish the cabinet a written report of the results of the performance tests. For standards listed in Sections 3 and 4 of this regulation, the corresponding compliance and test methods listed in 401 KAR 59:023, Section 6, shall apply, except that the length of time allowed for start-ups and shutdowns shall be three (3) hours.

Section 7. Reporting and Recordkeeping Requirements. For standards listed in Section 3 and 4 of this regulation, the corresponding reporting and recordkeeping requirements listed in 401 KAR 59:023, Section 7, shall apply.

Section 8. Compliance Timetable. (1) Except as provided in subsection (2) of this section, planning, awarding of contracts, and installation of equipment capable of attaining the level of the emission standards and operating standards established in this regulation shall be completed within three (3) years after the effective date of this regulation. Final compliance with this regulation, except as provided in subsection (2) of this section, shall be demonstrated no later than December 31, 1994.

(2) Planning, awarding of contracts, and installation of equipment and procedures capable of attaining the level of materials separation specified in 401 KAR 59:021, Section 8 shall be completed by December 31, 1992. The initial demonstration of compliance with the materials separation provisions (percent reduction) specified in 401 KAR 59:021, Section 10 shall be completed by December 31, 1994. The training requirement in Section 5 of this regulation shall be completed within one (1) year from the effective date of this regulation.

[Section 9. Procedures for Public Participation. The public participation procedures of KRS 224.855 shall apply to all affected facilities.]

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: September 14, 1990
FILED WITH LRC: September 14, 1990 at 11 a.m.

JUSTICE CABINET
Office of the Secretary
(As Amended)

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 **shall** [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. A [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, shall be exempt from the requirements of [need comply with] Section 1 of this regulation. Each person who has not received this training more recently than January 1, 1989, shall [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.

JUSTICE CABINET
Department of State Police
(As Amended)

502 KAR 45:050. Physical examination.

RELATES TO: KRS 16.040
STATUTORY AUTHORITY: KRS 16.080
NECESSITY AND FUNCTION: KRS 16.040 provides that the Commissioner of the Department of State Police may establish minimum physical requirements and conduct such tests and examinations as necessary to assure the fitness of applicants for employment as officers. This regulation outlines the physical requirements and the physical examination requirement.

Section 1. (1) Each applicant shall be required to submit to a physical examination by a qualified, licensed physician retained by the department for that purpose as a part of the selection process.
(2) The department may, if deemed necessary by the commissioner, allow the applicant to be examined by a physician of the applicant's choice at his own expense. If a physician other than one retained by the department performs the examination, he shall be required to fill out and sign the department's physical examination forms.

Section 2. The following guidelines shall to be used to determine if the applicant is in good health:
(1) Nose, throat, and speech. Chronic catarrh, sinus trouble, deviated septum, or chronically infected or enlarged tonsils shall be deemed cause for rejection. Deformities of the mouth or lips and speech impediments, including stammering and stuttering, shall be deemed cause for rejection.
(2) Teeth. All teeth shall be in good repair. Dentures or artificial replacements are acceptable.
(3) Ears. Hearing shall be normal in both ears; an average loss of thirty (30) decibels or more in either ear at the 500, 1000, 2000 or 3000 Hertz level as shown by audiometer test shall be deemed cause for rejection.
(4) Thyroid. Goiter or improperly functioning thyroid shall be deemed cause for rejection.
(5) Chest. Respiration shall be full, easy and regular; respiration shall be clear and distinct over both lungs.
(6) Heart. The action of the heart shall be uniform, free and steady, with regular rhythm; the heart shall be free from organic diseases. Blood pressure shall be within the limits of 135/80 and 110/74.
(7) Genitalia. Hydrocele or large varicorele, deformity of testicles, tumor formation, epidymites and venereal disease shall be deemed cause for rejection.
(8) Rectum. Hemorrhoids, fissure, fistula and pilonial cyst shall be deemed cause for rejection.
(9) Trunk and extremities. Poor posture, curvature of the spine, deformed chest, bow legs, knock knees, weak ankles, flat feet, deformed toes, shortening of long bones, enlarged or poorly functioning joints, amputated fingers or toes, varicose veins, paralysis or defective gait shall be deemed cause for rejection.
(10) Organic diseases. Family history of any hereditary disease, history of dizziness, epilepsy, confinement for mental illness in any institution, stomach ulcer, kidney disease, albuminuria or glycosuria, anemia, or skin disease shall be deemed cause for rejection.

Section 3. (1) Each applicant shall submit to and pass the [a] physical ability test set out in subsection (2) of this section. [based upon standards set by the commissioner.] This test shall cover four (4) areas based upon sex: height to weight ratio; bench press or push-ups in relation to body weight; flexibility; and sit-ups.

(2) Physical Ability Test.

	Male	Female
(a) Situps (within 60 seconds)	32	27
(b)1. Bench press (as percentage of body weight)	85	50; or
2. Pushups (within 60 seconds)	22	22 (modified position)
(c) Sit and reach (in inches)	14	16

(3) The department shall determine whether a bench press or pushups shall be required in

order to satisfy subsection (2)(b) of this section.

W. MICHAEL TROOP, Secretary
APPROVED BY AGENCY: November 7, 1990
FILED WITH LRC: November 7, 1990 at 4 p.m.

TRANSPORTATION CABINET
Department of Highways
Division of Planning
(As Amended)

603 KAR 5:071. Bus dimension limits.

RELATES TO: KRS 189.221, 189.222, 189.265, 281.735
STATUTORY AUTHORITY: KRS 189.221, 189.222, 189.265, 281.735
NECESSITY AND FUNCTION: KRS 189.222 authorizes the Secretary of Transportation to increase the dimension limits prescribed in KRS 189.221 for vehicles operated on designated state maintained highways or portions thereof up to specified limits if the increase is justified by the safety of the designated highways. KRS 189.222(6)(b) authorizes the Secretary of Transportation to increase the width limit for vehicles on the Federal Aid Highway System and the State Parkway System when authorized by federal law or laws or regulations up to a specified limit. KRS 189.265 establishes length and width limits for buses and authorizes the Secretary of Transportation to increase the width limits of motor buses, except for those operated by transit authorities created pursuant to KRS Chapter 96A, on state maintained highways if the increase is justified by the width of the designated highways. KRS 281.735(3) establishes a width limit for city and suburban buses and authorizes the Secretary of Transportation to increase the width limit on state maintained highways for all other buses only as provided by law. This regulation is adopted to set [fix] the maximum dimension limits for buses.

Section 1. Except as provided in Sections 2 and 3 [through 4] of this regulation the maximum dimensions for buses having a seating capacity of ten (10) or more, including the driver, operated on any state maintained highway shall be as set forth in KRS 189.265. [follows:]
[(1) Height: not to exceed eleven (11) feet and six (6) inches.]
[(2) Length: not to exceed forty (40) feet.]
[(3) Width: not to exceed ninety-six (96) inches exclusive of any required safety equipment. The width of a city or suburban bus shall not exceed 102 inches.]

[Section 2. Buses operated by a transit authority created pursuant to KRS Chapter 96A are exempt from the length provision of Section 1 of this regulation.]

Section 2. [3.] Buses which do not exceed a width of 102 inches, exclusive of any required safety equipment and tire bulge due to load, may be operated on those highways designated for the operation of motor vehicle [trucks] with increased dimensions by Section 3 [2] of 603 KAR 5:070.

Section 3. [4.] Buses which are allowed the increased width under the authority of Section 2 [3] of this regulation shall be allowed to operate within five (5) driving miles on state maintained highways from the designated routes for the purpose of attaining reasonable access to terminals; facilities for food, lodging, and rest; facilities for fuel and repairs; and points of loading and unloading of passengers and freight.

JEROME L. LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary
O. GILBERT NEWMAN, State Highway Engineer
APPROVED BY AGENCY: October 5, 1990
FILED WITH LRC: October 11, 1990 at 2 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Office of State Fire Marshal
(As Amended)

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 **outlined in Section 10 of this regulation** [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 **outlined in Section 10 of this regulation** [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.

Section 10. Application Form for Certification of Underground Petroleum Storage Tank Contractors.

COMPILER'S NOTE: This form is new, but is not shown with all new words underlined.

APPLICATION FOR CERTIFICATION OF UNDERGROUND PETROLEUM STORAGE TANK CONTRACTORS

TYPE: ___Full ___Remover
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/Box Office Number
   _____
   City County State Zip
3. Telephone: _____ _____
   Residence Business
4. Birthdate _____ 5. Social Security #_____
6. Place of Birth _____
   City County State
7. Business Address _____
   Street/Box Office Number
   _____
   City County State Zip
8. Certificate issued in:
   ____Company Name ____Individual Name
9. Send Mail to: _____
   Business Address/#7
   _____
   Permanent Residence/#2
10. List any schools or training seminars concerning tank installations which you have attended:

Title	Presented By	Date(s)

11. With whom did you most recently apprentice as a tank installer?
    Business name:_____
    Address:_____
    Street City State Zip
    Person who supervised you:_____
    Period of apprenticeship:
    From _____ To _____
    Month Yr Month Yr
12A. Number of years experience as a tank installer: _____
12B. Number of years experience as a tank remover: _____
13. 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	_____	_____

14A. Approximate number of piping installations you have:

	Supervised?	Participated in?
Black iron/ galvanized	_____	_____
Copper	_____	_____
Fiberglass	_____	_____
Cathodically protected steel	_____	_____
Dual wall	_____	_____
TOTALS	_____	_____

14B. Approximate number of tank removals you have: Supervised _____ Participated in _____
15. List the names and addresses of at least 3 people (e.g., employer, supervisors) familiar with your work as a tank installer/remover.

Name	Address	Telephone #
1.		
2.		
3.		

16. Compliance with health and worker safety? Yes ___ No ___
    40 hour safety training? Yes ___ No ___
    8 hour annual refresher? Yes ___ No ___
17. Compliance with baseline medical and monitoring program? Yes ___ No ___
18. Attach proof of general liability insurance.
19. Attach proof of pollution liability insurance.
20. Attach experience, listing of jobs (i.e., name of project, company name, dates, city, county, state, size and number of tanks, etc.).

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

NOTARIZED BY:
State of_____
County of_____

Subscribed and sworn to before me this _____ day of _____, 19____

_____
Notary Public
My Commission expires_____

[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.

REGULATIONS AMENDED AFTER PUBLIC HEARING OR WRITTEN COMMENTS RECEIVED

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 47:134. Limitations on amount of waste accepted by residential landfills.

RELATES TO: KRS Chapter 224
STATUTORY AUTHORITY: KRS 224.033, 224.842, 224.887
NECESSITY AND FUNCTION: **KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of wastes. KRS 224.842 requires that persons engaging in the management, processing, or disposal of waste first obtain a permit. This chapter establishes the permitting standards for solid waste sites and facilities, the standards applicable to all solid waste sites and facilities, and the standards for certification of operators. This regulation establishes a five (5) percent limit on the annual increase in waste a residential landfill may accept beyond the amount accepted during July 1989 through June 1990, when the permittee files a permit modification to add an additional waste source. The regulation also contains several exceptions to the five (5) percent cap.** [This regulation authorizes the Natural Resources and Environmental Protection Cabinet to limit five to (5) percent the annual increase of in-state or out-of-state waste, by weight or volume, which a residential landfill may accept, beyond the amount accepted during July, 1989 through June, 1990. The regulation also limits the amount of waste a residential landfill may accept to the maximum it is required to take under contracts executed prior to October 19, 1990. After a contract expires, a five (5) percent limitation applies to increases over the annual amount accepted during July, 1989 through June, 1990. The cabinet may revise the limitations to assure the capacity for disposal of Kentucky's solid waste, to protect against risks to human health or welfare or to the environment, or to carry out any other requirement of KRS Chapter 109 or 224, or regulations promulgated pursuant thereto. Residential landfills which were not designed to meet the more environmentally protective requirements applicable to contained landfills may be authorized to operate until July 1, 1995. However, the cabinet has found that certain of those residential landfills are greatly increasing the amount of waste they dispose, to fill the landfills before they are required to meet the more stringent requirements. Existing residential solid waste landfills are required by November 8, 1990 to notify the cabinet whether they intend to close or to meet the transition standards of 401 KAR 47:080, Section 4, by July 1, 1992. The cabinet has been directed to analyze this information to determine the remaining capacity for the disposal of solid waste generated in Kentucky and to report its findings to the Governor on or before January 31, 1991. The cabinet shall use the information it receives and the report it prepares to assess the disposal capacity required for waste generated in Kentucky. The emergency] **This** regulation is necessary [to assure the capacity for disposal of Kentucky's solid waste,] to limit the disposal of waste at residential landfills which do not meet the more environmentally protective requirements **adopted May 8, 1990,** for contained landfills, to protect Kentucky's groundwater from contamination, **to protect human health and the environment,** and to assure that waste is disposed at **permitted** solid waste facilities [which are consistent with the comprehensive state solid waste management program to be considered by the General Assembly in the special legislative session to be convened in January 1991].

Section 1. Annual increases in the amount of in-state or out-of-state waste accepted by a residential landfill **from new sources** shall not exceed more than five (5) percent of the annual amount, by weight or volume, accepted during the twelve (12) month period from July, 1989 through June 1990, unless the following criteria are met:

(1) The landfill is **permitted** [designed] in accordance with the requirements of 401 KAR Chapters 30 through 49, **as adopted May 8, 1990,** inclusive, applicable to contained landfills;

(2) The landfill is required to accept a greater amount of waste pursuant to a contract executed before October 19, 1990; or

(3) The cabinet determines that an alteration is necessary to be consistent with the area solid waste management plan, to assure the capacity for disposal of Kentucky's solid waste, to protect against risks to human health or welfare or to the environment, or to carry out any other requirement of KRS Chapter 109 or 224, or regulations promulgated pursuant thereto.

Section 2. For a residential landfill which did not operate for the entire period from July, 1989 through June, 1990, the five (5) percent limitation of Section 1 of this regulation shall apply to the average daily amount of waste the landfill accepted over the period it was in operation.

Section 3. If a residential landfill is required to accept an amount of waste greater than that accepted from July, 1989 through June, 1990, pursuant to a contract executed before October 19, 1990, the landfill shall not accept increases in the amount of waste, by weight or volume, beyond the maximum required by that contract. Upon termination of the contract, annual increases in the amount of in-state or out-of-state waste **from a new waste source** [accepted] shall not exceed more than five (5) percent of the annual amount, by weight or volume, accepted during July 1989 through June, 1990, unless the cabinet determines that an alteration is necessary in accordance with Section 1(3) of this regulation.

Section 4. The owner or operator of a residential landfill seeking to **add a new waste source** [increase the amount of waste which it may accept] shall apply for a major modification of its permit in accordance with 401 KAR 47:130 and 401 KAR 47:140. The permittee

shall demonstrate to the cabinet that during the period from June 1, 1990 to the date of the application:

(1) The landfill has not accepted waste from sources which were not approved in its permit, as required by 401 KAR 48:090, Section 8(1)(c); and

(2) The landfill has kept accurate records of the volumes of waste received from each source, as required by 401 KAR 47:190, Section 8(1)(b).

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: January 10, 1991
FILED WITH LRC: January 11, 1991 at 11 a.m.

NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(Amended After Hearing)

401 KAR 47:136. Diversions of waste.

RELATES TO: KRS Chapter 224
STATUTORY AUTHORITY: KRS 224.033, 224.842, 224.887
NECESSITY AND FUNCTION: KRS Chapter 224 requires the cabinet to adopt regulations for the management, processing, and disposal of wastes. KRS 224.842 requires that persons engaging in the management, processing, or disposal of waste first obtain a permit from the cabinet. This chapter establishes the permitting standards for solid waste sites and facilities, the standards applicable to all solid waste sites and facilities, and the standards for certification of operators. This regulation requires waste to be diverted to a permitted solid waste disposal facility with adequate capacity if the cabinet revokes, suspends or denies a permit or orders a solid waste disposal facility to cease accepting waste, or if the facility otherwise ceases to accept waste. That diversion shall require a minor [permit] modification to the permit of the receiving facility. [Existing residential solid waste landfills are required by November 8, 1990 to notify the cabinet whether they intend to close or to meet the transition standards of 401 KAR 47:080, Section 4 by July 1, 1992. The cabinet has been directed to analyze this information to determine the remaining capacity for the disposal of solid waste generated in Kentucky and to report its findings to the Governor on or before January 31, 1991. The cabinet shall use the information it receives and the report it prepares to assess the disposal capacity required for waste generated in Kentucky.] The regulation is necessary to assure that solid waste is disposed at permitted solid waste disposal facilities in a manner protective of human health and the environment and consistent with Kentucky's long-range planning goals for solid waste management[, to protect Kentucky's groundwater from contamination, and to assure that solid waste is disposed in a manner consistent with the comprehensive state solid waste management program to be considered by the General Assembly in the special legislative session to be convened in January, 1991].

Section 1. If the cabinet revokes, suspends or denies a permit for a solid waste disposal facility, orders the facility to cease accepting waste, or if the facility otherwise ceases to accept waste, the wastes which would have been accepted by the facility shall be diverted to a permitted solid waste facility with adequate disposal capacity. The diversion shall require a minor modification of the permit for the solid waste facility accepting the diverted waste, in accordance with 401 KAR 47:130.

Section 2. The owner or operator of the solid waste disposal facility prohibited from accepting waste shall post and maintain a clearly-legible sign advising the public that waste shall not be disposed at the facility.

FRANK DICKERSON, Commissioner
CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: January 10, 1991
FILED WITH LRC: January 11, 1991 at 11 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Education for Exceptional Children
(Amended After Hearing)

707 KAR 1:100. Kentucky School for the Deaf; admission policy.

RELATES TO: KRS 156.031, 167.150
STATUTORY AUTHORITY: KRS 156.070, 167.150
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 167.150 authorizes the State Board for Elementary and Secondary [of] Education, upon recommendation of the chief state school officer [Superintendent of Public Instruction], to prescribe admission policies for pupils to attend the Kentucky School for the Deaf. This regulation implements that function.

Section 1. Statement of Purpose. The educational programs at the Kentucky School for the Deaf (KSD) are designed to provide a variety of educational placements for hearing impaired children. KSD's goal is to provide a comprehensive educational program that includes college preparatory courses and vocational instruction that meets the State Board for Elementary and Secondary [of] Education Program of Studies requirements. Additionally, a developmental program, educational program and a prevocational work experience program are available for lower functioning deaf students to prepare them for independent or semi-independent living and to qualify them for employment, vocational training or placement in a sheltered workshop.

Section 2. Referral Procedures. An application form for admission shall [should] be requested from KSD. Prospective students may be referred for evaluation by parents or legal guardians or by local school districts or other agencies in cooperation with the student's parents. (Determinations regarding placement of the child shall be made in accordance with procedures outlined in [707 KAR 1:003 and] 707 KAR 1:051.) Available written reports on prospective students shall be [are] requested [and obtained] for review by KSD's Child Study

Center prior to scheduling of the preadmission evaluation of the child. These reports may include, but are not limited to, the following areas and are a part of the Intake History:

(1) Educational history to include reports from programs attended previously.

(2) Detailed family history to include medical, developmental, social and behavioral history of the child.

(3) Audiological evaluation.

(4) Psychological evaluation.

(5) Communication evaluation to include formal and informal data relative to expressive and receptive language (gestures, sign language, reading, writing), speech evaluation and any other pertinent information relating to the child's communication functioning level.

(6) Complete physical examination to include:

(a) Physical development;

(b) Digestive [and/]or intestinal difficulties, as indicated;

(c) Neurological information;

(d) Seizure history and expectation;

(e) Medications;

(f) Bowel and bladder;

(g) Cardiac information and history;

(h) Hereditary problems;

(i) Visual screening; and

(j) Mobility.

Section 3. Initial Evaluation Procedures. (1) Upon receipt of the completed application form which includes parental permission to evaluate the child, KSD personnel shall [will] review the application form and existing information and begin scheduling for the necessary assessments. Each child who comes to KSD for evaluation shall [must] be accompanied by a parent or guardian or a social worker or local school district representative. Depending upon the extent of the available assessment information, the assessment period at the school may range from one (1) day to several weeks.

(2) The individual assessment, to include but not be limited to educational and psychological testing, shall [will] be administered in the child's native language or other nondiscriminatory mode.

(3) Informal and formal observation techniques shall [will] play a major role in the assessment procedure. The evaluation may include participation in leisure time activities, meals, and adaptation to a residence in the appropriate dormitory.

(4) At the conclusion of the evaluation period, a multidisciplinary review of all the assessment information shall [will] be conducted by KSD to determine eligibility of the child according to Section 4 of this regulation.

Section 4. Eligibility Criteria for Admissions. (1) The primary sensory handicap of the student shall [must] be deafness. Admission to KSD shall be provided tuition-free to Kentucky residents, and Kentucky residents shall be given first consideration for any available openings at the school. Out-of-state students shall be eligible for admission after qualified Kentucky residents are accepted, and tuition fees for those students shall be determined by the State Board for Elementary and Secondary [of] Education, pursuant to KRS 167.150.

(2) The student shall [must] fall in the age range between five (5) and twenty (20) years inclusive.

(3) The prospective student shall [must] possess a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, and which adversely affects educational performance. A concomitant handicapping condition shall [will] not exclude the individual; however, hearing impairment shall [must] be the primary handicapping condition.

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

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

(b) On a standardized instrument for the evaluation of intellectual functioning, achieve at the educable mentally handicapped (as defined in 707 KAR 1:057) level or above. In the event it is not possible to determine a child's level of intellectual functioning and level of adaptive behavior due to his inability to carry out the tasks presented during psychological testing and educational evaluation, the student may be accepted for a trial placement.

(c) Exhibit the following prerequisites: Be schedule-trained in toileting; accept solid foods; be able to spoon feed and drink from a cup; need minimal assistance in bathing, dressing, and grooming; express his/her needs through natural gestures, signs, vocalizations; show a differential reaction to a familiar adult and accept stimulation; and walk or move independently about the school in a wheelchair.

(d) Process sufficient visual acuity to enable him or [/] her to utilize visual stimuli found in classrooms for the deaf.

(5) Children with significant medical problems shall [can] not be considered for admission to the residential program. Significant health problems shall [may] include, but are not limited to, planned hospitalization for twenty (20) days or more during an academic year, chronic moderate to severe respiratory difficulties, semiconsciousness [and/]or the requirements of sustained medical support services beyond the capability of the school's infirmary. Prospective students, also, shall [must] not require skilled nursing care.

(6) Once a determination of eligibility has been made by KSD's multidisciplinary evaluation team, written notification of eligibility status shall be sent to the parents, local education agency or referral source within fifteen (15) days. If the child is found to be ineligible for enrollment [or if the child is accepted for enrollment despite questions as to whether he or she fully meets each and every individual admission criteria], the notification shall include a description of the eligibility criteria, a description of the basis in the evaluation information for making the determination, [or entertaining any doubt as to fully meeting any individual admission criterion,] and a description of other factors [(including the feasibility of reasonable accommodation)] involved in the eligibility determination. The notification shall also contain:

(a) A statement of the skills needed by the child in order to be considered for eligibility, or to remain eligible, in the future; and

(b) A description of the outreach services that may be provided for the child while being maintained in a local school district program if requested by the LEA.

Section 5. Placement. If a student is determined eligible for admission to KSD, educational placement within the school shall [will] be determined by each child's Individualized Education Plan as developed by KSD, local school districts and the parents or guardians pursuant to 707 KAR 1:051.

Section 6. Change of Placement. A placement review may be initiated to determine if continued placement in KSD in appropriate. Review procedures shall be in accordance with the admission and release committee process as set forth in 707 KAR 1:051. Situations which lead to a review of placement may include, but are not limited to, the following:

(1) A change of circumstances which makes local school district placement appropriate.

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

(3) Inability to respond to developmental training as prescribed by the child's Individualized Education Plan (self-care, including feeding, dressing, personal hygiene).

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

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

(6) Deviant sexual behavior that has an adverse influence on the sexual behavior of other children.

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

THOMAS C. BOYSEN, Commissioner
HENRY E. POGUE, IV, Chairman
APPROVED BY AGENCY: January 4, 1991
FILED WITH LRC: January 4, 1990 at noon

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Amended After Hearing)

902 KAR 2:150. Human immunodeficiency virus education, initial professional licensure.

RELATES TO: KRS 211.180, 214.020, 214.615
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: KRS 214.615 provides that as of July 1, 1991, the Cabinet for Human Resources shall require that an educational course approved by the cabinet on the transmission, control, treatment and prevention of human immunodeficiency virus infection and AIDS be completed by prospective licensees under KRS Chapters 311, 312, 313, 314, 315, 320, 327, 333, 335.

Section 1. The educational course approved by the cabinet for initial licensure shall be either of the following:

(1) Any one of those courses found on the official listing of the AIDS education program, CHR, which is designated as appropriate for licensed professionals. Courses on the list shall be marked either as appropriate for all licensed professionals or designated as appropriate only for one (1) or more professions. Requests for inclusion on the official listing may be made by any interested party [Licensure boards, universities providing education to the professions under KRS chapters listed in the Necessity and Function of this regulation, and state and national professional organizations wishing to add courses to the list shall proffer them for approval] by submitting, to the AIDS education program, material including the title, style, (correspondence, in-person, video or other) and brief description of the course. A course-description brochure will suffice to meet this requirement; or

(2) Any HIV education program or course having received approval of a national accrediting body or a national professional accrediting organization which regularly accredits programs and courses.

Section 2. All courses shall include:

(1) Basic medical and epidemiologic information about HIV and the diseases and conditions it can cause;

(2) Information regarding the methods of transmission of HIV, methods of prevention of HIV infection, and currently recognized methods of medical treatment for HIV infection;

(3) Basic instructions for management of HIV infection both in the health care workplace and in other commonly encountered working environments. These instructions shall be consistent with federal occupational safety and health standards;

(4) A brief review of the moral, ethical, and legal issues surrounding HIV infection;

(5) Instruction regarding appropriate attitudes and behaviors toward those persons infected or possibly infected with HIV;

(6) Instruction regarding the need for comprehensive human services for those with HIV infection.

Section 3. The minimum length of the course for each profession shall be set by its individual licensure board.

Section 4. Any course approved by the cabinet shall have been updated within no more than two (2) years of the date that it is taken by the licensee to ensure that the course material reflects contemporary scientific findings concerning HIV infection. Printed or audio visual material shall bear the production date (month and year). The month and year of production shall appear on a handout or syllabus for courses to be given in person.

Section 5. The licensure boards shall apply standards regarding the qualifications of course providers and the appropriateness of specific material to the given profession. State and

national quality standards shall be used, where they exist.

Section 6. If CHR suspects a deficiency in the conduct of an approved course which is not being satisfactorily addressed by one (1) or more licensure boards, or if a licensure board so requests, CHR may inspect that course and may remove the course from the approved list if it does not meet the quality standards of this regulation [charge the vendors a fee not to exceed seventy-five (75) dollars for the inspection].

Section 7. Each applicant [licensee] shall certify to the boards either:

(1) The completion of an approved course, on a form created and distributed by CHR; or

(2) Reasonable cause for having not fulfilled the requirements of Section 1 of this regulation, on an affidavit created by the cabinet, and submitted to the appropriate licensing board at the time of licensure application. An affidavit of reasonable cause shall be valid for no more than six (6) months and shall be accepted from a given individual only once. A licensing board may issue a license to an individual who has submitted an affidavit of reasonable cause. If the individual does not certify fulfillment of the requirements of Section 1 of this regulation within six (6) months from the date of the affidavit, the licensing board shall take appropriate disciplinary action [taken an approved course, or an affidavit created and distributed by CHR, to his individual licensure board, as a condition of receiving a professional license under KRS 214.615. An affidavit of reasonable cause shall be valid for no more than six (6) months and shall be accepted from a given licensee only once].

(3) If an applicant [licensee] has graduated from a professional school whose AIDS education curriculum is approved under Section 1(1) or (2) of this regulation within two (2) years (five (5) years for a physician, if he has been in a residency program throughout the interim), he shall be deemed to have met the requirement of this subsection without submitting a form.

Section 8. Each licensure board shall submit to CHR by December 31 of each year, beginning in 1991, a report stating the total number of persons applying for licensure in the past twelve (12) months; and of those, the number meeting the AIDS education requirement, the number having submitted an affidavit of reasonable cause, and the number of disciplinary actions taken for failure to meet the requirements of Section 1 of this regulation at the expiration of the six (6) month period [and the number of licenses denied for failure to meet the requirement. Boards shall also report the number of licenses revoked because affidavits of reasonable cause have expired].

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: January 11, 1991
FILED WITH LRC: January 11, 1991 at 10 a.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Amended After Hearing)

902 KAR 2:160. Human immunodeficiency virus education, continuing education for professionals.

RELATES TO: KRS 211.180, 214.020, 214.610
STATUTORY AUTHORITY: KRS 194.050, 211.090
NECESSITY AND FUNCTION: KRS 214.610 provides that each licensee under KRS Chapters 311, 312, 313, 314, 315, 320, 327, 333, and 335 shall complete a Cabinet for Human Resources approved educational course as specified in the respective chapters on the transmission, control, treatment, and prevention of human immunodeficiency virus infection and AIDS for the first time by July 1, 1991 (July 1, 1992, for nursing and physical therapy) and at least once during each licensure cycle thereafter [as part of their periodic licensure renewal cycles].

Section 1. The educational course approved by the cabinet for continuing education shall be either of the following:

(1) Any one of those courses found on the official listing of the AIDS education program, CHR, which is designated as appropriate for licensed professionals. Courses on the list shall be marked either as appropriate for all licensed professionals or designated as appropriate only for one (1) or more professions. Requests for inclusion on the official listing may be made by any interested party [Licensure boards, universities providing education to the professions under KRS chapters listed in Necessity and Function of this regulation, and state and national professional organizations wishing to add courses to the list shall proffer them for approval] by submitting, to the AIDS education program, material including the title, style (correspondence, in-person, video or other) and brief description of the course. A course-description brochure will suffice to meet this requirement; or

(2) Any AIDS/HIV education program or course having received approval of a national accrediting body;

(3) Any AIDS/HIV education course which has received the approval of a national professional organization which regularly approves continuing education courses for the particular profession.

Section 2. All courses shall include:

(1) Basic medical and epidemiologic information about HIV and the diseases and conditions it can cause;

(2) Information regarding the methods of transmission of HIV, methods of prevention of HIV infection, and currently recognized methods of medical treatment for HIV infection;

(3) Basic instructions for management of HIV infection both in the health care workplace and in other commonly encountered working environments. These instructions shall be consistent with federal occupational safety and health standards;

(4) A brief review of the moral, ethical, and legal issues surrounding HIV infection;

(5) Instruction regarding appropriate attitudes and behaviors toward those persons infected or possibly infected with HIV;

(6) Instruction regarding the need for comprehensive human services for those with HIV infection.

Section 3. For professions with existing continuing education requirements, the minimum number of continuing education hours per certification cycle devoted to AIDS/HIV shall be set by the licensure board and shall be made part of the overall requirement (included within the total statutory number of hours, where those exist). For professions without the existing requirements, the minimum course length per certification cycle shall be two (2) hours.

Section 4. Any course approved by the cabinet shall have been updated within no more than two (2) years of the date that it is taken by the licensee to ensure that the course material reflects contemporary scientific findings concerning HIV infection. Printed or audio visual shall bear the production date (month and year). The month and year of production shall appear on a handout or syllabus for courses designed to be given in person.

Section 5. The licensure boards shall apply standards regarding the qualifications of course providers and the appropriateness of specific material to the given profession. State and national quality standards shall be used, where they exist.

Section 6. If CHR suspects a deficiency in the conduct of an approved course which is not being satisfactorily addressed by one (1) or more license boards, or a licensure board so requests, CHR may inspect that course and may remove it from the approved list if it does not meet quality standards of this regulation [charge the vendors a fee not to exceed seventy-five (75) dollars for the inspection].

Section 7. Each licensee shall certify to the board the completion of an approved course either:

(1) On a form created and distributed by CHR; or

(2) On the general continuing education form used by his licensure board, if one exists; or

(3) In the manner by which the boards currently audit continuing education requirements, as a condition of renewed licensure under KRS 214.610.

Section 8. Each licensure board (except nursing and physical therapy) shall, by August 1, 1991, submit an interim report to CHR stating the total number of licensees, as of July 1, and of that number, the number that had met the AIDS education requirement. Each licensure board shall submit to CHR by December 31 of each year, beginning in 1991 (except nursing and physical therapy, which will submit starting in 1992) a report stating the number of license renewals applied for during the year, the number or percent of licensees [applicants] meeting the AIDS education requirement. The report shall also include a summary of disciplinary actions taken by the boards for noncompliance [, and the number of licenses denied for failure to meet the requirement].

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: January 11, 1991
FILED WITH LRC: January 11, 1991 at 10 a.m.

CABINET FOR HUMAN RESOURCES
Office of Inspector General
(Amended After Hearing)

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

RELATES TO: KRS 216B.010 to 216B.130, 216B.990
STATUTORY AUTHORITY: KRS 216B.042, 216B.105
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.

(i) Assuring that all written facility policies, plans, and procedures are followed.

(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; and

4. Procurement of appropriate consent forms. This may include the release of educational and medical records.

(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)**, and the affected local school districts**. 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. **Educational services provided by a local school district may be provided within the facility or within the local school district. The facility's multidisciplinary team shall make a recommendation concerning the delivery site of educational services provided by a local school district that is based on least restrictive environment determinations for individual residents.** 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, **which may be incorporated into the individualized treatment plan (IEP) developed by the local school district**. The multidisciplinary team shall develop treatment activities which extend into the classroom as appropriate. The executive director or designee shall **request** [receive notice and] an invitation to attend all IEP meetings. **If allowed, the executive director or designee shall attend all IEP meetings.**

4. To avoid unnecessary duplication and make maximum use of resources, the **services provided by** [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: January 9, 1991
FILED WITH LRC: January 10, 1991 at 3 p.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JANUARY 15, 1991

COUNCIL ON HIGHER EDUCATION
(Proposed Amendment)

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

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

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

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

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

Section 2. Minimum Qualifications for Institutional Admission as First-time Freshmen. (1) Kentucky residents who have graduated from public high schools or certified nonpublic high schools (i.e., high schools adhering to the "Program of Studies for Kentucky Schools: Grades K-12" as approved by the State Board for Elementary and Secondary Education) [that have met the accreditation standards of the Kentucky Department of Education], who have taken the American College Testing Assessment (ACT), and who will enroll in college classes for the first time following graduation from high school are generally granted admission to community colleges and community college-type programs at each university. The Career Planning Program Level II (CPP-II) or the ASSET testing program may be substituted for the ACT requirement for adult students, if the institution believes either of these testing instruments is better suited to the needs of adult students. An adult student is defined as an individual who is twenty-one (21) or older. Certain programs, however, may have additional admission requirements.

(2) Kentucky residents who have graduated from public high schools or certified nonpublic high schools (i.e., high schools adhering to the "Program of Studies for Kentucky Schools: Grades K-12" as approved by the State Board for Elementary and Secondary Education), [that have met the accreditation standards of the Kentucky Department of Education,] who have taken the ACT*, who have completed the minimum educational preparation, and who will enroll in college classes for the first time following graduation from high school have fulfilled the minimum requirements for admission to baccalaureate programs at each university. *(The ACT is the preferred admission test for Kentucky public institutions, and applicants are encouraged to take the ACT; however, each institution may accept the Scholastic Aptitude Test (SAT) in lieu of the ACT for resident and nonresident applicants in an amount not to exceed ten (10) percent of the first-time freshmen admitted to baccalaureate programs.) Each university may establish additional admission criteria to supplement these minimum requirements.

(3) Kentucky residents who have earned a high school equivalency certificate (GED) or who are graduates of noncertified nonpublic high schools (i.e., nonpublic high schools not adhering to the "Program of Studies for Kentucky Schools: Grades K-12" as approved by the State Board for Elementary and Secondary Education) [that have not met the accreditation standards of the Kentucky Department of Education] may be admitted to community colleges or community college-type programs at each university upon completion of the ACT. The Career Planning Program Level II (CPP-II) or the ASSET testing program may be substituted for the ACT requirement for adult students, if the institution believes either of these testing instruments is better suited to the needs of adult students. An adult student is defined as an individual who is twenty-one (21) or older. These same individuals may be admitted to baccalaureate programs at each university by meeting the minimum requirements specified in subsection (2) of this section. Completion of the minimum educational preparation may be validated through the submission of ACT area scores which are deemed adequate by each university. Each university may establish additional admission criteria to supplement these minimum requirements.

(4) Nonresidents must meet the same minimum qualifications for admission as Kentucky residents as stated in subsections (1) through (3) of this section and at least one (1) of the following conditions in order to be admitted to state institutions:

(a) Graduate in the top fifty (50) percent of their high school class;

(b) Achieve a composite score at the 50th percentile or above for all students taking the ACT or the SAT nationally (the ACT is the preferred admission test for Kentucky public institutions, and applicants are encouraged to take the ACT; however, each institution may accept the SAT in lieu of the ACT for resident and nonresident applicants in an amount not to exceed ten (10) percent of the first-time freshmen admitted to baccalaureate programs); or

(c) Demonstrate through other accepted measures the ability to pursue the college academic program without substantial remedial aid.

(5) If, under extenuating circumstances, students are admitted conditionally without having fulfilled the testing requirement, the [such] students must take the ACT to fulfill this requirement during the first semester of enrollment.

Section 3. Minimum Educational Preparation. (1) Effective for the fall semester of 1987, applicants who have satisfied the minimum qualifications for institutional admission as first-time freshmen and have successfully completed twenty (20) or more approved* high school units including the following minimum academic preparati requirements are eligible for admission to baccalaureate programs at each university. *(An approved unit is a course of study included in the "Program of Studies for Kentucky Schools; Grades K-12". [or offered by a school that has met the accreditation standards of the Kentucky Department of Education.]) Each university may establish additional requirements to supplement this minimum educational preparation.

(a) Four (4) units of high school study in English, specifically, including English I (2301), English II (2302), English III (2303), and English IV (2304) or AP English (2307 or 2308).

(b) Three (3) units of high school study in mathematics, specifically including Algebra I (2710), (2722) or (both 2720 and 2721) or Algebra II (2711 or 2723); Geometry (2712 or 2735 or 2732), and one (1) additional mathematics elective. Beginning in 1990-91, the mathematics elective will be limited to predetermined courses which are identified in the "Program of Studies for Kentucky Schools: Grades K-12" published by the Kentucky Department of Education. Effective with admissions for the fall semester of 1994, the three (3) required units of high school study in mathematics shall include Algebra I (2710 or 2722 or 2751); Algebra II (2711 or 2723); and Geometry (2712 or 2732 or 2735). This mathematics requirement also may be met by completing the integrated mathematics series consisting of three (3) units (2756, 2757, and 2758).

(c) Two (2) units of high school study in science, specifically including either Biology I (2517) or Chemistry I (2521) or Physics I (2532), and one (1) additional science elective. At least one (1) of the science courses must be a laboratory course. Beginning in 1990-91, the science elective will be limited to predetermined courses which are identified in the "Program of Studies for Kentucky Schools: Grades K-12". Effective with admissions for the fall semester of 1994, the two (2) required units of high school study in science shall include Biology I (2517) and either Chemistry I (2521) or Physics I (2532), at least one (1) of which shall be a laboratory course.

(d) Two (2) units of high school study in social studies, specifically including World Civilization (2246) and U.S. History (2243) or AP American History (2244).

(e) In addition, college-bound students are encouraged to take, as part of their elective course selections, additional coursework in mathematics, sciences, foreign languages, arts, and computer literacy. Substitutions cannot be made for any course which is identified by a specific program of studies number unless the course in question has been deemed equivalent in content by the Council on Higher Education in consultation with the Department of Education.

(2) Course selections are tied to the "Program of Studies for Kentucky Schools: Grades K-12" and the individual course descriptions contained in that document. Adjustments in the minimum educational preparation for college will occur as changes are made in the program of studies. For guidance in the selection of specific courses, counselors should consult the program of studies and Council on Higher Education materials on the precollege curriculum.

(3) It is the responsibility of each institution of higher education to determine whether an applicant has met these minimum educational preparation requirements.

(4) Effective with admissions for the fall semester of 1992, all students admitted with baccalaureate-degree status to universities shall be subject to the precollege curriculum as established in this section. Excluded from this requirement shall be nontraditional students, which means students twenty-five (25) years of age or older, and students entering baccalaureate-degree status with twenty-four (24) or more semester credit hours applicable to a baccalaureate degree with a GPA (grade point average) of at least 2.00 on a 4.00 scale. Specifically subject to this requirement are the following: first-time freshmen pursuing a baccalaureate degree with or without a declared major; students converting from nondegree status to baccalaureate-degree status; students changing from certificate or associate-degree level to baccalaureate-degree level; and students who, transferring from other institutions, have been admitted to baccalaureate-degree status by the receiving institution. All degree-seeking students shall be assigned a degree-level code.

Section 4. Conditional Admissions [Exceptions to the Minimum Educational Preparation] Qualifications. (1) Subject to the requirements and limitations established by the Council on Higher Education, each university shall have the option of admitting conditionally [by exception] first-time freshman applicants to baccalaureate programs who have not met the minimum educational preparation qualifications for admission. Beginning in the fall semester of 1987, each university may grant exceptions to the minimum educational preparation qualifications and admit conditionally each academic term a maximum of twenty (20) percent of the total number of applicants admitted to baccalaureate programs as first-time freshmen. First-time freshmen admitted conditionally [by

exception] shall remove or otherwise satisfy all deficiencies regarding the minimum educational preparation in a manner and time period established by the enrolling university.

(2) Effective with the fall semester of 1994, each university enrolling students under the conditional admission provision of this policy shall admit conditionally each academic term not more than five (5) percent of a base figure. The transition from twenty (20) percent to five (5) percent shall be initiated as follows: beginning with the fall semester of 1992, each university shall admit conditionally each academic term not more than fifteen (15) percent of a base figure; and, beginning with the fall semester of 1993, each university shall admit conditionally each academic term not more than ten (10) percent of a base figure. The base figure shall be the average number of students reported as enrolled with baccalaureate-degree status over the preceding four (4) years. Nonresident students who failed to take world civilization while in high school shall not be reported or treated as having a precollege curriculum deficiency and shall not be subject to conditional admission on this basis.

(3) By January 1, 1992, each university shall submit to the Council on Higher Education for review and approval its policy covering the removal of precollege curriculum course deficiencies for students admitted conditionally. These policies shall apply to admissions beginning with the fall semester of 1992 and shall include the following components and conditions:

(a) Precollege curriculum course deficiencies in English and mathematics should be removed as soon as possible after enrollment, and shall be removed before students earn twenty-four (24) hours of degree credit. Students failing to comply with this condition of admission shall be prohibited from enrolling in additional degree-credit courses until the required corrective measures have been completed.

(b) Courses used to remove precollege curriculum deficiencies in English and mathematics shall not apply toward graduation credit.

(c) Students who have not completed the required courses in English and mathematics, but who score at or above the 60th percentile on the relevant portion of the ACT or SAT, shall be considered as having demonstrated a proficiency in the subject and shall not be assessed as deficient on this basis.

(d) Removal of precollege curriculum deficiencies in science and social studies shall be required before students complete twenty-four (24) hours of degree credit. The institutions shall stipulate the manner in which deficiencies shall be removed.

(e) University policies shall specify how the removal of deficiencies will be monitored and enforced.

(4) Although not subject to the precollege curriculum for admission purposes, students enrolled in community colleges or community college-type programs in universities shall be assessed and reported as to their precollege curriculum status effective with admissions for the fall semester of 1992. Students with precollege curriculum deficiencies shall remove deficiencies subject to the same requirements and conditions as baccalaureate students who are admitted conditionally. By January 1, 1992, individual community colleges or the University of Kentucky Community College System shall submit their policies or its policy covering the removal of precollege curriculum course deficiencies to the Council on Higher Education for review and approval. By January 1, 1992, universities shall submit their policies applicable to community college-type students to the Council on Higher Education for review and approval, if these policies differ from their policies for baccalaureate students admitted conditionally.

Section 5. Special Students. (1) Applicants of superior ability, as demonstrated by exceptional academic achievement, high ACT scores, and social maturity, may be granted early admission to the freshman class.

(2) At the discretion of the institution, applicants unable to meet college entrance requirements may be admitted to college classes for which they are qualified.

(3) Kentucky residents sixty-five (65) or older who are admitted to state-supported institutions shall have all registration and tuition charges waived. However, an institution may limit admission of these students if classes are filled, or if their admission necessitates additional classes.

Section 6. Admission with Advanced Standing. (1) Applicants who have attended another accredited college or university may be admitted with advanced standing in accordance with admissions requirements established by each institution. An institution may have additional requirements for nonresidents.

(2) Lower division academic courses offered for undergraduate credit at any accredited Kentucky community college are transferable for academic credit to state-supported universities. Lower division academic courses are those offered for undergraduate credit at the freshman and sophomore level or normally counted toward requirements for an associate degree. Usually numbered 100 to 299, these are introductory in nature and require no significant prerequisites. Determination of course level shall be made by the governing boards of the public universities and filed with the Council on Higher Education.

(3) The number of semester hours earned at the community college level which will be applied toward meeting requirements for a baccalaureate degree will depend upon the degree being pursued and the transfer practices of the receiving institution. In cases where educational objectives have changed, students may take additional courses at a community college after having completed the associate degree requirements. In this event, the college to which the student plans to transfer should be consulted.

(4) Although each public university has the responsibility for determining its degree requirements, it normally takes two (2) additional academic years for a community college transfer student to complete baccalaureate degree requirements.

(5) Credits presented from institutions not accredited may be accepted only when validated by advanced work at the receiving institution [and/]or by examination at the discretion of the institution.

Section 7. General Policies on Nonresident Enrollment. (1) Nonresident enrollment in the school of medicine at state-supported institutions operating those programs is limited to no more than ten (10) percent of the total headcount enrollment in each program.

(2) Institutions which waive the nonresident surcharge for nonresident students will continue to count those students as nonresident students for purposes of this policy and reporting to the council.

GARY S. COX, Executive Director
APPROVED BY AGENCY: January 14, 1991
FILED WITH LRC: January 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 27, 1991 at 11 a.m. at the Council on Higher Education Conference Room, 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 22, 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. 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 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: Michael Gardone, Council on Higher Education, 1050 U.S. 127 South, Suite 101, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Michael Gardone

(1) Type and number of entities affected: This amendment makes minor adjustments to a regulation which affects all 8 of the state-supported universities, the 14 community colleges within the UK Community College System, and all applicants for admission to the freshman class. This regulation provides guidelines for undergraduate admission to the state-supported institutions of higher education in Kentucky. As amended, this regulation strengthens the mathematics and science requirements for college bound students. Also, this amended regulation clarifies to which students the precollege curriculum applies and will provide greater consistency in the application of the precollege curriculum.

Another change made by the amended regulation is that by the fall semester of 1994 the percent of students admitted conditionally as a result of precollege curriculum deficiencies is to be reduced from 20 percent to 5 percent. Also, the base for computing the number of conditional admissions is changed from the number of students admitted to baccalaureate programs to the number of students enrolled with baccalaureate-degree status, which is a smaller number since institutions do not enroll all students admitted.

This amended regulation also provides that nonresident students who fail to take world civilization are not to be reported or treated as having a precollege curriculum deficiency and are not subject to conditional admission. This provision was added because many states do not offer world civilization, and world civilization is not required in the precollege curriculum of most states.

Still another provision of this amended regulation requires each university to submit to the Council on Higher Education for review and approval its policy covering the removal of precollege curriculum course deficiencies for students admitted conditionally, and this policy must include specific components. Furthermore, students enrolled in the University of Kentucky Community College System or community college-type programs at universities who have precollege curriculum deficiencies shall remove deficiencies subject to the same requirements as baccalaureate students who are admitted conditionally. Community college policies dealing with this provision must be submitted for review and approval by the Council on Higher Education.

(a) Direct and indirect costs or savings to those affected: This regulation has applied to the 8 state-supported universities for several years. The revisions in course requirements specified in the amendment will not result in additional costs or savings for the universities.

1. First year: Increases in indirect costs to the community colleges within the UK Community College System will result from assessing compliance with the precollege curriculum as part of the admission process and advising students of any deficiencies which need to be corrected. There will also be indirect costs for each university and community college, or the UK Community College System, associated with the development of a policy addressing the removal of precollege curriculum course deficiencies.

2. Continuing costs or savings: The indirect costs associated with assessing high school transcripts for compliance with the precollege curriculum will be recurring but are not new since institutions have been assessing compliance since 1987.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no other factors which will increase or decrease costs. Since the precollege curriculum is not required for admission to community college-type programs at universities or the UK Community College System, the admission requirements for these programs are less than the admission requirements to baccalaureate programs. This difference in admission requirements could make admission to community college-type programs at universities and community colleges with the UK Community College System more attractive to some students.

(b) Reporting and paperwork requirements: The state-supported universities and community colleges, or the UK Community College System, will need to submit their policy addressing the removal of precollege curriculum course deficiencies to the Council on Higher Education for review and approval. The state-supported universities and community colleges will also need to identify the precollege curriculum status of students as part of the routine reporting of student data.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Increases in indirect costs will result from computing the number of

students subject to the precollege curriculum requirements who can be admitted conditionally by each university. This indirect cost will not be significant because the data required for this computation will be readily available through the regular student data reporting system.

2. Continuing costs or savings: Indirect costs to the agency related to the computation of the number of students subject to the precollege curriculum who can be admitted conditionally will be recurring.

3. Additional factors increasing or decreasing costs: There are no other factors which will increase or decrease costs for the agency.

(b) Reporting and paperwork requirements: The number of conditional admissions permitted for each university will need to be reported to each university annually.

(3) Assessment of anticipated effect on state and local revenues: The requirements for admission to state-supported universities and community colleges will have no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This is an amendment to an existing regulation; therefore, no alternative methods were considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This amended regulation does not conflict with any other statute, administrative regulation, or government policy.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: There is no additional information.

TIERING: Was tiering applied? Yes. Completion of the precollege curriculum is not a condition of admission to baccalaureate-degree status for nontraditional students (those 25 years of age or older) and for students who enter baccalaureate-degree status with 24 or more semester credit hours with a grade point average of at least 2.00 on a 4.00 scale. The precollege curriculum requirement will not be applied to nontraditional students due to the lack of relevance of high school courses. The precollege curriculum will not be applied to students who enter baccalaureate-degree status with 24 semester hours of collegiate courses with a grade point average of 2.00 because they have demonstrated their ability to successfully complete college-level courses. Completion of the precollege curriculum is not a condition of admission to community colleges and community college-type programs at universities in order for students to have open access to higher education opportunities. These students, unless otherwise exempt, will be assessed as to their compliance with the precollege curriculum and will be required to remedy any deficiencies once enrolled in college.

STATE BOARD OF ELECTIONS
(Proposed Amendment)

31 KAR 4:020. Election costs, county clerk reimbursement form.

RELATES TO: KRS 117.343
STATUTORY AUTHORITY: KRS 117.015, 117.343
NECESSITY AND FUNCTION: To provide a method and form for the reimbursement to the county clerks for the cost of employing office personnel necessary for the conduct of elections including the registration and purgation of voters. [Said reimbursement not to exceed fifty (50) cents per registered voter in the county per year.]

Section 1. [The] Reimbursement shall be based on the number of registered voters for the general election held in November.

Section 2. The form for reimbursement, [adopted shall be prescribed by the] Finance and Administration Cabinet, [; is designated as] DOA-48A, revised 1-91, is incorporated by reference herein. Copies of the reimbursement form may be inspected or obtained at the office of the State Board of Elections, Room 71, Capitol Building, Frankfort, Ky. 40601, between the hours of 8 a.m. through 4:30 p.m., EST, Monday through Friday [(see Appendix A)].

BREMER EHRLER, Chairman
APPROVED BY AGENCY: January 11, 1991
FILED WITH LRC: January 11, 1991 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 21, 1991, at 10 a.m. in Room 107 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 16, 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: George Russell, Executive Director, State Board of Elections, Room 71, State Capitol, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: George Russell
(1) Type and number of entities affected: County clerks.
(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): There are no additional costs or savings as the result of this regulation. The amount necessary to reimburse the county clerks has been budgeted previously.

(b) Reporting and paperwork requirements: County clerks will be required to file with the State Board of Elections annually a report setting forth the cost of office personnel involved in the election process.

(2) Effects on the promulgating administrative body: The State Board of Elections will be required to process the filing from each county clerk. No additional personnel or costs will be incurred.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: The costs to be reimbursed to county clerks have previously been budgeted and are in place.

(b) Reporting and paperwork requirements: One additional form to be filed by each county clerk annually and processed by the State Board of Elections.

(3) Assessment of anticipated effect on state and local revenues: County clerks will be reimbursed for the cost of office personnel involved in the election process not to exceed fifty cents per registered voter in the county per year.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The requirements of KRS 117.343 are mandatory.

(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: No

TIERING: Was tiering applied? No. Tiering is inapplicable because KRS 117.343 prescribes a single standard to be applied to all affected persons and entities. There is only one class of persons or entities affected.

TEACHER'S RETIREMENT SYSTEM
(Proposed Amendment)

102 KAR 1:035. Employment [Substitute teaching] by retired members [teachers].

RELATES TO: KRS 161.605

STATUTORY AUTHORITY: KRS 161.310

NECESSITY AND FUNCTION: KRS 161.605 provides that retired members [teachers] may perform [do] part-time or substitute employment [teaching] not to exceed the equivalent of 100 days per year. This regulation provides the procedures [and definitions] necessary to administer this statute.

[Section 1. Teachers retired for service may do substitute or regular part-time teaching for not more than 100 days in each fiscal year. They shall pay no contributions and shall have no reductions in their regular annuities on account of such service. Retired teachers shall do no other teaching in the public schools or state supported universities covered by the retirement system.]

Section 1. [2.] For purposes of this regulation and KRS 161.605, any period of substitute employment [teaching] of three (3) hours or less shall be considered one-half (1/2) day and any period greater than three (3) hours shall be considered a full day. Part-time employment shall not exceed fifty-four (54) percent of a full-time member's [teacher's] weekly schedule for [on] a regular school term (nine and one-fourth (9 1/4) months) [basis], and no more than thirty-nine (39) percent of a full-time member's [employee's] weekly schedule for [on] a twelve (12) month school term [basis].

Section 2. Retired members who perform part time or substitute employment shall not pay any contributions to the Teacher's Retirement System for these employment services and their retirement annuity shall not be reduced during these periods of service.

ARLENE M. ROMINE, Vice Chairperson

APPROVED BY AGENCY: December 17, 1990

FILED WITH LRC: January 3, 1991 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled on February 21, 1991, at 9 a.m., EST, at the Teachers' Retirement System of Kentucky office, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing. Unless written notification of intent to attend the public hearing is received by the agency at least five days before the hearing, the hearing may be cancelled. The hearing is open to the public. Any individual who attends the hearing 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. Individuals who do not wish to attend the public hearing 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: Pat N. Miller, Executive Secretary, Teachers' Retirement System of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Billy Hunt

(1) Type and number of entities affected: 67,500 active and retired members and 229 employers.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(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: Quadrennial review.
TIERING: Was tiering applied? Yes

TEACHER'S RETIREMENT SYSTEM
(Proposed Amendment)

102 KAR 1:050. Out-of-state service interest rates.

RELATES TO: KRS 161.515
STATUTORY AUTHORITY: KRS 161.310
NECESSITY AND FUNCTION: KRS 161.515 provides that members of the Teachers' Retirement System may secure credit for out-of-state service under certain circumstances, and requires the trustees to set the interest rate on contributions made to cover this [such] service. This regulation is intended to provide the procedures required to carry out the provisions of this statute and to set the interest rate to be charged.

Section 1. In presenting out-of-state service for credit, the most recent service may be presented first in order.

Section 2. Persons presenting out-of-state service credit shall be required to file an appropriate affidavit on forms provided by the retirement system certifying that the service being transferred is not being used at present and will not be used in the future to qualify for any benefits from any other retirement program.

Section 3. [Contributions for each year to be transferred shall be at such rate as is currently effective for members of the Teachers' Retirement System and shall be based on the first annual salary received for service in Kentucky subsequent to the out-of-state service.] Interest at the rate of eight (8) percent compounded annually from the end of each school year concerned to the date of payment shall be added to the required contributions.

Section 4. The provisions of this regulation shall become effective July 1, 1983.

ARLENE M. ROMINE, Vice Chairperson
APPROVED BY AGENCY: December 17, 1990
FILED WITH LRC: January 3, 1991 at 1 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled on February 21, 1991, at 9 a.m., EST, at the Teachers' Retirement System of Kentucky office, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing. Unless written notification of intent to attend the public hearing is received by the agency at least five days before the hearing, the hearing may be cancelled. The hearing is open to the public. Any individual who attends the hearing 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. Individuals who do not wish to attend the public hearing 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: Pat N. Miller, Executive Secretary, Teachers' Retirement System of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Billy Hunt
(1) Type and number of entities affected: 67,500 active and retired members and 229 employers.
(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:
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Quadrennial review.
TIERING: Was tiering applied? Yes

TEACHER'S RETIREMENT SYSTEM
(Proposed Amendment)

102 KAR 1:057. Credit for military service.

RELATES TO: KRS 161.507
STATUTORY AUTHORITY: KRS 161.310
NECESSITY AND FUNCTION: KRS 161.507 provides for the crediting for retirement purposes time spent on active duty with the Armed Forces of the United States, with certain limitations. This regulation establishes [sets up] the procedures for validating and crediting [such] active duty service.

Section 1. A member may receive credit toward retirement as provided in KRS 161.507, upon meeting the eligibility requirements and payment of contributions to the Teachers' Retirement System as provided in this regulation. [Such credit may be credited only if discharge was other than dishonorable. Service credit shall be considered as Kentucky teaching service, except that it may not be used for meeting the five (5) years of Kentucky service required to qualify for regular service or disability retirement.] This [Such] credit shall be used [credited] in meeting the requirements for early retirement.

Section 2. [A maximum of six (6) years of active military service may be credited to a member's retirement account.] Active duty of less than six (6) months duration shall not be credited toward service for retirement purposes, unless teaching service was interrupted by this [such] duty, or unless the member received a discharge for medical reasons.

Section 3. A member may purchase credit for one (1) month of retirement credit for each month or part of a month of active military service. [The latest years of military service shall be considered first in allowing credit toward retirement.]

Section 4. A member, having valid service credit in the Teachers' Retirement System and one (1) of the other state supported retirement systems of Kentucky, may elect to purchase retirement credit for active duty time in either of the systems concerned, or the service credit may be divided between the two (2) systems. If the service is to be divided the following additional requirements must be met:

(1) The total service credited in all systems may not exceed six (6) years.

(2) The same years active duty may not be used in more than one (1) system.

(3) Each system shall calculate the cost of this [such] retirement service credit in accordance with the statutes and regulations governing that system.

[Section 5. Retirement service credit for military service performed shall be allowed only if the member desiring such service credit contributes to the Teachers' Retirement System a sum equal to thirty-five (35) percent of the actuarial cost for each year so credited. The board of trustees shall adopt a table of actuarial factors to be used in calculating the amount of the required contribution.]

ARLENE M. ROMINE, Vice Chairperson

APPROVED BY AGENCY: December 17, 1990

FILED WITH LRC: January 3, 1991 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled on February 21, 1991, at 9 a.m., EST, at the Teachers' Retirement System of Kentucky office, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing. Unless written notification of intent to attend the public hearing is received by the agency at least five days before the hearing, the hearing may be cancelled. The hearing is open to the public. Any individual who attends the hearing 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. Individuals who do not wish to attend the public hearing 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: Pat N. Miller, Executive Secretary, Teachers' Retirement System of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Billy Hunt

(1) Type and number of entities affected: 77,500 active and retired members and 229 employers.

(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:

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Quadrennial review.

TIERING: Was tiering applied? Yes

TEACHER'S RETIREMENT SYSTEM
(Proposed Amendment)

102 KAR 1:060. Refunds.

RELATES TO: KRS 161.470

STATUTORY AUTHORITY: KRS 161.310

NECESSITY AND FUNCTION: KRS 161.470(6) provides that members of the Teachers' Retirement System may receive a refund of their contributions upon withdrawal from service. This regulation provides the administrative procedures necessary to carry out the provisions of this statute.

Section 1. Refunds shall be made on the basis of permanent withdrawal from service [teaching] in a covered position. No refund may be made if the member is under contract for employment in a covered position [to teach].

Section 2. Partial refunds of member contributions shall only be permitted when a member cancels service credit and obtains credit for the service in a state or municipal retirement system outside Kentucky as provided in 102 KAR 1:045.

ARLENE M. ROMINE, Vice Chairperson

APPROVED BY AGENCY: December 17, 1990

FILED WITH LRC: January 3, 1991 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled on February 21, 1991, at 9 a.m., EST, at the Teachers' Retirement System of Kentucky office, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing

shall notify this agency in writing. Unless written notification of intent to attend the public hearing is received by the agency at least five days before the hearing, the hearing may be cancelled. The hearing is open to the public. Any individual who attends the hearing 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. Individuals who do not wish to attend the public hearing 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: Pat N. Miller, Executive Secretary, Teachers' Retirement System of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Billy Hunt
(1) Type and number of entities affected: 67,500 active and retired members and 229 employers.
(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:
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Quadrennial review.
TIERING: Was tiering applied? Yes

TEACHER'S RETIREMENT SYSTEM
(Proposed Amendment)

102 KAR 1:100. Insurance.

RELATES TO: KRS 161.675
STATUTORY AUTHORITY: KRS 161.310
NECESSITY AND FUNCTION: KRS 161.675 provides that the trustees are authorized to enter into contracts with insurance carriers to provide [for provision of] hospital-medical insurance for [to] members retired for service or disability and for certain dependents of [such] retirees. This regulation sets out procedures under which this coverage is to be provided.

Section 1. The Board of Trustees of the Teachers' Retirement System of the state of Kentucky shall provide for members retired for service; members retired for disability; spouses and minor children of retired members as provided in KRS 161.675; spouses receiving monthly benefits under the provisions of KRS 161.525; and minor children of members deceased prior to retirement if the [such] member was eligible for retirement as provided in KRS 161.600, a medical benefit program including but not limited to hospital room and board, drugs and medicines, doctor fees, nursing care, and convalescent hospital care.

Section 2. Specific provisions and exclusions are [as] provided in the blanket contract with the insurance carrier selected by the board of trustees [Aetna Life and Casualty Insurance Company], the master policy issued under the contract, and any modifications to the contract or master policy [thereto] approved by the board of trustees.

Section 3. Members retiring under reciprocal provisions of KRS 61.680, who have less than five (5) years service credit in the Teachers' Retirement System shall not be included for coverage under the medical insurance program as set out above and in KRS 161.675.

ARLENE M. ROMINE, Vice Chairperson
APPROVED BY AGENCY: December 17, 1990
FILED WITH LRC: January 3, 1991 at 1 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled on February 21, 1991, at 9 a.m., EST, at the Teachers' Retirement System of Kentucky office, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing. Unless written notification of intent to attend the public hearing is received by the agency at least five days before the hearing, the hearing may be cancelled. The hearing is open to the public. Any individual who attends the hearing 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. Individuals who do not wish to attend the public hearing 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: Pat N. Miller, Executive Secretary, Teachers' Retirement System of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Billy Hunt
(1) Type and number of entities affected: 67,500 active and retired members and 229 employers.
(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:
(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Quadrennial review.
TIERING: Was tiering applied? Yes

TEACHER'S RETIREMENT SYSTEM
(Proposed Amendment)

102 KAR 1:125. Omitted contributions.

RELATES TO: KRS 161.560
STATUTORY AUTHORITY: KRS 161.310
NECESSITY AND FUNCTION: KRS 161.560 provides that each agency employing members of the Teachers' Retirement System shall deduct the appropriate member contributions and forward the contributions [them] to the system on a monthly basis. This regulation sets out the conditions under which these required contributions shall be paid in the event [that] the employing agency fails to deduct these [such] amounts from the member's salary and forward the contributions [same] to the retirement system.

Section 1. In every case where a properly certificated member [teacher] entitled to membership under KRS 161.470 was employed, or is employed in the future, [to teach regularly,] and the board of education fails for any reason to deduct the retirement contribution due under the retirement Act, the employee [such teacher] if a member of the retirement system, and not retired, may pay the retirement contributions [dues] which should have been deducted by the employer plus eight (8) percent compound interest from the end of the year in which the service was performed [done] to date of payment, and receive credit for those years, provided [; providing] the teacher was not at fault in creating this delinquency.

Section 2. Members of the retirement system who have previously withdrawn their contributions, may reinstate these [such] accounts by complying with the requirements of KRS 161.470(3), and by repaying the amount refunded plus interest at the rate of eight (8) percent compounded annually from the date of withdrawal to date of repayment.

Section 3. Payment may be made directly to the retirement system. Payments [, but payment] shall not be made in installments. A receipt shall be given to the member making a [such] payment.

Section 4. The provisions of this regulation shall become effective July 1, 1983.

ARLENE M. ROMINE, Vice Chairperson
APPROVED BY AGENCY: December 17, 1990
FILED WITH LRC: January 3, 1991 at 1 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled on February 21, 1991, at 9 a.m., EST, at the Teachers' Retirement System of Kentucky office, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing. Unless written notification of intent to attend the public hearing is received by the agency at least five days before the hearing, the hearing may be cancelled. The hearing is open to the public. Any individual who attends the hearing 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. Individuals who do not wish to attend the public hearing 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: Pat N. Miller, Executive Secretary, Teachers' Retirement System of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Billy Hunt
(1) Type and number of entities affected: 67,500 active and retired members and 229 employers.
(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:
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Quadrennial review.
TIERING: Was tiering applied? Yes

TEACHER'S RETIREMENT SYSTEM
(Proposed Amendment)

102 KAR 1:130. Additional contributions.

RELATES TO: KRS 161.220, 161.555
STATUTORY AUTHORITY: KRS 161.310
NECESSITY AND FUNCTION: KRS 161.220(4)(f) and 161.555 provide that agencies employing members of the Teachers' Retirement System and whose salaries are paid from federal project funds or from nonpublic funds, shall make additional contributions to the system equal to the contributions of the [such] members. This regulation sets out the manner of transmitting these additional contributions to the system.

Section 1. The member and employer contributions for salaries paid from federal project funds or nonpublic funds [Agencies, boards, and other organizations employing members of the Teachers' Retirement System referred to in KRS 161.220(4)(f) and 161.555 shall make contributions to the Teachers' Retirement System in an amount equal to the total contributions of such members. Contributions of both the member and employer] shall be forwarded to the Teachers' Retirement System [in the same manner and at the same time] as provided in KRS 161.560 [for regular contributions to the Teachers' Retirement System].

Section 2. Members employed by employers covered by [referred to in] Section 1 of this regulation may make contributions for part-time, substitute, and partial year's service as provided in Teachers' Retirement System regulations for other members of the Teachers' Retirement System. Employers shall [would] be required to make additional contributions for these employees in the same manner as provided for full-time employees.

Section 3. Members employed by employers covered by this regulation [referred to above] may make contributions while on an approved leave of absence [as set out in the statutes and Teachers' Retirement System regulations], providing the employer or the employee makes an additional contribution equal to the regular member contribution for the period of time covered by the [such] leave of absence.

ARLENE M. ROMINE, Vice Chairperson
APPROVED BY AGENCY: December 17, 1990
FILED WITH LRC: January 3, 1991 at 1 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled on February 21, 1991, at 9 a.m., EST, at the Teachers' Retirement System of Kentucky office, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing. Unless written notification of intent to attend the public hearing is received by the agency at least five days before the hearing, the hearing may be cancelled. The hearing is open to the public. Any individual who attends the hearing 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. Individuals who do not wish to attend the public hearing 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: Pat N. Miller, Executive Secretary, Teachers' Retirement System of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Billy Hunt
(1) Type and number of entities affected: 67,500 active and retired members and 229 employers.
(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:
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Quadrennial review.
TIERING: Was tiering applied? Yes

TEACHER'S RETIREMENT SYSTEM
(Proposed Amendment)

102 KAR 1:135. Interest credited to accounts.

RELATES TO: KRS 161.440, 161.580, 161.705
STATUTORY AUTHORITY: KRS 161.310
NECESSITY AND FUNCTION: KRS 161.440 provides for crediting [regular] interest, as defined in KRS 161.220(13), to the various funds of the Teachers' Retirement System, and KRS 161.580 requires that individual accounts be maintained for each member of the system. This regulation sets out the procedures to be followed in crediting interest [regular interests] to each member's account.

Section 1. Interest at the rate of three (3) percent [Regular interest] shall be credited to all member accounts as [so] long as the member is in active status with the retirement system.

Section 2. For purposes of this regulation "active status" means [shall be defined as] that time during which the member has valid service credit with the retirement system.

Section 3. No interest shall be credited to member accounts during the first fiscal year of

membership. Subsequent to the first fiscal year of membership, [regular] interest shall be credited as of June 30 of each year of active status.

Section 4. [Regular] Interest shall be assigned from the Guarantee Fund to each of the other funds, except the Expense Fund, at the end of each fiscal year. Interest shall be assigned to individual funds as follows:

(1) The Teachers' Savings Fund and the State Accumulation Fund shall be assigned equal amounts of interest in accordance with [the procedures described in] Sections 1, 2, and 3 of this regulation.

(2) The Voluntary Fund shall be assigned interest in accordance with 102 KAR 1:122 [120].

(3) All other funds, except the Expense Fund, shall be assigned interest based upon the average month end balance of the fund for each [the] fiscal year [in question].

ARLENE M. ROMINE, Vice Chairperson
APPROVED BY AGENCY: December 17, 1990
FILED WITH LRC: January 3, 1991 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled on February 21, 1991, at 9 a.m., EST, at the Teachers' Retirement System of Kentucky office, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing. Unless written notification of intent to attend the public hearing is received by the agency at least five days before the hearing, the hearing may be cancelled. The hearing is open to the public. Any individual who attends the hearing 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. Individuals who do not wish to attend the public hearing 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: Pat N. Miller, Executive Secretary, Teachers' Retirement System of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Billy Hunt

(1) Type and number of entities affected: 67,500 active and retired members and 229 employers.

(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:

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Quadrennial review.

TIERING: Was tiering applied? Yes

TEACHER'S RETIREMENT SYSTEM
(Proposed Amendment)

102 KAR 1:140. Disability.

RELATES TO: KRS 161.661
STATUTORY AUTHORITY: KRS 161.310
NECESSITY AND FUNCTION: KRS 161.661(5) provides that benefits to disability retirees shall be recalculated at the termination of the entitlement period as defined in KRS 161.661(3). This regulation sets out the procedures to be followed in making these new calculations of payable benefits.

[Section 1. Members who remain disabled at the expiration of their entitlement period shall have their retirement allowance recalculated under the service retirement procedure except that those members less than sixty (60) years of age shall be considered as sixty (60).]

Section 1. [2. At the time the] When a retirement allowance is recalculated following the termination of the entitlement period for disability benefits, the member may choose any option plan authorized under KRS 161.630. Survivors of a member whose allowance has been recalculated shall not be eligible for survivor benefits as set forth in KRS 161.520.

Section 2. [3.] Requirements for [as to] medical reexaminations, income and employment restrictions, and reevaluation of eligibility status, shall be the same as [defined for] disability retirement in KRS 161.661.

Section 3. [4.] Any medical coverage extended to persons retired by reason of disability under the terms of the statutes and contracts with insurance carriers shall be deemed to extend to those persons who retired by reason of disability on July 1, 1964, and thereafter, and whose eligibility period as set forth in KRS 161.661(3) and (5), has expired.

ARLENE M. ROMINE, Vice Chairperson
APPROVED BY AGENCY: December 17, 1990
FILED WITH LRC: January 3, 1991 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled on February 21, 1991, at 9 a.m., EST, at the Teachers' Retirement System of Kentucky office, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing. Unless written notification of intent to attend the public hearing is received by the agency at least five days before the hearing, the hearing may be cancelled. The hearing is open to the public. Any individual who attends the hearing

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REGULATORY IMPACT ANALYSIS

Agency Contact Person: Billy Hunt
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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:
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Quadrennial review.
TIERING: Was tiering applied? Yes

TEACHER'S RETIREMENT SYSTEM
(Proposed Amendment)

102 KAR 1:160. Annuity tables.

RELATES TO: KRS 161.630, 161.705
STATUTORY AUTHORITY: KRS 161.310
NECESSITY AND FUNCTION: KRS 161.630 provides that a member of the Teachers' Retirement System, retiring for service, may elect the actuarial equivalent of annuity payments provided by KRS 161.620 through choice of an approved optional benefit. In calculating these benefits [calculation of such benefit], a series of actuarial tables are prepared [must be utilized]. This regulation establishes the actuarial tables to be used for this purpose [provides a vehicle by which these actuarial tables may be made a part of the trustees regulations].

Section 1. The annuity values and option factor tables for use in calculating benefits are the 1983 tables prepared by the actuary at the direction of the Board of Trustees [and based on the 1968 actuarial investigation and the annuity table for 1949 are hereby incorporated by reference].

[Section 2. A copy of said tables is filed with the Legislative Research Commission as a part of this regulation.]

ARLENE M. ROMINE, Vice Chairperson
APPROVED BY AGENCY: December 17, 1990
FILED WITH LRC: January 3, 1991 at 1 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled on February 21, 1991, at 9 a.m., EST, at the Teachers' Retirement System of Kentucky office, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing. Unless written notification of intent to attend the public hearing is received by the agency at least five days before the hearing, the hearing may be cancelled. The hearing is open to the public. Any individual who attends the hearing 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. Individuals who do not wish to attend the public hearing 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: Pat N. Miller, Executive Secretary, Teachers' Retirement System of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Billy Hunt
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3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year: None
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3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Quadrennial review.
TIERING: Was tiering applied? Yes

TEACHER'S RETIREMENT SYSTEM
(Proposed Amendment)

102 KAR 1:162. Early retirement actuarial discounts applicable to annuities.

RELATES TO: KRS 161.600 [161.220 to 161.710]
STATUTORY AUTHORITY: KRS 161.310
NECESSITY AND FUNCTION: KRS 161.600(1)(b) [161.620(1)(d)] provides that the Board of Trustees shall adopt a schedule of actuarial discounts to be applied to annuities of members retiring between ages fifty-five (55) and sixty (60) years who have less than twenty-seven (27) [thirty (30)] years Kentucky service in the system. This regulation carries out the mandate of this statute.

Section 1. The retirement annuity of a member retiring for service who has less than twenty-seven (27) [thirty (30)] years of Kentucky service, including military credit, and who is at least fifty-five (55) years of age shall be reduced at the rate of five (5) percent for each year the retirement age of the member is less than sixty (60) years, or five (5) percent for each year the Kentucky service is less than twenty-seven (27) [thirty (30)] years, whichever is the lesser reduction.

ARLENE M. ROMINE, Vice Chairperson
APPROVED BY AGENCY: December 17, 1990
FILED WITH LRC: January 3, 1991 at 1 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled on February 21, 1991, at 9 a.m., EST, at the Teachers' Retirement System of Kentucky office, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing. Unless written notification of intent to attend the public hearing is received by the agency at least five days before the hearing, the hearing may be cancelled. The hearing is open to the public. Any individual who attends the hearing 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. Individuals who do not wish to attend the public hearing 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: Pat N. Miller, Executive Secretary, Teachers' Retirement System of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Billy Hunt
(1) Type and number of entities affected: 67,500 active and retired members and 229 employers.
(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:
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Quadrennial review.
TIERING: Was tiering applied? Yes

TEACHER'S RETIREMENT SYSTEM
(Proposed Amendment)

102 KAR 1:165. Surviving childrens' benefits.

RELATES TO: KRS 161.520
STATUTORY AUTHORITY: KRS 161.310
NECESSITY AND FUNCTION: KRS 161.520(6) provides that survivors benefits for a dependent child may be extended to age twenty-three (23) if the child is a full-time student in a recognized educational program beyond the high school level. This regulation serves to define "recognized educational program," and to set up specific guidelines for administering this authorized extension of the benefit period.

Section 1. Definitions. For purposes of this regulation the following definitions shall apply:
(1) Recognized educational program means [is defined as] an educational program beyond the high school level that has been approved by a state, or accredited by a state or nationally recognized accrediting agency.
(2) Full-time student means [is defined as] a student who is in full-time attendance in a recognized educational program and is carrying a subject load which is considered full-time for day students under the standards and practices of the educational institution.

Section 2. [The benefit of an unmarried dependent child will cease at age eighteen (18), or age nineteen (19) if still in high school.] A minor child receiving payment of survivors benefits shall be paid in full for any month in which some payment is due. If the child is or plans to be a full-time student in a recognized educational program beyond the high school level, he may apply for continuation or restoration of his monthly benefit. If the child's application is approved, his monthly payment shall continue until he attains age twenty-three (23) unless he marries or stops attending school on a full-time basis.

Section 3. If the child is a full-time student in a recognized educational program beyond the high school level at the time he reaches age eighteen (18), he should make application for continuation of his benefit at least thirty (30) days prior to his 18th birthday. A child who is accepted as a full-time student in a recognized

educational program after he attains age eighteen (18) should make application for restoration of his monthly benefit at least thirty (30) days prior to his registration as a student.

Section 4. Benefit payments for a properly qualified student shall begin with the first month which he is in full-time attendance at a recognized educational institution. The student shall be eligible for a full monthly benefit for his first month of attendance.

Section 5. Proof of full-time school attendance is required if a child has reached age eighteen (18) but not age twenty-three (23). The child shall supply the necessary information on a form provided by the Kentucky Teachers' Retirement System. The information supplied by the student must be corroborated by a written statement from the school involved.

Section 6. Benefit payments may continue through the normal school vacation periods if the child was a full-time student immediately prior to the vacation period and he intends to continue full-time or actually does attend full-time after the end of the vacation period. Benefit payments shall not be made for more than four (4) months of vacation time during a school year.

Section 7. A child may be entitled to benefits retroactively for as many as six (6) months before the month in which he files the application for benefits. A child shall be entitled to benefits beginning with the first month in the six (6) month retroactive period in which he met all the requirements to be entitled to benefits except for the filing of an application.

Section 8. When a child attains age eighteen (18) and continues to be entitled to benefits as a full-time student, the person who has been receiving the benefit payments will continue to receive the payments unless it is deemed advisable to make payment directly to the child or in some other manner.

ARLENE M. ROMINE, Vice Chairperson
APPROVED BY AGENCY: December 17, 1990
FILED WITH LRC: January 3, 1991 at 1 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled on February 21, 1991, at 9 a.m., EST, at the Teachers' Retirement System of Kentucky office, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing. Unless written notification of intent to attend the public hearing is received by the agency at least five days before the hearing, the hearing may be cancelled. The hearing is open to the public. Any individual who attends the hearing 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. Individuals who do not wish to attend the public hearing 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: Pat N. Miller, Executive Secretary, Teachers' Retirement System of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Billy Hunt
(1) Type and number of entities affected: 67,500 active and retired members and 229 employers.
(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:
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Quadrennial review.
TIERING: Was tiering applied? Yes

TEACHER'S RETIREMENT SYSTEM
(Proposed Amendment)

102 KAR 1:180. Kentucky Industrial Development Finance Authority [KIDFA] investments.

RELATES TO: KRS 161.430
STATUTORY AUTHORITY: KRS 161.310
NECESSITY AND FUNCTION: KRS 161.430(1)[(b)] provides that the board of trustees shall give priority to the investment of funds in obligations calculated to improve the industrial development and enforce the economic welfare of the Commonwealth [funds of the Teachers' Retirement System may be invested in obligations of the Commonwealth of Kentucky, its departments and agencies]. This regulation sets out guidelines to be followed in investing in obligations of the Kentucky Industrial Development Finance Authority.

Section 1. (1) The board of trustees will consider requests by the Kentucky Industrial Development Finance Authority for loans when loan [as such] requests are submitted. [Such] Requests shall be made in writing thirty (30) days in advance of the time funds are needed and shall be signed by the chairman of the authority. Each request shall contain a reference to the action of the authority authorizing the request for the loan. Any loan made pursuant to the request of the authority shall be evidenced by an instrument or

instruments of indebtedness executed by the authority and signed by the chairman. All [such] instruments shall be approved by the Attorney General. Any transfer of funds shall be by interaccount bill as provided in KRS 154.170.

(2) The investment committee shall review each request [carefully] and approve or disapprove the request [,] subject to the action of the board of trustees.

(3) Loans made to the authority shall bear interest, payable semiannually, on July 1 and January 1, at a rate of return equal to that available on corporate bonds, rated AA or the equivalent by one (1) or more nationally recognized rating services, of the most recent issue. In the event more than one (1) [such] issue has been offered on the same date, the rate available on the largest issue shall be used.

(4) Loans made to the authority shall be for a period of not more than twenty-five (25) years. During the first five (5) years of these [such] loans, interest shall be paid as set forth in subsection (3) of this section, [above] and the authority shall have the right to pay all or any part of the principal during this period. Beginning with the sixth year,the authority shall pay interest and at least [each year shall repay no less than] that percentage of the remaining principal balance necessary to retire the loan within the remaining life of the loan.

(5) The authority shall furnish to the board of trustees an annual financial statement of its accounts.

(6) During any [It is agreed that during a] fiscal year, the amount of funds loaned to the authority by any one (1) of the state [several] retirement systems shall be in the same proportion to the total amount loaned as the assets of the individual system are to the total assets of all the systems.

ARLENE M. ROMINE, Vice Chairperson

APPROVED BY AGENCY: December 17, 1990

FILED WITH LRC: January 3, 1991 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled on February 21, 1991, at 9 a.m., EST, at the Teachers' Retirement System of Kentucky office, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing. Unless written notification of intent to attend the public hearing is received by the agency at least five days before the hearing, the hearing may be cancelled. The hearing is open to the public. Any individual who attends the hearing 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. Individuals who do not wish to attend the public hearing 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: Pat N. Miller, Executive Secretary, Teachers' Retirement System of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Billy Hunt

(1) Type and number of entities affected: 67,500 active and retired members and 229 employers.

(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:

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Quadrennial review.

TIERING: Was tiering applied? Yes

TEACHER'S RETIREMENT SYSTEM
(Proposed Amendment)

102 KAR 1:185. Reciprocal program between County Employees Retirement System, Kentucky Employees Retirement System, State Police Retirement System and Teachers' Retirement System [CERS, KERS, SPRS, and TRS].

RELATES TO: KRS 61.552, 61.680, 161.608 [161.706]

STATUTORY AUTHORITY: KRS 161.310

NECESSITY AND FUNCTION: KRS 61.552, 61.680 and 161.608 [161.706] set out a broad program of reciprocity among the various retirement systems administered under provisions of KRS Chapters 61 and 161. This regulation defines [in detail] the benefits to be provided and the administrative procedures to be followed in arriving at the appropriate payments to be made to eligible persons.

Section 1. [Administrative procedures applying to members having creditable service in County Employees Retirement System, Kentucky Employees Retirement System, or State Police Retirement System, and Teachers' Retirement System.] Upon death, disability, or service retirement, the following procedure shall be applicable to a member having an account in more than one (1) retirement system:

(1) Combine the member's service in all systems.

(2) Determine eligibility in each system based on combined service.

(3) If eligible in any system, determine benefits.

(4) Check for specific exceptions such as prior service, request for separate account or special death or disability exception.

Section 2. [Service Retirement Benefits.] (1) A member eligible to retire who elects service retirement from one (1) system, shall be paid from all systems in which he has an account unless he requests that his accounts be separated.

(2) The "final average salary" will be calculated by using the five (5) highest annual salaries regardless of the system under which the service was covered. Calculations will be based on the procedures in use by each system concerned.

(3) Each system will determine benefit payments on the basis of the final average salary and service credited in that system. Payments will be made by each system in accordance with established [its usual] procedures. Where [except where] the normal age requirement has not been met, benefits shall be actuarially reduced.

(4) The member will not be required to elect the same retirement option in both systems. Each annuity option will apply only to the system for which it is elected.

(5) A member may elect to have each system treat his service credit in that system without regard to any other service credit, by requesting that his accounts be separated. In this case, "final average salary" would be based on the salaries earned under each system separately.

(6) The minimum annuity of seventy-five (75) [fifty-five (55)] dollars per month provided in KRS 161.620 shall not apply to persons retiring with less than five (5) years service in the Teachers' Retirement System.

Section 3. [Disability Retirement Benefits.] (1) If a member qualifies for disability benefits based on [the] service in the system in which he is currently a contributing member, [then] he will receive disability benefits from that system based on the formula used by that system and other system(s) will pay:

(a) Benefits based on separate accounts should the member elect to maintain separate accounts; or

(b) An actuarial accrued benefit based on the member's age, service, and final compensation, if eligible for this [such] benefit; or

(c) A refund if requested by the member.

(2) If the combined service in two (2) or more systems is used to qualify a member for benefits, all systems under which the combined service would meet service requirements shall [would] participate in benefit payments. Each system shall [would] calculate benefits using the formula in effect in that system. The Teachers' Retirement System shall [TRS would] pay benefits during the eligibility period in proportion to the service in the Teachers' Retirement System [TRS] as it relates to total combined service. After the expiration of the eligibility period, the benefit would be recalculated on the basis of Teachers' Retirement System [TRS] service without discount.

(3) If the combined service of a member meets service requirements in only one (1) system, [then] that system shall only pay[s] benefits under their disability formula and the other system shall pay benefits [pays as outlined] under subsection (1)(a) to (c) of this section.

(4) The medical requirements for disability benefits will be those of the system to which the member is currently contributing, if combined service meets service requirements of that system. If service requirements are met in only one (1) system, the medical requirements of that system will prevail regardless of current employment in another system.

Section 4. [Death and Survivor Benefits.] (1) An active member with Teachers' Retirement System [TRS] service who has not qualified for Teachers' Retirement System [TRS] service retirement at the time of death shall [would] have death and survivor benefit coverage as follows:

(a) A Teachers' Retirement System [TRS] member currently employed in a position covered by the Teachers' Retirement System [TRS] would have full coverage for benefits provided by KRS 161.520 and KRS 161.655 [665] without regard to service in any other system.

(b) A Teachers' Retirement System [TRS] member currently employed in a position covered by the County Employees Retirement System, the Kentucky Employees Retirement System, or the State Police Retirement System [CERS, KERS, or SPRS] would qualify for coverage in proportion to the service in the Teachers' Retirement System [TRS] as it relates to total combined service.

(c) Service in any [either] of the four (4) state retirement systems affected by this regulation [concerned] would qualify as continued [serve to continue] coverage under the Teachers' Retirement System [TRS] if the member was covered at the termination of employment under the Teachers' Retirement System [TRS] and did not withdraw his account with the Teachers' Retirement System [TRS]. This [Such] coverage would continue until the [such] time [as] the member became eligible for death [and/]or survivor benefits in the system under which he is currently employed.

(2) An active member with Teachers' Retirement System [TRS] service who has qualified for service retirement at time of death would have coverage for death and survivors benefits as follows:

(a) If the member had sufficient Teachers' Retirement System [TRS] service to qualify for retirement on that service only, full benefits would be payable to qualified survivors as provided in KRS 161.520, 161.525 and 161.655. The annuity portion would be calculated as provided in KRS 61.680 and actuarially adjusted for age and sex of the eligible survivor.

(b) If the member qualified for retirement only on the basis of combined service, the benefits under KRS 161.520 and 161.655 would be paid in the same proportion as the Teachers' Retirement System [TRS] service was to total combined service. The annuity portion would be calculated as provided in subsection (2)(a) of this section.

Section 5. [Reinstatement of Withdrawn Account.] A former member of the Teachers' Retirement System [TRS] who has withdrawn his account and last service credit may reinstate his account and service credit with the Teachers' Retirement System if [under TRS provided]:

(1) The member [He] is a contributing member of the County Employees Retirement System, the Kentucky Employees Retirement System, or the State Police Retirement System with at least one (1) year of contributing service; and [to either CERS, KERS, or SPRS;]

[(2) Has contributing service under any of the three (3) systems equal to two (2) years or the number of years subsequent to withdrawal of contributions, whichever is the lesser number, and obtains six (6) months additional service in either CERS, KERS, or SPRS after payment of recontribution; and]

(2) [(3)] If Prior Service is involved, the member shall [must] have one (1) or more years contributing service in the Teachers' Retirement System [TRS] subsequent to July 1, 1941.

Section 6. [Military Service.] A member having valid service credit in more than one (1) of the state retirement systems may elect to purchase retirement credit for active duty time in one (1) system[;] or he may divide the service credit between two (2) systems. If service is to be divided the following additional requirements shall all [must] be met:

(1) The total military service credit in all systems may not exceed six (6) years.

(2) The same years active duty may not be used in more than one (1) system.

(3) Each system will calculate the costs of [such] military retirement credit in accordance [keeping] with the statutes and regulations of that system.

Section 7. Teachers' Retirement System [Medical Insurance Coverage. TRS] members qualifying for retirement on combined service, but having less than five (5) years service in Teachers' Retirement System [TRS] shall not be included for coverage under the [TRS] Hospital-Medical Insurance Program.

[Section 8. Actuarial Factors to be Applied. Where a person is entitled to an actuarially reduced benefit due to failure to meet age requirements for normal retirement, the actuarial discount shall be three (3) percent for each year the member is less than normal retirement age as provided in KRS 161.620(1)(c), and five (5) percent per year of age less than sixty (60) years of age or the service credit is less than thirty (30) years as provided in KRS 161.620(1)(d).]

ARLENE M. ROMINE, Vice Chairperson

APPROVED BY AGENCY: December 17, 1990

FILED WITH LRC: January 3, 1991 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled on February 21, 1991, at 9 a.m., EST, at the Teachers' Retirement System of Kentucky office, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing. Unless written notification of intent to attend the public hearing is received by the agency at least five days before the hearing, the hearing may be cancelled. The hearing is open to the public. Any individual who attends the hearing 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. Individuals who do not wish to attend the public hearing 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: Pat N. Miller, Executive Secretary, Teachers' Retirement System of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Billy Hunt

(1) Type and number of entities affected: 67,500 active and retired members and 229 employers.

(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:

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Quadrennial review.

TIERING: Was tiering applied? Yes

TEACHER'S RETIREMENT SYSTEM
(Proposed Amendment)

102 KAR 1:195. Payroll reports.

RELATES TO: KRS 161.560

STATUTORY AUTHORITY: KRS 161.310

NECESSITY AND FUNCTION: KRS 161.560 provides that employers shall submit [such] payroll reports, contribution lists, and other data as may be required by regulation of the board of trustees. This regulation sets out the procedures to be followed by employers in forwarding payroll reports to the Teachers' Retirement System.

Section 1. Employers shall submit a complete report of all member contributions to the Teachers' Retirement System at the close of each fiscal year. These [Such] reports must be received by the Teachers' Retirement System no later than August 1 [July 20] of each year. The Teachers' Retirement System shall determine the [types of] information required in [on] the reports.

Section 2. Employers shall provide to the Teachers' Retirement System, upon request, information relating to the dates that the members are paid and other information related to the payroll deduction of member contributions to the Teachers' Retirement System.

Section 3. The Teachers' Retirement System may require special reports of all member contributions to the [Retirement] system at the [such] times [that] it is deemed necessary and in the best interest of the [Retirement] system.

ARLENE M. ROMINE, Vice Chairperson
APPROVED BY AGENCY: December 17, 1990
FILED WITH LRC: January 3, 1991 at 1 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled on February 21, 1991, at 9 a.m., EST, at the Teachers' Retirement System of Kentucky office, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing. Unless written notification of intent to attend the public hearing is received by the agency at least five days before the hearing, the hearing may be cancelled. The hearing is open to the public. Any individual who attends the hearing 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. Individuals who do not wish to attend the public hearing 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: Pat N. Miller, Executive Secretary, Teachers' Retirement System of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Billy Hunt
(1) Type and number of entities affected: 67,500 active and retired members and 229 employers.
(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:
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Quadrennial review.
TIERING: Was tiering applied? Yes

TEACHER'S RETIREMENT SYSTEM
(Proposed Amendment)

102 KAR 1:210. Submission of employer data.

RELATES TO: KRS 161.560
STATUTORY AUTHORITY: KRS 161.310
NECESSITY AND FUNCTION: [Amendments to] KRS 161.560 [enacted by the 1982 Session of the General Assembly] requires the Teachers' Retirement System to impose an interest penalty at an annual rate not to exceed twelve (12) percent per year on employers who do not remit member contributions within fifteen (15) days following each payroll period. This regulation establishes [is intended to establish the] guidelines for submission of payroll reports, contribution lists, other data from employers, and imposition of the interest penalty.

Section 1. Each employer shall advise the Teachers' Retirement System of [as to] the payroll dates that are applicable to all employees who [that] are members of the Teachers' Retirement System. [The initial report of this information shall be due in the Retirement System Office by October 1, 1982.] The employers shall be responsible for advising the Teachers' Retirement System of any [and all future] changes in the payroll dates.

Section 2. [No later than fifteen (15) days following the end of each payroll period, the employer shall forward all member contributions to the Teachers' Retirement System.] In forwarding the member contributions, the employer shall certify that the submitted monies represent all contributions deducted for the applicable pay period.

Section 3. In the event that member contributions are not received by the Teachers' Retirement System within fifteen (15) days following a payroll period, the employer shall be charged interest at the rate of one (1) percent simple interest of the amount of the late contribution for each month or part of a month that the contributions are late. In no event shall the interest charge exceed twelve (12) percent during a twelve (12) month period. The employer shall pay the imposed penalty to the Teachers' Retirement System within thirty (30) days after notification of the infraction.

Section 4. The employment contract, payroll and retirement contribution records of members shall be made available to representatives of the Teachers' Retirement System by the employer at any time during regular working hours.

Section 5. The Teachers' Retirement System may require from the employer [such] payroll reports, contribution lists and other pertinent data that are necessary to identify member retirement contributions. The required information shall be on forms furnished [by the Retirement System] or approved by the [Retirement] system.

[Section 6. The provisions of this regulation shall become effective October 1, 1982.]

ARLENE M. ROMINE, Vice Chairperson
APPROVED BY AGENCY: December 17, 1990
FILED WITH LRC: January 3, 1991 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled on February 21, 1991, at 9 a.m., EST, at the Teachers' Retirement System of Kentucky office, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing. Unless written notification of intent to attend the public hearing is received by the agency at least five days before the hearing, the hearing may be cancelled. The hearing is open to the public. Any individual who attends the hearing 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. Individuals who do not wish to attend the public hearing 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: Pat N. Miller, Executive Secretary, Teachers' Retirement System of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Billy Hunt
(1) Type and number of entities affected: 67,500 active and retired members and 229 employers.
(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:
(2) Effects on the promulgating administrative body: None
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Quadrennial review.
TIERING: Was tiering applied? Yes

GENERAL GOVERNMENT CABINET
Board of Optometric Examiners
(Proposed Amendment)

201 KAR 5:010. Application for examination; reciprocity.

RELATES TO: KRS 320.220, 320.250, 320.270
STATUTORY AUTHORITY: KRS 320.240
NECESSITY AND FUNCTION: KRS 320.220 requires all persons who practice optometry in this state to be licensed by the Kentucky Board of Optometric Examiners. KRS 320.270 grants the the board the discretion to admit to practice in Kentucky persons licensed to practice optometry in other states. This regulation prescribes the procedures to be followed in making application to the board for a license by examination or [of] reciprocity.

Section 1. Any person wishing to take the examination for license to practice optometry must file the following in the office of the secretary not later than thirty (30) days prior to the examination:
(1) Completed application form;
(2) Transcript or other satisfactory evidence of undergraduate and graduate college credits;
(3) Transcript or other satisfactory evidence of optometry credits;
(4) A recent photograph of head and shoulders, front view [Three (3) recent photographs of head and shoulders, front view, about three (3) inches by three (3) inches]; and
(5) A money order or cashier's check payable to the Kentucky State Treasurer in the amount of $200 [twenty-five (25) dollars] for residents and $400 [seventy-five (75) dollars] for nonresidents. Resident, for the purpose of these regulations, shall mean a person legally qualified to vote in this state at the time his or her application is received.

Section 2. All applicants shall have successfully completed the National Board of Examiners in Optometry (NBEO) and the International Association of Boards in Optometry Examination within five (5) years of the date of application. Certification by the National Board of Examiners in Optometry (NBEO) and the International Association of Boards of Optometry [on Parts 1 and 2] may be accepted by the board in lieu of the written portion of the Kentucky board examination. [if the applicant has passed the national board examination within five (5) years of the date of application. However,] All applicants shall, however be required to take the oral and clinical or practical examination.

Section 3. No application fee for examination will be returned to any applicant after his application has been approved by the board, because of the decision of the applicant not to stand examination or his failure, for any reason, to take the examination; provided, however, if mitigating circumstances appear, the board may at its discretion apply the fee to a subsequent examination. Upon successfully completing the examination, the applicant will then pay an additional fee of thirty (30) dollars for the license certificate and printing. In addition, those applicants successfully passing the examination shall pay the annual license fee of $100 [up to seventy-five (75) dollars] for the remainder of the licensing year.

Section 4. All applicants for license by reciprocity shall deliver all information required by KRS 320.270 and this regulation to [must have all required information in] the office of the secretary at least ninety (90) days prior to the examination date, and must personally appear before the board at the examination meeting.

Section 5. All applicants for license by reciprocity shall in addition to the requirements of KRS 320.270, [must] furnish the following information to the board:

(1) A completed application including undergraduate, graduate and optometric college credits;

(2) One (1) photograph [Three (3) photographs], head and shoulders, front view[, about three (3) inches by three (3) inches];

(3) Both of [Letters of recommendation from] the following:

(a) Certificate of good standing from the president or secretary of the state board of the state where the applicant is licensed [President or secretary of state board of state wherein the applicant is licensed];

(b) A letter of recommendation from at least one (1) [Any] other reliable person that knows him well.

(4) Statement of whether the [if] applicant has ever been cited before any state board and if answer is "yes," enclose complete report of the details;

(5) Information from state board:

(a) That he is licensed and has been practicing optometry five (5) years or more;

(b) That his state board can grant a license by reciprocity and would grant a license [give favorable consideration] to a similarly qualified Kentucky licensee for license by reciprocity if such request were made.

(6) A written statement explaining why the applicant wishes to be admitted to practice in [wants to come to] Kentucky;

(7) Certified check or money order in the amount of $400 [seventy-five (75) dollars].

AVERY HILL, President

APPROVED BY AGENCY: January 11, 1991

FILED WITH LRC: January 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1991 at 10 a.m. at Room 105, Capitol Annex Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 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: Ada Towles, Secretary, Board of Optometric Examiners, 1000 West Main Street, Georgetown, Kentucky 40324.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ada Towles

(1) Type and number of entities affected: Persons seeking admission to the practice of optometry in the Commonwealth of Kentucky. Based on the number of applicants for the year 1990, this will affect 34 applicants.

(a) Direct and indirect costs or savings to those affected: License fees for new admittees is increased from $75 to $100. Application fee costs will increase from $25 to $200 for residents and from $75 to $400 for nonresidents. (Actually, from $100 to $200 for residents and from $200 to $400 for nonresidents; former KRS 320.270 already set the fees at $100 and $200, but the regulation was never amended.)

1. First year: The same costs effects noted in (1)(a) above should be continuing in nature.

2. Continuing costs or savings: The same costs effects noted in (1)(a) above should be continuing in nature.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Applicants for admission will be required to submit only one photograph rather than three. Applicants for admission by reciprocity will be required to submit a certification of good standing from the jurisdiction where they are licensed to practice optometry rather than a letter of recommendation from a state officer.

(2) Effects on the promulgating administrative body: The content of applications processed by the board will be sightly changed.

(a) Direct and indirect costs or savings: The increased application fees will result in additional income to the board in the amount of $3,400 (based upon 34 resient applications) and the increased income due to new license fees will increase by $850, based upon the number of applicants for the year 1990.

1. First year: The same effect noted in (2)(a) above should be continuing in nature.

2. Continuing costs or savings: The same effect noted in (2)(a) above should be continuing in nature.

3. Additional factors increasing or decreasing costs: There are no additional factors since applications have long been submitted under the existing regulation.

(b) Reporting and paperwork requirements: There will be no effects since the agency already processes applications.

(3) Assessment of anticipated effect on state and local revenues: There will be no effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives 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: Changes in this regulation are required to comply with the 1990 Legislative amendments of KRS 320.250 and 320.270.

TIERING: Was tiering applied? Yes. There is different fee treatment accorded residents and nonresident applicants.

GENERAL GOVERNMENT CABINET
Board of Optometric Examiners
(Proposed Amendment)

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

RELATES TO: KRS 320.280

STATUTORY AUTHORITY: KRS 320.240, 320.280

NECESSITY AND FUNCTION: KRS 320.280 requires all licensed optometrists to annually take courses of study in subjects relating to the practice of optometry. This proposed regulation establishes the required hours of study and prescribes the approved programs and those records which will be maintained and submitted showing proof of attendance at said programs.

Section 1. The annual course of study year shall be from January 1 through December 31. Beginning January 1, 1991, each licensee except those whose licenses have been placed in inactive status, shall be required to attend eight (8) continuing education [a minimum of four (4)] credit hours in order to renew his or her license except those optometrists who are authorized to prescribe therapeutic agents who shall be required to attend a minimum of seven (7) credit hours in ocular therapy and pharmacology for a total required minimum annual study of fifteen (15) hours. [for the year 1975. For subsequent years, each licensee must receive eight (8) credit hours. The licensee shall be entitled to credit for those years in which he or she actually attended courses. As an example, a licensee who attends educational courses in the year 1975 shall furnish proof of those courses attended at the time that he seeks renewal of his license in 1976. Courses he attended in 1974 will not be considered for the year 1976.]

Section 2. Educational courses [programs] which will be approved as meeting the minimum standards shall include those sponsored by a recognized and established state, regional (multistate) or national optometric association, an accredited college of optometry or an accredited college of medicine. [hereinafter listed. This approval is based on past performances and continued maintenance of minimum standards for:]

[(1) Educational meetings of the American Optometric Association.]

[(2) Educational meetings of the Kentucky Optometric Association.]

[(3) Educational meetings of the Southern Council of Optometrists.]

[(4) Educational meetings (scientific sections) of the American Academy of Optometry.]

[(5) Post graduate courses offered at any approved college of optometry.]

[(6) Other educational programs approved by the board as meeting the criteria as set forth in this regulation. This shall include any organization named herein, or any other regularly organized group of Kentucky optometrists which wishes to sponsor an educational program to meet the standards for annual license renewal. Any such organization or group shall submit five (5) copies of a program schedule and outline to the board not less than sixty (60) days prior to the date of the program. The board will review the schedule and outline and, if the program meets the minimum standards, will grant prior approval.]

[Section 3. Board approval of continuing education programs will be determined on the following basis:]

[(1) Whether the program is likely to contribute to the advancement and extension of professional skill and knowledge in the practice of optometry.]

[(2) Whether the speakers, lecturers and others participating in the presentation are recognized by the board as being qualified in their field.]

[(3) Whether the proposed course, if it is to be tuition fees charged for courses conducted within the Commonwealth of Kentucky, is open to all optometrists licensed in this state.]

[(4) Whether the tuition fees charged for courses conducted within the Commonwealth of Kentucky is the same for nonmembers of the organization sponsoring the course, as it is for members of the organization. Any difference in tuition charged to nonmembers, as opposed to members of the sponsoring organization, shall be reasonably and directly related to the sponsoring organization's expense in operating the course.]

Section 3. [4.] (1) Evidence of attendance at an educational program shall be furnished by the sponsoring organization to each registrant at the program. This evidence shall consist of a certificate of attendance, provided by [which shall be signed by the secretary or president of] the sponsoring organization and shall contain the following information:

(a) The name of the sponsoring organization.

(b) The name and address of the licensee.

(c) The educational topics addressed at the program and the identity of the speakers.

(d) Number of hours attended.

(e) The date of the educational program.

(f) Such other evidence as the board may deem necessary.

(g) A certification by the licensee that he attended the study course.

(h) A certification by an official of the sponsoring organization.

(2) This evidence shall be submitted to the board no later than December 31 of each year [accompany a licensee's application for renewal of his license].

Section 4. [5.] Credit shall not be given for more than two (2) hours attendance in courses of office management and administration.

[Section 6. The board shall, on or before February 15 of each year, mail written notices to all licensed optometrists for the ensuing year.]

Section 5. [7.] In the event any licensee shall fail to attend the required educational programs or to provide documentation of attendance, the secretary of the board shall by February 15 notify such licensee at his or her last known address that his or her license may be suspended [revoked]. A licensee claiming mitigating circumstances which prevented [exemption from] attendance at an educational program shall file a sworn statement of reasons with the secretary of the board when he applies for renewal of his license. The board shall upon receipt of the affidavit, determine whether good cause is shown for not instituting license suspension procedures [the waiving of the requirements of the continuing education program]. Good cause shall be either of the following:

(1) Those licensees, who the board determines, were unable to attend sufficient hours of continuing education courses because of illness, incapacity or other undue hardships. [Any

licensee serving in the regular Armed Forces of the United States during any part of the twelve (12) months immediately preceding the annual license renewal date.]

(2) Any licensee first licensed by examination or reciprocity within twelve (12) months immediately preceding the annual license renewal dates. [Those licensees, who the board determines, were unable to attend sufficient hours of continuing education courses because of illness, incapacity or other undue hardships.]

(3) Nothing herein shall exempt a licensee from fulfilling continuing education requirements for the year for which good cause was shown following the termination of the hardship or other mitigating circumstances. [Any licensee first licensed by examination or reciprocity within twelve (12) months immediately preceding the annual license renewal dates.]

Section 6. [8.] In the event an optometrist becomes ineligible for license renewal for failure to comply with the continuing education requirements, he shall be suspended from further practice. The board may reinstate any such suspended licensee upon receipt of satisfactory proof that the licensee has completed the deficient hours of study, however, such reinstatement shall not preclude other disciplinary action.

[Section 9. All registered optometrists shall at all times keep the secretary of the board informed of their correct addresses.]

AVERY HILL, President

APPROVED BY AGENCY: January 14, 1991

FILED WITH LRC: January 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1991 at 10 a.m. at Room 105, Capitol Annex Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 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: Ada Towles, Secretary, Board of Optometric Examiners, 1000 West Main Street, Georgetown, Kentucky 40324.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ada Towles

(1) Type and number of entities affected: Persons admitted to the practice of optometry in Kentucky of which there are currently 555.

(a) Direct and indirect costs or savings to those affected: There are no direct and indirect costs or savings since licensed optometrists are already required to attend continuing education courses.

1. First year: The same effect noted in (1)(a) above should be continuing in nature.

2. Continuing costs or savings: The same 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 effect noted in (1)(a) above is the only known effect. There will be no effect on competition.

(b) Reporting and paperwork requirements: Licensed optometrists will be required to submit evidence of attendance at the additional courses required by the regulation, however, licensed optometrists are already required to submit this information.

(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 existing board communications.

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 alternatives 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: Changes in this regulation are required by the 1990 legislative amendments to KRS 320.280.

TIERING: Was tiering applied? No. Tiering is not applicable to this regulation.

GENERAL GOVERNMENT CABINET
Board of Optometric Examiners
(Proposed Amendment)

201 KAR 5:037. Advertising.

RELATES TO: KRS 320.295 [320.300(3)], 326.060, 438.065

STATUTORY AUTHORITY: KRS 320.240, 320.295

NECESSITY AND FUNCTION: KRS 320.295, pursuant to case law, allows certain professional advertising for optometrists and allows the Board of Optometric Examiners to promulgate regulations governing advertising. [320.300(3) prohibits advertisement of the price of visual aid glasses and other matters relating to the sale of visual aid glasses. In view of court decisions declaring statutory prohibitions against price advertising unconstitutional, particularly the case of Consumer Association of Kentucky, Inc., v. the Kentucky Board of Optometric Examiners, decided by the U.S. District Court for the Eastern District of Kentucky, on November 1, 1977, the following regulation is adopted.]

Section 1. Advertising which is informational and not deceptive, fraudulent, misleading,

unfair or self-laudatory is permitted, but is limited as follows:

(1) To informing the public of the availability of eye care [visual aid] services and aids [materials];

(2) Such advertisement may be by radio, television, print medium or any other medium which is not in violation of KRS Chapter 320;

(3) If additional charges may be incurred in an eye examination for related services in individual cases, then the advertisement shall so state;

(4) All advertisements of price for visual aid glasses (including contact lenses) alone shall clearly state: "does not include eye examination."

(5) Any optometrist who has been subjected to any disciplinary measures for advertising violations may be required by the board to secure prepublication approval of all advertisements by the board for any period of time which the board deems appropriate.

Section 2. (1) In the absence of compelling reasons to the contrary, a minimum examination must be performed in all cases. In advertising a price for an eye examination, a minimum examination [must be performed for the price stated; the required minimum eye examination] to be performed includes the following:

(a) Complete case history (ocular, physical, occupational, medical, generic and other pertinent information);

(b) Chief ocular complaint;

(c) Aided and unaided visual acuity;

(d) External examination (eye and adnexia);

(e) Internal ophthalmoscopic examination (media, lens, fundus, etc.);

(f) Neurological integrity;

(g) Static retinoscopy or auto refractor;

(h) Far and near point subjective;

(i) Test of accommodation and convergence and binocular coordination at far and near;

(j) For patients over twenty-five (25) [adults over thirty-five (35)] tonometry.

(k) Biomicroscopic examination.

(2) In addition to the above, the minimum eye examination for contact lenses shall include the following:

[(a) Biomicroscopic examination;]

(a) [(b)] Use of Fluorescein or Rose Bengal Dyes when indicated;

(b) [(c)] Diagnostic evaluation with lenses on eye;

(c) [(d)] Corneal curvature measurements dioptral.

Section 3. (1) The advertisement of eye glass lenses shall include the following: single vision or specified type of multifocal lenses.

(2) Advertisement of contact lenses shall include the following information:

(a) Description of type of lens; for example, "soft, tinted, extended wear toric" [Type, whether hard or soft];

(b) Whether or not professional fees are [an eye examination is] included in the advertised price.

(3) If dispensing fees are not included in the advertisement of visual aid glasses, then the advertisement should so state.

[(4) Advertising which is permitted under this regulation is limited to advertising which is in the public interest and which is not prohibited by Section 5 of this regulation.]

Section 4. No person, either individually, or while employed or connected with a corporation or association, shall advertise the fitting of contact lenses unless he is an optometrist, physician of osteopath, except an ophthalmic dispenser may advertise that he fits contact lenses if all fittings occur in the presence of and under the supervision of an optometrist, physician or osteopath.

Section 5. Advertising which is not in the public interest and which is prohibited shall include, but is not limited to, advertising that:

(1) Is false, fraudulent, deceptive, misleading or unfair;

(2) Is in violation of any law [Any prices advertised for ophthalmic materials or services must be effective for the period of time prescribed for the advertising of prices under KRS Chapter 367];

(3) Represents an optometrist as a specialist in any optometric specialty unless that optometrist has been certified by a certifying board approved by the Kentucky Board of Optometric Examiners, and has furnished proof of such certification to the board's satisfaction;

(4) Represents intimidation or undue pressure;

(5) Claiming or using any secret or special method or treatment which the licensee refuses to divulge to the Kentucky Board of Optometric Examiners;

(6) Uses coded or special names for visual materials or services that have an established trade name where such coded or special names are deceptive to consumers.

Section 6. The prescription may contain the following or similar language:

(1) The (below) (above) contains those measurements and directions which are included in a prescription for spectacle lenses. As a matter of information you are advised that the person fitting or attempting to fit contact lenses will probably have to take additional measurements and make interpretations of those measurements as they relate to this prescription. Under Kentucky law only optometrists, osteopaths and physicians are authorized to fit contact lenses, except ophthalmic dispensers may fit contact lenses in the presence of and under the supervision of an optometrist, osteopath or physician.

(2) The signed spectacle prescription shall be given to the patient upon request at the completion of the examination and payment of fees.

AVERY HILL, President

APPROVED BY AGENCY: January 14, 1991

FILED WITH LRC: January 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1991 at 10 a.m. at Room 105, Capitol Annex Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 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: Ada Towles, Secretary, Board of Optometric Examiners, 1000 West Main Street, Georgetown, Kentucky 40324.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ada Towles
(1) Type and number of entities affected: Licensed optometrists in Kentucky who advertise their services; there are currently 555 licensed optometrists. It is impossible to ascertain the number who advertise.
(a) Direct and indirect costs or savings to those affected: Since advertising is elective rather than required, there will be no costs or savings.
1. First year: The same effect noted in (1)(a) above should be continuing in nature.
2. Continuing costs or savings: The same 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 effect noted in (1)(a) above is the only known effect. Although advertising affects competition, each licensed optometrist elects whether or not to advertise. There will, therefore, be no direct effect by this regulation on competition.
(b) Reporting and paperwork requirements: This is not affected except for licensed optometrists who have been disciplined by the board for advertising violations who may be required to seek prepublication approval of advertising by the board.
(2) Effects on the promulgating administrative body: The board will educate licensees about this regulation.
(a) Direct and indirect costs or savings: There will be no cost or savings because the education concerning this regulation will be done through the board's existing communications.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: No effect except for monitoring licensed optometrists who are required by the board to seek prepublication approval of advertising.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered.
(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: Changes in this regulation are required by the enactment of KRS 320.295 and by the 1990 GA's repeal of the prohibition against advertising formerly set out at KRS 320.300(3).
TIERING: Was tiering applied? No. This regulation applies to all licensed optometrists. Tiering is not applicable to this regulation.

GENERAL GOVERNMENT CABINET
Board of Optometric Examiners
(Proposed Amendment)

201 KAR 5:040. Unprofessional conduct.

RELATES TO: KRS 320.310(1)(f)
STATUTORY AUTHORITY: KRS 320.240
NECESSITY AND FUNCTION: KRS 320.310(1)(f) provides that the board shall have the power to discipline a licensed optometrist [refuse to grant, issue or renew any license], or to make or suspend any license for grossly unprofessional or dishonorable conduct, as determined by the board. This regulation relates to certain instances of [defines] grossly unprofessional or dishonorable conduct as determined by the board but shall not be all inclusive.

Section 1. It shall be grossly unprofessional conduct for an optometrist to practice optometry in any office where the instruments and equipment, including office furniture, fixtures and furnishings, contained therein are not maintained in a clean and sanitary manner.

Section 2. No optometrist shall give or receive any fee, salary, commission or other remuneration or thing of value, in any manner, or under any guise or pretext whatever, to or from any person, firm or corporation in return for optometric patients being referred to said optometrist, or in order to secure optometric patients, nor shall any optometrist enter into any contract, agreement or arrangement, either oral or written, whereby his professional services are hired or leased out, nor shall he permit himself to be employed by an unlicensed optometrist, person, firm or corporation for the purpose of engaging in the practice of optometry for said unlicensed optometrist, firm or corporation except in the case of a licensed hospital, licensed multidisciplinary health clinic or a professional service corporation. Nothing herein however shall be interpreted to prohibit employment by a governmental entity.

Section 3. No optometrist shall practice optometry in, on or about the premises where others engage in any unlawful or grossly unprofessional or incompetent practice which is known to the optometrist, or by the exercise of reasonable intelligence should it come to his attention, and further no optometrist shall be associated with or share offices and/or fees with any person who is engaged in the unauthorized practice of optometry in the Commonwealth of Kentucky.

Section 4. Every optometrist shall refrain from publicly criticizing the [visual] services rendered by a fellow practicing optometrist, and complaints and criticism regarding the practice, procedures and conduct of a fellow practitioner shall be made only to the board.

Section 5. Every optometrist shall keep the visual welfare of his patient uppermost at all times, and shall strive to see that no person

calling as a patient shall lack visual care, regardless of his financial status.

Section 6. Every optometrist shall treat with confidence the professional information obtained from his patient, except as otherwise required by law.

[Section 7. No optometrist shall use any wording in the display mentioned in KRS 320.310(1)(t) to describe the profession other than the words "optometrist," "vision specialist" and/or "eyes examined."]

Section 7. [8.] It shall be grossly unprofessional conduct for an optometrist to fail to have in good working order or to be unable to operate those instruments and equipment necessary to perform the minimum examination as specified in Section 8 [9] of this regulation. Such instruments and equipment shall be maintained in all offices where optometry is practiced in this state.

Section 8. [9.] (1) Practicing the full scope of optometry does not always require performing a complete examination on every patient. The procedures performed in a patient's case should be left to the professional judgement of the optometrist and determined by the standard of care in optometry. In instances where a complete eye examination is warranted by profession standards [In the absence of compelling reasons to the contrary,] it shall be considered grossly unprofessional conduct and gross incompetence for an optometrist to fail to perform at a minimum [make] the following as part of a minimum examination and keep a permanent record thereof:

(a) [(1)] Complete case history (ocular, physical, occupational, medical, generic and other pertinent information);

(b) [(2)] Chief ocular complaint;

(c) [(3)] Aided and unaided visual acuity;

(d) [(4)] External examination (eye and adnexia);

(e) [(5)] Internal ophthalmoscopic examination (media, lens, fundus, etc.);

(f) [(6)] Neurological integrity;

(g) [(7)] Static retinoscopy or auto refractor;

(h) [(8)] Far and near point subjective;

(i) [(9)] Test of accommodation and convergence and binocular coordination at far and near;

(j) [(10)] For patients over twenty-five (25) [adults over thirty-five (35)] tonometry;

(k) Biomicroscopic examination.

(2) [(11)] In addition to the above, the minimum examination for contact lenses shall include the following:

[(a) Biomicroscopic examination;]

(a) [(b)] Use of Fluorescein or Rose Bengal dyes, when indicated;

(b) [(c)] Diagnostic evaluation with lenses on eye;

(c) [(d)] Corneal curvature measurements dioptral.

Section 9. Any act constituting a violation of KRS Chapter 320 shall be unprofessional conduct.

Section 10. It shall be grossly unprofessional conduct for an optometrist to fail to notify the patient to return the completed prescription for verification for accuracy, when the prescription is to be filled and fabricated by another licensed person.

AVERY HILL, President

APPROVED BY AGENCY: January 14, 1991

FILED WITH LRC: January 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1991 at 10 a.m. at Room 105, Capitol Annex Building, Frankfort, Kentucky. Individuals interested in being heard at hearing shall notify this agency in writing by February 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: Ada Towles, Secretary, Board of Optometric Examiners, 1000 West Main Street, Georgetown, Kentucky 40324.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ada Towles

(1) Type and number of entities affected: Licensed optometrists in Kentucky of which there are currently 555.

(a) Direct and indirect costs or savings to those affected: The only indirect savings is that in some cases an optometrist will not be required to perform a comprehensive eye examination, as formerly required, thus reducing the time involved by the optometrist.

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): None

(b) Reporting and paperwork requirements: There are no additional reporting and paperwork requirements.

(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 communications.

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 alternatives 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. This regulation pertains to all licensed optometrists. Tiering is not applicable to this regulation.

GENERAL GOVERNMENT CABINET
Board of Optometric Examiners
(Proposed Amendment)

201 KAR 5:050. Office locations and equipment [Branch offices].

RELATES TO: KRS 320.310(3)
STATUTORY AUTHORITY: KRS 320.240
NECESSITY AND FUNCTION: KRS 320.310(3) permits each optometrist to maintain not more than one (1) branch office. This [proposed] regulation requires each optometrist [maintaining a branch office] to furnish information concerning each [said branch] office to the board and prescribes the professional equipment required at each office.

Section 1. (1) Each office shall have all equipment and supplies necessary to perform the required examinations.
(2) An optometrist shall keep the board advised at all times of the location, mailing address and telephone number of each office he or she maintains. [Any optometrist maintaining a branch office shall notify the secretary of the board of the date of opening, location, days in operation and office hours of the branch office.]

AVERY HILL, President
APPROVED BY AGENCY: January 14, 1991
FILED WITH LRC: January 15, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1991 at 10 a.m. at Room 105, Capitol Annex Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 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: Ada Towles, Secretary, Board of Optometric Examiners, 1000 West Main Street, Georgetown, Kentucky 40324.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ada Towles
(1) Type and number of entities affected: Licensed optometrists in Kentucky of which there are currently 555.
(a) Direct and indirect costs or savings to those affected: There are no costs or savings effects since licensed optometrists are already required to advise the board of certain information and to maintain certain minimum office equipment.
1. First year: The same effect noted in (1)(a) above should be continuing in nature.
2. Continuing costs or savings: The same 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 effect noted in (1)(a) is the only known effect. There will be no effect on competition.
(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.
(2) Effects on the promulgating administrative body: The board will simply have all relevant information concerning offices maintained by licensed optometrists.
(a) Direct and indirect costs or savings: There will be no costs or savings since this is merely a clarification of a preexisting reporting requirement and certain minimum equipment has always been required.
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: The board already maintains information relating to office locations.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered..
(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 regulatory amendment is prompted by the 1990 legislative amendments to KRS 320.310(3). The changes are for clarification purposes. There are no substantive changes.
TIERING: Was tiering applied? No. This regulation applies to all licensed optometrists. Tiering is not applicable to this regulation.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:047. Specified areas; seasons, limits for upland game birds, furbearers and small game.

RELATES TO: KRS 150.010, 150.025, 150.170, 150.175, 150.180, 150.300, 150.340, 150.360, 150.370, 150.399, 150.400, 150.410, 150.415, 150.416, 150.417, 150.990
STATUTORY AUTHORITY: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: This regulation pertains to the hunting seasons, bag and possession limits for upland game birds, furbearers and animals on specified wildlife management areas and refuges. This regulation is necessary for the continued protection of these species and to insure a permanent and continued

supply of wildlife resources for present and future residents of the state. The function of this regulation is to provide for the prudent taking of upland game birds, furbearers and animals within reasonable limits based upon an adequate supply. This amendment is necessary because of changes in season dates and the opening or closure of certain wildlife management areas to hunting.

Section 1. All provisions of 301 KAR 2:250 apply to [statewide and specified area regulations, seasons, bag and possession limits apply to the following] wildlife management areas and refuges unless exceptions are listed.

Section 2. Exceptions to 301 KAR 2:250 [Statewide Small Game Hunting Regulations] for Wildlife Management Areas and Refuges. (1) West Kentucky Wildlife Management Area located in McCracken County.

(a) Quail and rabbit: November 1 through January 31 on Tracts 2, 3, 6 and 7; January 1 through 10 on Tracts 1, 4 and 5.

(b) Squirrel (gray and fox): from opening of Western zone squirrel season through October 31 on Tracts 1 through [, 2, 3, 4, 5 and] 6. November 1 through December 31 on Tract 6 only.

(c) Raccoon and opossum: tracts 1 through 6 only. There is no shakeout season on this area.

(d) All hunters and dog trainers shall check in and out daily at the designated check station.

(e) All tracts designated by numbers followed by the letter "A" are closed to hunting.

(f) No rifles, or ball or slug ammunition of any type shall be allowed for taking small game.

(g) Unleashed dogs are prohibited April 1 through the opening of Western Zone squirrel season, except during permitted field trials.

(h) Tract 6 is closed to vehicular traffic February 1 through April 16.

(i) There shall be no upland game bird, small game or furbearer hunting, trapping or unleashed dogs allowed during the deer quota hunts.

(2) Land Between the Lakes Wildlife Management Area (LBL) season through September 23; December 1 through January 31; and during deer archery season only by legally licensed and equipped deer archery hunters.

(a) Squirrel (gray and fox): from opening of Western Zone squirrel season through September 27 [28], December 1 through January 31; and during deer archery season only by legally licensed and equipped deer archery hunters.

(b) Quail: December 1 through the last day of February.

(c) Rabbit: December 1 through the last day of February.

(d) Raccoon and opossum: Tuesday, Thursday, Friday and Saturday nights only during the period December 1 through January 31. Daily bag limit one (1) person per night. Raccoon and opossum hunters shall check in and out nightly at designated check station. Harvest report cards shall be displayed in vehicle windshield while hunting and submitted at the check station upon completion of each night's hunt. Season shall be closed in some hunt areas as posted at designated hunter check stations [on dates listed in the LBL Hunting Guide].

(e) Field trials: September 1 through March 31. Scheduled basis only. Written requests shall be received by LBL at least ten (10) days prior to the proposed hunt date. Approval shall be obtained from LBL and the Department of Fish and Wildlife Resources District Supervisor. Field trials shall be recognized club hunts and each participant shall be on a club roster for that hunt.

(f) Fox chasing: from sunset to sunrise; third Saturday in August through the third Saturday in September south of Highway 68 to state line.

(g) Fox (gray and red) and bobcat taking: gun and archery on December 1 through January 31.

(h) Groundhog: daylight hours only. March 15 through March 31 and during the LBL deer archery season only by legally licensed and equipped deer archery hunters. All harvested animals shall be removed from the area. Gun hunting is prohibited in Hunt Area 8 and in that portion of Hunt Area 9 designated as the ORV area.

(i) Coyote: daylight hours only by legally licensed hunters during any LBL open season with weapons specified for that season.

(j) Bird dog, beagle and raccoon hound training season: during the entire month of October only in areas designated in the LBL Hunting and Angling Guide.

(k) All dogs shall wear a collar bearing the owner's name, address, and telephone number. Dogs shall not be used for hunting October 1 through November 11, except in authorized field trials and designated dog training Hunt Areas.

(l) Trapping for furbearers (including bobcats).

1. Only those persons issued trapping permits shall [who are selected by a drawing are permitted to] trap furbearers on LBL. Permits shall be issued by public drawing, with unissued permits made available on a first-come first-served basis.

2. Authorized trappers shall trap in assigned areas only and shall report their harvest in accordance with LBL instructions.

3. Trapping season: January 7 through January 20 for all furbearers.

4. Trapping devices. No. 3 or smaller foothold traps, padded foothold traps and snares without self-locking devices are permitted. The jaws of No. 1 1/2 and larger foothold traps used on land shall be offset three-sixteenths (3/16) inch or be padded foothold traps. Water sets are restricted to No. 3 or smaller foothold traps, padded foothold traps, No. 330 or smaller Conibear-type traps, and nonlocking snares.

(m) Bobcat: bobcats shall be taken by gun, archery or trapping.

1. The limit is two (2) bobcats per person per season by any legal method.

2. The bobcat harvest quota is twenty-four (24). Should it be determined that the quota of twenty-four (24) bobcats shall be filled prior to January 31, the season shall close. Notice shall be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

3. All bobcats shall be tagged before leaving LBL and within forty-eight (48) hours of harvest. Bobcats shall be tagged by LBL personnel upon presentation of the entire animal, skinned or unskinned, at LBL check stations, Golden Pond Administrative Office, or Patrol Office.

4. Bobcats shall be taken by hunting or by calling during daylight hours only. Callers shall use only hand or mouth operated calls.

(n) Weapons restrictions. The use of crossbows, center-fire rifles, center-fire handguns, and shotguns with slugs or shot larger than BBs is prohibited for the taking of all species listed in this subsection except that

groundhogs may be taken with center-fire rifles during the specified spring season.

(3) Reelfoot National Wildlife Refuge located in Fulton County.

(a) Squirrel (gray and fox): fourth Saturday in August through October 15 only in areas designated by signs as open to public hunting.

(b) Raccoon: four (4) consecutive nights beginning on the last Wednesday in September and four (4) consecutive nights beginning on the first Wednesday in October on the Long Point Refuge unit, with hunting allowed only during the hours of 7:30 p.m. to 12 midnight. No bag or possession limits.

(c) Hunters shall check in and out at designated check stations.

[(d) No other hunting is permitted except as authorized by other applicable regulations.]

(4) Ballard Wildlife Management Area located in Ballard County.

[(a)] Areas designated by signs are closed to hunting.

[(b) The wooded area south of Terrell Landing Road and designated by signs reading "Wildlife Management Area for Public Hunting" is open in conjunction with other applicable seasons.]

(5) Central Kentucky Wildlife Management Area located in Madison County.

(a) This area is closed to all upland game bird, furbearer and small game hunting except [dove and] squirrel.

(b) Unleashed dogs are prohibited April 1 through the opening of the Western Zone squirrel season, except during permitted field trials. In addition, unleashed dogs are limited to Tuesdays, Thursdays, Saturdays and Sundays, except for permitted field trials.

(c) Furbearer shall be taken by trapping only. All trappers shall obtain written permission from the area manager.

(6) Curtis Gates Lloyd/Mullins Wildlife and Recreation Area located in Grant and Kenton Counties [County].

(a) Areas closed to hunting are designated by refuge signs.

(b) Quail and rabbit: November 1 through January 31 except during the deer gun season.

(c) Unleashed dogs are prohibited April 1 through the opening of the Western Zone squirrel season, except during permitted field trials.

(d) All hunters and dog trainers shall check in and out daily at the designated check station.

(7) Pioneer Weapons Wildlife Management Area located in Bath and Menifee Counties. Hunters on this area are restricted to pioneer weapons only. These include muzzle-loading rifles, muzzle-loading pistols, muzzle-loading shotguns, longbows, recurve bows or compound bows and crossbows. Muzzle-loading shotguns for taking squirrels, quail, grouse and rabbits shall not be used with shot larger than No. 2.

(a) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(b) Breech-loading firearms shall be unloaded in both the chamber and magazine unless possessed by authorized personnel.

(8) Fort Campbell Wildlife Management Area located in Christian and Trigg Counties. There shall be no hunting on Tuesdays or Wednesdays except when Tuesday or Wednesday is a federal holiday or as follows: December 18-19 and 26. There shall be no hunting on December 25 and January 1.

(a) Seasons, bag and possession limits.

1. Squirrel (gray and fox): August 17 [18] through September 27 [21], November 28 [22] through December 13 [7], December 14 [8] through 31 on selected areas; January 2 [4] through January 31.

2. Quail: November 28 [22] through December 13 [7], December 14 [8] through 31 on selected areas; January 2 [3] through February 29 [28].

3. Rabbit: November 28 [22] through December 13 [7], December 14 [8] through 31 on selected areas; January 2 [3] through February 29 [28]; bag limit five (5); possession limit ten (10).

4. Raccoon, [gray] foxes and opossum: taking with gun or dogs, November 28 [22] through December 13 [7], December 14 [8] through 31 on selected areas. January 2 [3] through February 29 [28]; limit one (1) per person.

5. Coyote and groundhog: May 13 through August 17 and during any other authorized hunt.

[6. Red fox: November 22 through December 7, December 8 through 31 on selected areas. January 3 through 28.]

(b) Permission shall be obtained for each hunt at building #6645 and hunters shall stay within their assigned area. A hunting permit costing fifteen (15) dollars is required.

(c) All hunters between the ages of twelve (12) and eighteen (18) shall possess a valid hunter safety certificate.

(9) Clay Wildlife Management Area located in Nicholas County.

(a) Quail and rabbit: November 1 through December 31.

(b) Grouse: October 1 through December 31.

(c) Squirrel (gray and fox): First Saturday in September through December 31.

(d) All hunters and dog trainers shall check in and out daily at the designated check station.

(e) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(f) There shall be no upland game bird, small game or furbearer hunting, trapping or unleashed dogs allowed during deer quota hunts.

(10) Pine Mountain Wildlife Management Area located in Letcher County. Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(11) Dewey Lake Wildlife Management Area in Floyd County, Paintsville Lake Wildlife Management Area in Johnson and Morgan Counties, Fishtrap Lake Wildlife Management Area in Pike County and Redbird Wildlife Management Area in Clay and Leslie Counties.

(a) Squirrel (gray and fox): First Saturday in September through December 31.

(b) Grouse: October 1 through December 31.

(c) Quail and rabbit: November 1 through December 31.

(d) Furbearer: Closes December 31.

[(e) Closed to all other hunting except as authorized by other applicable regulations.]

(e) [(f)] There shall be no upland game bird, small game or furbearer hunting or trapping or unleashed dogs allowed when these areas are open to deer gun hunting.

(f) [(g)] Unleashed dogs are prohibited March 1, through August 31 except during permitted field trials.

(g) [(h)] Shotguns only.

(h) [(i)] Shakeout season is closed on these areas.

(12) Beaver Creek Wildlife Management Area located in McCreary and Pulaski Counties, Mill Creek Wildlife Management Area in Jackson County

and Cane Creek Wildlife Management Area in Laurel County and all private in-holdings within these areas.

(a) Squirrel (gray and fox): First Saturday in September through December 31.

(b) Grouse: October 1 through December 31.

(c) Quail and rabbit: November 1 through December 31.

(d) Furbearer: December 5 through December 31. All trappers shall obtain and complete a harvest survey form obtained from the area manager.

[(e) Closed to all other hunting except as authorized by other applicable regulations.]

(e) [(f)] There shall be no upland game bird, small game or furbearer hunting or trapping or unleashed dogs allowed when these areas are open to deer gun hunting.

(f) [(g)] Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(g) [(h)] Shakeout season is closed on these areas.

(13) Higginson-Henry Wildlife Management Area located in Union County.

(a) Quail and rabbit: November 1 through January 31.

(b) Unleashed dogs are prohibited April 1 through the opening of the Western Zone squirrel season except during permitted field trials.

(c) All hunters and dog trainers shall check in and out daily at the designated check station.

(d) There shall be no upland game bird, small game or furbearer hunting, trapping or unleashed dogs allowed during deer quota hunts.

(14) Yellowbank Wildlife Management Area located in Breckinridge County.

(a) Quail and rabbit: November 1 through January 31.

(b) All hunters and dog trainers shall check in and out daily at the designated check station.

(c) Unleashed dogs are prohibited April 1 through the opening of the Western Zone squirrel season except during permitted field trials.

(d) There shall be no upland game bird, small game or furbearer hunting, trapping or unleashed dogs allowed during deer quota hunts.

(e) Areas within Tract 1 designated by signs are closed to all hunting, fishing, boating and trespassing from October 15 through March 15.

(15) Kleber Wildlife Management Area located in Owen and Franklin Counties.

(a) Quail and rabbit: November 1 through January 31.

(b) All hunters and dog trainers shall check in and out daily at the designated check station.

(c) Unleashed dogs are prohibited April 1 through the opening of the Western Zone squirrel season except during permitted field trials.

(d) There shall be no upland game bird, small game or furbearer hunting, trapping or unleashed dogs allowed during deer quota hunts.

(16) Westvaco Public Hunting Areas. Persons hunting on Westvaco Public Hunting Areas shall possess a valid Westvaco Hunting Permit.

(17) Sloughs Wildlife Management Area located in Henderson and Union Counties. Frank Sauerheber Unit: areas designated by signs are closed to all hunting, fishing, boating and trespassing from October 15 through March 15.

(18) Peal Wildlife Management Area located in Ballard County.

(a) Squirrel (gray and fox): third Saturday in August through the Friday before the deer gun season and the day following the deer gun season through December 31.

(b) Furbearer hunting: twenty (20) day taking season commencing the day following the deer gun season. There is no shakeout season on this area.

(c) Furbearer trapping: December 1 through 10; water sets only; trappers selected by drawing conducted by the area manager.

(d) Quail and rabbit: November 1 through January 31.

(e) There shall be no upland game bird, small game or furbearer hunting or trapping or unleashed dogs allowed during the deer gun season.

(19) Big South Fork National River and Recreation Area located in McCreary County.

(a) Squirrel (gray and fox): first Saturday in September through December 31.

(b) Grouse: October 1 through December 31.

(c) Quail and rabbit: November 1 through December 31.

(d) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(e) There shall be no upland game bird, small game or furbearer hunting or trapping or unleashed dogs allowed during the deer gun season.

(20) Taylorsville Lake Wildlife Management Area in Spencer, Anderson and Nelson Counties.

(a) Areas closed to all hunting, fishing, boating and trespassing are designated by refuge signs.

(b) Quail and rabbit: November 1 through January 31.

(c) There shall be no upland game bird, small game or furbearer hunting or trapping or unleashed dogs allowed during the deer quota hunts.

(21) Fleming Wildlife Management Area located in Fleming County.

(a) Quail and rabbit: November 1 through December 31.

(b) Grouse: October 1 through December 31.

(c) Squirrel (gray and fox): first Saturday in September through December 31.

(d) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(e) There shall be no upland game bird, small game or furbearer hunting or trapping or unleashed dogs allowed during the deer gun season.

(22) Grayson Lake Wildlife Management Area in Carter and Elliott Counties.

(a) Areas designated by signs are closed to hunting.

(b) Quail and rabbit: November 1 through December 31.

(c) Grouse: October 1 through December 31.

(d) Squirrel (gray and fox): first Saturday in September through December 31.

(e) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.

(f) There shall be no upland game bird, small game or furbearer hunting or trapping or unleashed dogs allowed during deer quota hunts.

(g) All hunters and dog trainers shall check in and out daily at a designated check station.

(23) Robinson Forest Wildlife Management Area located in Breathitt, Perry and Knott Counties is closed to all hunting.

(24) Lake Cumberland Wildlife Management Area - All Kentucky Department of Fish and Wildlife Resources managed lands on the north side of Lake Cumberland.

(a) Grouse: October 1 through December 31.
(b) Quail and rabbit: November 1 through December 31.
(c) Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.
(d) There shall be no upland game bird, small game or furbearer hunting or trapping or unleashed dogs allowed during deer gun season.
(25) Green River Lake Wildlife Management Area in Taylor and Adair Counties.
(a) Quail and rabbit: November 1 through January 31.
(b) Grouse: closed to hunting.
(c) [(b)] Unleashed dogs are prohibited March 1 through August 31 except during permitted field trials.
(d) [(c)] There shall be no upland game bird, small game or furbearer hunting or trapping or unleashed dogs allowed during deer gun season.
(26) Barren River Wildlife Management Area in Allen and Barren Counties and Nolin Reservoir Wildlife Management Area in Edmonson, Grayson and Hart Counties.
(a) Quail and rabbit: November 1 through January 31.
(b) There shall be no upland game bird, small game or furbearer hunting or trapping or unleashed dogs allowed during deer gun season.
(27) Yatesville Wildlife Management Area located in Lawrence County.
(a) All hunters and dog trainers shall check in and out daily at a designated check station.
(b) Areas designated by signs are closed to all hunting, fishing, boating and trespassing.
(28) Daviess County Wildlife Management Area located in Daviess County.
(a) Area closed to hunting and trapping for upland game birds, small game and furbearers.
(b) Unleashed dogs are prohibited April 1 through the opening of the Western Zone squirrel season except during permitted field trials.
(29) Fort Knox Wildlife Management Area located in Bullitt, Meade and Hardin Counties.
(a) Furbearer: trapping is prohibited.
(b) Unleashed dogs are prohibited April 1 through the opening of the Western Zone squirrel season except during permitted field trials.
(c) Area requirements.
1. Permission to hunt shall be obtained for each hunt at the hunt control office.
2. There shall be no upland game bird, small game or furbearer hunting or trapping or unleashed dogs allowed during deer gun hunts.
3. Hunters shall stay in their assigned areas.
4. All hunters thirty-seven (37) years of age and younger shall possess a valid hunter safety certificate.
5. Pistols, center fire rifles and crossbows are prohibited.
6. Vehicles are prohibited off maintained roads, except as otherwise authorized.
7. All firearms shall be unloaded while in a vehicle, being carried in a nonhunting area, during nonhunting hours or after a hunter has taken the legal game bag limit.
(30) Pennyrile Forest Wildlife Management Area located in Christian, Caldwell and Hopkins Counties. There shall be no upland game bird, small game or furbearer hunting, trapping or unleashed dogs allowed during deer quota hunts.

DON R. McCORMICK, Commissioner
RONALD E. GENTRY, Secretary
DAVID H. GODBY, Chairman

APPROVED BY AGENCY: December 4, 1990
FILED WITH LRC: January 14, 1991 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 26, 1991 at 1 p.m. in the Wildlife Annex, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 21, 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: Lauren E. Schaaf, Director of Wildlife, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick
(1) Type and number of entities affected: Approximately 340,000 small game hunters and 7,000 trappers are expected to participate in the 1987-88 statewide hunting and trapping seasons. About 14,000 of these can be expected to avail themselves of the opportunity to participate in seasons on the special areas designated in this regulation.
(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license and/or a state trapping license. Indirect costs are determined by the individual, depending upon his level of participation.
1. First year: Persons participating in the hunting or trapping seasons proposed by this regulation would be required to possess a valid hunting license ($8.50 for residents) or a valid trapping license ($11.50 resident, $6 resident landowner/tenant), respectively. A $15 hunting permit is required by Fort Campbell authorities.
2. Continuing costs or savings: Same as first year.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Hunters are required to check in and/or out at some of the management areas specified in this regulation. Trappers on Mill Creek, Cane Creek and Beaver Creek wildlife management areas are required to complete a harvest survey.
(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed regulation.
(a) Direct and indirect costs or savings: Primary costs are associated with enforcing the regulation.
1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is $2,500.
2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: 14,000 small game hunters and 140 trappers may be expected to expend money for equipment, transportation, food and lodging. The average annual expenditure for these items by Kentucky small game hunters is $147 according to the 1985 National Hunting and Fishing Survey. The average season expenditure for Kentucky trappers during the 1981-82 trapping season was $209.32. State and local revenues can be expected to be positively affected due to necessary expenditures by small game hunters and trappers for the required licenses and due to taxes levied upon items purchased.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only available alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based upon the wise use of renewable resources and the fact that small game and furbearer populations are at levels which can sustain a regulated harvest by sportsmen.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? 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 parts of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. The County Clerks Office serves as a distribution system for the hunting licenses required by this regulation. The County Circuit Courts are where violators of these regulations are prosecuted.

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 County Clerk's Office personnel are involved in sale of hunting licenses. This office receives a $.75/license fee for selling the licenses. The County Circuit Courts are utilized for prosecution of cases made against violators of these regulations and recover their costs as the court cost portion of any levied fines.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:250. Seasons and limits for upland game birds, furbearers and small game.

RELATES TO: KRS 150.010, 150.025, 150.170, 150.175, 150.180, 150.300, 150.305, 150.340, 150.360, 150.365, 150.370, 150.390, 150.399, 150.400, 150.410, 150.415, 150.416, 150.417, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: This regulation pertains to the hunting season, bag and possession limits for upland game birds, furbearers and small game and trapping season for furbearers. This regulation is necessary for the continued protection of the species listed and to insure a permanent and continued supply of wildlife resources for present and future residents of the state. The function of this regulation is to provide for the prudent taking of upland game birds, furbearers and small game within reasonable limits based upon an adequate supply.

Section 1. Definitions. (1) "Trap" means deadfall, wire cage or box trap, foothold trap, padded foothold trap, Conibear-type trap or nonlocking snare.

(2) "Foothold trap" means a spring-loaded trap with smooth, metallic jaws designed to capture an animal by closing upon one of its feet.

(3) "Padded foothold trap" means a spring-loaded trap with offset jaws designed to capture an animal by closing upon one of its feet and which is commercially constructed so the edges designed to touch the animal are composed of a nonmetallic substance.

(4) "Conibear-type trap" means a spring-loaded trap with opposing jaws designed to capture an animal around the neck or body and quickly render that animal unconscious or dead.

(5) "Nonlocking snare" means a wire, cable or string which forms a loop to capture an animal [around the foot, neck or body] and which is constructed without a device [designed] to prevent the loop from loosening.

(6) "Furbearer" means mink, muskrat, beaver, opossum, gray fox, red fox, raccoon, weasel, striped skunk and bobcat.

Section 2. Hunting and Trapping Seasons. (1) Squirrel (gray and fox): Eastern zone - first Saturday in September through the Friday before the second Saturday in November and the day following the ten (10) day deer gun season through December 31. The Eastern zone includes the following counties: Bell, Breathitt, Clay, Clinton, Elliott, Estill, Floyd, Harlan, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, McCreary, Magoffin, Martin, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Russell, Wayne, and Whitley. Western zone - third Saturday in August through October 31, and the day following the ten (10) day deer gun season through December 31. The Western zone includes all counties not in the Eastern zone.

(2) Rabbits and quail: Zone A - November 1 through the Friday before the second Saturday in November and the day following the ten (10) day deer gun season through January 31. Zone A includes the following counties: Bell, Boyd, Breathitt, Carter, Clay, Elliott, Estill, Floyd,

Greenup, Harlan, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, McCreary, Magoffin, Martin, Menifee, Morgan, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Rowan, Russell, Wayne, Whitley and Wolfe.

Zone B - the day following the ten (10) day deer gun season through the third Sunday in February. Zone B includes all counties not listed in Zone A above.

(3) Grouse: the day following the ten (10) day deer gun season through the last day in February. Grouse hunting permitted only east of the line delineated by Interstate 75 from the Kentucky/Ohio state line to US 60, south of US 60 to the Bluegrass Parkway, south of the Bluegrass Parkway to Interstate 65, and east of Interstate 65 to the Kentucky/Tennessee state line.

(4) Furbearers: the day following the ten (10) day deer gun season through January 31. Bobcats shall be taken only according to provisions of 301 KAR 2:240.

(5) Extended beaver season: the entire month of February.

(6) Falconry hunting: squirrels, rabbits, quail, ruffed grouse, and furbearers may be taken by falconry from September 1 through February 15.

Section 3. Legal Trapping Devices and Hunting Restrictions. (1) Traps. All traps set on dry land are limited to deadfalls, wire cage or box traps, No. 2 or smaller foothold traps, padded foothold traps having a jaw spread of six (6) inches or less, No. 220 or smaller Conibear-type traps and snares without self-locking devices. Traps shall not be set closer than ten (10) feet apart and shall not be set in trails or paths commonly used by humans or domestic animals. All traps are legal for water sets except during the extended beaver season as stipulated in subsection (2) of this section.

(2) Extended beaver season: trap restrictions. Traps of size No. 3 and larger, padded foothold traps having a jaw spread of five and one-half (5 1/2) inches or larger, Conibear-type traps, with jaw spread eight (8) inches or larger and nonlocking snares. Only water sets are permitted.

(3) The wildlife listed in this section may be taken by the use of hand or mouth operated calling or attracting devices.

(4) Taking raccoon and opossum. Raccoon and opossum shall not be taken from a vehicle or boat with the aid of artificial light at any time or any place except by trapping.

(5) Prohibited ammunition. No person hunting any species listed in this regulation shall have in his or her possession any buckshot or shotgun slugs.

(6) Shooting hours. [Shooting hours for the species below are] Daylight hours only, except for raccoon and opossum which may be taken any time during day or night.

Section 4. Bag and Possession Limits.

Game	Bag Limits	Possession Limits
Squirrel (gray and fox)	6	12
Rabbit	4	8
Quail	8	16
Grouse	4	8
Furbearers (except raccoon by means other than trapping)	No limits	No limits
Raccoon (by means other than trapping)	1	No limits*
Falconry	During portions of this season which occur outside of seasons specified in Section 3(1), (2), (3) and (4) of this regulation, the daily falconry bag limit shall not exceed two (2) of any of these species, singly or in the aggregate, per falconer.	

*No possession limit on raccoons, except that no hunter shall take more than the daily bag limit within a twenty-four (24) hour period from noon to noon.

Section 5. Trapping Licenses. An appropriate [The following] trapping license is [s are] required:

(1) Resident landowner or tenant trapping license. This license authorizes the licensee to take wild animals by trapping upon owned farmlands. The landowner's or tenant's dependent children or spouses may also purchase such a license. Either the tenant or his dependent children residing upon the owner's lands have the same privilege.

(2) Resident statewide trapping license. This license authorizes the holder to take wild animals by trapping upon his lands or lands of another person with written consent of the landowner.

(3) Nonresident statewide trapping license. This license authorizes the holder to take wild animals by trapping upon his lands or lands or another person with written consent of the landowner.

DON R. McCORMICK, Commissioner
RONALD E. GENTRY, Secretary
DAVID H. GODBY, Chairman
APPROVED BY AGENCY: December 4, 1990
FILED WITH LRC: January 14, 1991 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 26, 1991 at 9 a.m. in the Wildlife Annex, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 21, 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: Lauren E. Schaaf, Director of Wildlife, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: 340,000 small game hunters and 7,000 trappers are expected to participate in the hunting and trapping seasons proposed by this regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license and/or a state trapping license. Indirect costs are determined by the individual, depending upon his level of participation.

1. First year: Persons participating in the hunting or trapping seasons proposed by this regulation would be required to possess a valid hunting license ($8.50 for residents) or a valid trapping license ($11.50 resident, $6 resident landowner/tenant), respectively.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcing the regulation.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is $900,000.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: 340,000 small game hunters may be expected to expend money for equipment, transportation, food and lodging. The average annual expenditure for these items by Kentucky small game hunters is $147 according to the 1985 National Hunting and Fishing Survey. The average season expenditure for Kentucky trappers during the 1981-82 trapping season was $209.32. State and local revenues can be expected to be positively affected due to necessary expenditures by small game hunters and trappers for the required licenses and due to taxes levied upon items purchased.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only available alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based upon the wise use of renewable resources and the fact that small game and furbearer populations are at levels which can sustain a regulated harvest by sportsmen.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? 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 parts of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. The County Clerks Office serves as a distribution system for the hunting licenses required by this regulation. The County Circuit Courts are where violators of these regulations are prosecuted.

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 County Clerk's Office personnel are involved in sale of hunting licenses. This office receives a $.75/license fee for selling the licenses. The County Circuit Courts are utilized for prosecution of cases made against violators of these regulations and recover their costs as the court cost portion of any levied fines.

NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation & Enforcement
(Proposed Amendment)

405 KAR 10:040. Procedures, criteria and schedule for release or credit of performance bond.

RELATES TO: KRS 350.060, 350.064, 350.093, [350.110,] 350.113, 350.151, 350.465, 30 CFR Parts 730-733, 735, 800.40, 917, 30 USC 1253, 1255, 1269

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064, 350.093, 350.151, 350.465, 30 CFR Parts 730-733, 735, 800.40, 917, 30 USC 1253, 1255, 1269

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to set out by regulation procedures and criteria for the release of performance bond. This regulation specifies the procedures, criteria, and schedule, including reclamation phases, for the release and partial release of liability under performance bonds. This regulation also sets forth certain notice and hearing requirements pertinent to bond release.

Section 1. Procedures for Release of Performance Bond. (1) Application for bond release. The permittee or any person authorized to act on his or her behalf may or the cabinet shall, initiate an application for release of all or part of the performance bond liability applicable to a particular permit or increment after all reclamation, restoration and abatement work in a reclamation phase as defined in Section 2(4) of this regulation has been

completed on the entire permit area or increment.

(a) Bond release applications may only be filed at times or seasons that allow the cabinet to evaluate properly the reclamation operations alleged to have been completed.

(b) Within thirty (30) days of the initiation of any bond release request, the permittee shall submit copies of letters which it has sent to adjoining property owners, surface owners (their agents and lessees), local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond. For bond releases initiated by the cabinet, the cabinet shall undertake the notification requirements set forth in this subsection. The notices shall also state that these individuals and their representatives may participate in a bond release inspection by contacting the cabinet. These notices shall be sent at the time the permittee initiates the application for release.

(c) Upon the filing of an application for bond release by a permittee, or the initiation of such release by the cabinet, the cabinet shall notify, by certified mail, within thirty (30) days of such filing or initiation, the municipality or county judge-executive where the surface coal mining operation is located.

(d) Within thirty (30) days after advertising an application for bond release as per the requirements of subsection (2) of this section, the permittee, or the cabinet if it elected to advertise as per subsection (2) of this section, shall submit proof of said publication. Proof of publication shall be placed, by the cabinet, with the bond release application. Such proof of publication shall be considered part of the bond release application.

(2) Public notice. At the time of initiating an application for bond release under this section, the permittee shall, and the cabinet may at permittee expense, advertise the filing of the application in the newspaper of largest bona fide circulation according to the definition in KRS 424.110 to 424.120 in the county or counties in which the permit area is located. Said advertisement shall begin within sixty (60) days of the initiation of any application for bond release whether said bond release application is initiated by the permittee or the cabinet. Should the cabinet initiate a bond release pursuant to this subsection but choose not to advertise the release pursuant to this section, and the permittee does not advertise the request for the release within the time schedules established by this subsection, the bond release application shall be denied. The advertisement shall be placed in the newspaper at least once a week for four (4) consecutive weeks. The advertisement shall contain:

(a) The name of the permittee, the permit number and the date of issuance or renewal of the permit or increment;

(b) The precise location and the number of acres of the lands subject to the application;

(c) The type and total amount of bond filed for the permit area or increment and the reclamation phase for which release is sought;

(d) The type and approximate dates of reclamation work performed;

(e) A description of the results achieved as they relate to the permittee's approved reclamation plan;

(f) A statement that written comments, objections, and requests for a public hearing may be submitted to the cabinet, provide the appropriate address of the cabinet, and the closing date by which comments, objections, and requests must be received;

(g) A statement that a public hearing has been scheduled, including the date and location of the hearing; and

(h) A statement that the schedule public hearing shall be cancelled if the cabinet does not receive a request for the public hearing by the closing date for requests for hearing.

(3) Objections, comments or requests for public hearing prior to bond release.

(a) Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond and, if desired, file a request for a public hearing with the cabinet within thirty (30) days after the last publication of the notice required by subsection (2) of this section.

(b) The cabinet shall schedule a public hearing for each request for bond release, such hearing to be scheduled within five (5) working days of the end of the public comment period. If the cabinet does not receive a request for a public hearing by the end of the public comment period, the cabinet shall cancel the public hearing. The public hearing shall be held in the locality of the surface coal mining operation for which bond release is sought. The person requesting the release shall contact the cabinet prior to beginning advertisements under subsection (2) of this section to obtain the date and location of the public hearing in order to include this information in the advertisement.

(c) The hearing under paragraph (b) of this subsection shall be legislative in nature and the provisions of 405 KAR 7:090 shall not apply. The cabinet shall have the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials, and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made, and a transcript shall be made available on the motion of any party or by order of the cabinet.

(d) Without prejudice to the right of an objector or the applicant and upon agreement of all parties, the cabinet may hold an informal conference in accordance with the procedures in 405 KAR 8:010, Section 11 for permit conferences to resolve such written objections in lieu of the public hearing under paragraph (b) of this subsection. The informal conference shall be held at the same time and location as was scheduled for the public hearing. The cabinet shall make a record of the informal conference unless waived by all parties, which shall be accessible to all parties. The cabinet shall

also furnish all parties of the informal conference with a written finding of the cabinet on the informal conference, and the reasons for said finding.

(4) Inspection and evaluation. The cabinet shall inspect and evaluate the reclamation work involved within thirty (30) days after initiation of a bond release request by the permittee, or any person authorized to act on his or her behalf, or as soon thereafter as weather conditions permit. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution. The surface owner, agent, or lessee known to the cabinet shall be given notice of such inspection and may participate with the cabinet in making the bond release inspection. The cabinet may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

(5)(a) Notice of decision. The cabinet shall as described in paragraph (b) of this subsection provide notification in writing of its decision to release or not to release all or part of the performance bond within five (5) days following receipt of proof of public advertisement as required in this section, or within five (5) days of the end of the thirty (30) day public comment period provided for in subsection (3) of this section, whichever is later. Provided, however, that if an informal conference or public hearing has been requested pursuant to subsection (3) of this section, the cabinet shall provide its notice of decision within thirty (30) days following said informal conference or public hearing.

(b) The notice of the decision shall state the reasons for the decision, recommend any corrective actions necessary to secure the release, and notify the permittee, the surety, any person with an interest in collateral who has previously requested such notification in writing, persons who filed objections in writing, and objectors who were a party to the informal conference or public hearing of their right to request, within thirty (30) days of notice, a formal hearing as provided for by subsection (6) of this section. Where the decision is to release all or part of the performance bond, the notice shall state that the release shall occur fourteen (14) days after the date of the decision unless temporary relief is granted under 405 KAR 7:090, Section 8.

(c) In no event shall the cabinet disapprove an application for reclamation phase I or II release of a surety bond or a bond secured by a letter of credit solely upon the permittee's failure to pay penalties or fines, if applicable reclamation requirements for the requested release have been fully met.

(6) Requests for formal hearing after bond release or denial. Any person aggrieved by the decision of the cabinet to approve or disapprove a bond release application, in whole or in part, shall have the right to request a formal hearing pursuant to 405 KAR 7:090. When the cabinet has decided to release all or part of the performance bond, the release shall not occur until fourteen (14) days after the date of the decision. At the end of that fourteen (14) days, the cabinet shall effect the release unless temporary relief is granted under 405 KAR 7:090, Section 8.

Section 2. Criteria and Schedule for Release of Performance Bond. (1) Monies pledged under performance bonds shall not be eligible for release until the permittee has met the requirements of the applicable reclamation phase as defined in subsection (4) of this section. The cabinet may release portions of the monies pledged under performance bonds applicable to a permit or increment following completion of reclamation phases on the entire permit area or entire increment.

(2) The maximum portion of the monies pledged under performance bonds applicable to a permit area which may be released shall be calculated on the following basis:

(a) Release an amount not to exceed sixty (60) percent of the total original bond amount on the permit area, section, or increment upon completion of phase I reclamation.

(b) Release an additional amount not to exceed twenty-five (25) percent of the total original bond amount on the permit area or increment upon completion of phase II reclamation, but in all cases the amount remaining shall be sufficient to reestablish vegetation and reconstruct any drainage structures.

(c) Release the remaining portion of the total performance bond on an entire permit area or increment after standards of phase III reclamation have been attained on the entire permit area or increment and final inspection and procedures of Section 1 of this regulation have been satisfied. After the final bond release for phase III reclamation on an increment, the increment shall be deleted from the permit area.

(3) The cabinet shall not release any monies pledged under performance bonds applicable to a permit if such release would reduce the total remaining monies pledged under performance bonds to an amount less than that necessary for the cabinet to complete the approved reclamation plan, achieve compliance with the requirements of KRS Chapter 350, Title 405, Chapters 7 through 24 or the permit, and abate any significant environmental harm to air, water or land resources or danger to the public health and safety which might occur prior to the release of all performance bond liability for the permit area.

(4) Reclamation phases are defined as follows:

(a) Reclamation phase I shall be deemed to have been completed on the entire permit area or increment when the permittee completes backfilling, regrading, topsoil replacement, and drainage control including soil preparation and initial seeding and mulching in accordance with the approved reclamation plan and a report for the area has been submitted to the cabinet in accordance with 405 KAR 16:200, Section 8 or 405 KAR 18:200, Section 8;

(b) Reclamation phase II shall be deemed to have been completed on the entire permit area or increment when:

1. Revegetation has been established in accordance with the approved reclamation plan and the standards for the success of revegetation, except productivity standards, have been [are] met;

2. The lands are not contributing suspended solids to stream flow or run off outside the

permit area or increment in excess of the requirements of KRS 350.420, Title 405, Chapters 16 or 18, or the permit;

3. With respect to prime farmlands, soil productivity has been restored as required by 405 KAR 20:040, Section 6 and the plan approved under 405 KAR 8:050, Section 3; and

4. The provisions of a plan approved by the cabinet for the sound future management of any permanent impoundment by the permittee or landowner have been implemented to the satisfaction of the cabinet.

(c) Reclamation phase III will be deemed to have been completed on the entire permit area or increment when the permittee has successfully completed all surface coal mining and reclamation operations in accordance with the approved reclamation plan, such that the land is capable of supporting the postmining land use approved pursuant to 405 KAR 16:210 or 405 KAR 18:220; and has achieved compliance with the requirements of KRS Chapter 350, Title 405, Chapters 7 through 24, and the permit; and the applicable liability period under 405 KAR 10:020, Section 3(2) has expired.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: January 3, 1991
FILED WITH LRC: January 8, 1991 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment has been scheduled for 9 a.m. (EST) Wednesday, February 27, 1991 in the Department for Surface Mining Reclamation and Enforcement's Training Room (Room D-16) at the Hudson Hollow Office Park, 2 Hudson Hollow Road, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by February 22, 1991. The scheduled hearing may be cancelled if the contact person has not received any written notice of intent to testify by February 22, 1991, five days before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request for it, in which case the person requesting the recording or transcript shall pay for it.

Written Comments: A person who wishes to comment on this proposed amendment but does not wish to testify at the hearing may submit written comments on the proposed amendment at any time before 4:30 p.m. (EST) on February 27, 1991. Comments received after that time will not be considered. Written comments and written notices of intent to testify at the hearing shall be submitted to: Jim Villines, Kentucky Department for Surface Mining, 2 Hudson Hollow Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jim Villines

The following brief discussion of the regulatory procedure being amended will help explain the impact of the amendment: Reclamation of a permit area takes place in 3 phases. In brief, Phase I ends when backfilling, grading, drainage control, topsoil redistribution and initial seeding have been completed; Phase II ends when initial revegetation has been successfully established and at least 2 years have elapsed after the end of Phase I; and Phase III ends when at least 5 years have elapsed after the end of Phase I and all reclamation requirements have been met (this is not a complete description of the requirements for the 3 phases of reclamation). A permittee can obtain release of a portion of the reclamation bond upon successful completion of each phase.

Under present 405 KAR 10:040, Section 2(4)(b), Phase II is deemed to be complete when, among other requirements, revegetation has been established in accordance with the approved reclamation plan and the standards for the success of revegetation have been met. The standards for success of revegetation on lands reclaimed for agricultural uses, such as cropland and pastureland, include ground cover, productivity, and other standards. Productivity is determined by harvesting an entire area (as by harvesting an entire corn crop or hay crop) or by harvesting small representative portions of the area in a statistically valid manner. It is the cabinet's responsibility to determine if the reclaimed area meets the applicable standards for bond release. The cabinet may make the necessary field determinations and laboratory analyses itself, or may allow the permittee to make these determinations and analyses to the satisfaction of the cabinet.

The effect of the proposed amendment is that these productivity determinations will not be required for Phase II bond release, except on prime farmlands. Other applicable standards such as ground cover will continue to apply to Phase II bond release. For agricultural land uses, productivity standards will continue to apply as conditions for Phase III, final bond release.

(1) Type and number of entities affected: This amendment will affect a present or future permanent program permittee at the time it applies for Phase II bond release if the approved postmining land use for any part of the permit area is agricultural, unless the agriculture area consists entirely of prime farmland. There presently are 1107 permanent program permits that have an approved nonprime agricultural postmining land use and have not yet obtained Phase II bond release.

(a) Direct and indirect costs or savings to those affected: This amendment will not increase direct or indirect costs to the regulated entities or to the cabinet. The amendment will provide a direct savings when certain permittees apply for Phase II bond release. The savings will accrue either to the cabinet or the permittee depending upon which party would have made the field determinations and laboratory analyses on each particular permit, and the magnitude of the savings will depend upon the methods which would have been used and other case-specific factors. The amendment will provide an indirect savings to those permittees whose permit areas would not have met productivity standards when they applied for Phase II bond release, since under the amendment the bond release will take place without regard to productivity standards and the permittee will thereafter maintain a smaller bond amount than

if the release had not taken place.

1. First year: Direct and indirect savings will accrue, as described in (1)(a) above, to certain permittees who apply for Phase II bond release in the first year after the proposed amendment takes effect.

2. Continuing costs or savings: Direct and indirect savings will accrue, as described in (1)(a) above, to certain permittees who apply for Phase II bond release in subsequent years.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors increasing or decreasing costs and no effects upon competition.

(b) Reporting and paperwork requirements: The amendment will reduce paperwork and reporting requirements for those affected permittees who would have made the productivity field determinations and laboratory analyses themselves, rather than having the cabinet make them. These permittees will save the expense of recording the results of field determinations, analyzing the field results and laboratory results, and submitting them to the cabinet in an appropriate form.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This amendment will not increase direct or indirect costs to the cabinet. The amendment will provide a direct savings when certain permittees apply for Phase II bond release. The savings will accrue either to the cabinet or the permittee depending upon which party would have made the field determinations and laboratory analyses on each particular permit, and the magnitude of the savings will depend upon the methods which would have been used and other case-specific factors.

1. First year: Direct savings will accrue to the cabinet, as described in (2)(a) above, when certain permittees apply for Phase II bond release in the first year after the proposed amendment takes effect.

2. Continuing costs or savings: Direct savings will accrue to the cabinet, as described in (2)(a) above, when certain permittees apply for Phase II bond release in subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The amendment will reduce paperwork requirements for the cabinet in those cases where the cabinet would have made the productivity field determinations and laboratory analyses rather than the permittee. The cabinet will save the expense of recording the results of field determinations and analyzing the field results and laboratory results. Further, the cabinet will save the expense of processing the paperwork which would have been submitted by the permittee if the permittee had made the field determinations and laboratory analyses.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because the proposed simple amendment achieves precisely the intended result.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or governmental policies which conflict with, overlap, or duplicate the proposed amendment.

(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 sole effect of the proposed amendment is to remove an unnecessary requirement. Tiering is not appropriate because there are no size factors which warrant retention of the requirement for some permittees while removing it from others.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 USC 1253, 1255, 1269; 30 CFR Parts 730-733, 735, 800.40, 917.

2. State compliance standards. This amendment at 405 KAR 10:040 Section 2(4)(b)1 excepts productivity standards from the revegetation success standards that must be met in order to qualify for Phase II bond release on lands reclaimed for agricultural uses, other than prime farmlands.

3. Minimum or uniform standards contained in the federal mandate. Federal minimum standards for Phase II bond release are at 30 CFR 800.40(c)(2): "(2) At the completion of Phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond. When determining the amount of bond to be released after successful revegetation has been established, the regulatory authority shall retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for operator responsibility in Section 515 of the Act for reestablishing revegetation..."

The cabinet has recently learned that the federal Office of Surface Mining interprets this federal regulation as not requiring that productivity standards be met to qualify for Phase II bond release on lands reclaimed for agricultural uses, except prime farmland.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This amendment will bring the Kentucky requirements into conformity with the corresponding federal requirements. This amendment is filed under KRS 13A.2264(2). A copy of 30 CFR 800.40, in a separate binder, is submitted under KRS 13A.2264(4). This federal regulation is not being adopted by reference and is not being adopted without change.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This item is not applicable since the federal and state standards will be equivalent.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Enforcement
(Proposed Amendment)

601 KAR 1:005. Safety regulations.

RELATES TO: KRS Chapters 138, 281, Title 49, Code of Federal Regulations, Part 390-397
STATUTORY AUTHORITY: KRS 138.665, 281.600, 281.726, 281.730, 281.750, Title 49, Code of Federal Regulations, Part 390-397
NECESSITY AND FUNCTION: This regulation sets out safety procedures to be followed by motor carriers operating in the Commonwealth of Kentucky.

Section 1. Definitions. (1) "Farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private motor carrier is using the vehicle to transport agricultural products from his farm or to transport farm machinery or farm supplies to his farm. It also includes any operation of a motor vehicle by a farmer which is generally thought of as farm machinery. The transportation of hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 601 KAR 1:025, Transporting hazardous materials, permit, is not included in this definition.

(2) "Daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.

(3) "Load limit" means the rated seating capacity for which a passenger-carrying vehicle is licensed plus twenty-five (25) percent of the rated seating capacity.

Section 2. [(1)] All commercial motor vehicles operated for-hire or in private carriage, interstate or intrastate, except as set forth in Section 3 of this regulation [those listed in subsection (2) of this section] shall be governed by the following Motor Carrier Safety Regulations adopted and issued by the United States Department of Transportation:

(1) [(a)] Title 49, Code of Federal Regulations Part 390, General, effective as amended through August [March] 30, 1990;

(2) [(b)] Title 49, Code of Federal Regulations, Part 391, Qualifications of Drivers, effective as amended through February 1, 1990;

(3) [(c)] Title 49, Code of Federal Regulations, Part 392, Driving of Motor Vehicles, effective as amended through November 15, 1988;

(4) [(d)] Title 49 Code of Federal Regulations, Part 393, Parts and Accessories Necessary for Safe Operation, with a latest effective date of November 24, 1989;

(5) [(e)] Title 49, Code of Federal Regulations, Part 394, Notification, Recording and Reporting of Accidents, effective as amended through December 21, 1988;

(6) [(f)] Title 49, Code of Federal Regulations, Part 395, Hours of Service of Drivers, effective as amended through August 13, 1990 [November 15, 1988];

(7) [(g)] Title 49, Code of Federal Regulations, Part 396, Inspection, Repair and Maintenance, effective as amended through December 7, 1989. The first annual inspection of motor carrier vehicles operating exclusively in intrastate commerce and subject to the provisions of this administrative regulation shall be completed by December 31, 1990 even though Part 396 mandates the first inspection for interstate carriers to be completed by July 1, 1990; and

(8) [(h)] Title 49, Code of Federal Regulations, Part 397, Transportation of Hazardous Materials; Driving and Parking Rules, effective as amended through November 15, 1988.

Section 3. [(2)] The following exemptions and exceptions to compliance with the provisions of Section 2 of this regulation [subsection (1) of this section] are adopted:

(1) [(a)] City buses, suburban buses, taxicabs, motorcycles and motor vehicles primarily designed for carrying passengers and having provisions for not more than eight (8) passengers and the driver are not required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation. Except that any operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall provide proof of having passed the medical examination set forth in 49 CFR Part 391 or have received a medical waiver as set forth in 601 KAR 11:040 and subsection (8) of this section.

(2) [(b)] Vehicles owned by the federal government, a state government, a county government, a city government, or a board of education and vehicles operating in interstate commerce which are specifically excluded by Title 49, Code of Federal Regulations, Part 390 are not required to comply with the federal regulations adopted by or incorporated by reference in this administrative regulation. Except that any operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall provide proof of having passed the medical examination set forth in 49 CFR Part 391 or have received a medical waiver as set forth in 601 KAR 11:040 and subsection (8) of this section.

(3) [(c)] Motor vehicles which are used exclusively in intrastate commerce and exclusively in farm-to-market agricultural transportation when operated during daylight hours by a private motor carrier are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B, relative to lighting device requirements. They are, however, required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(4) [(d)] Motor vehicles which are used exclusively in intrastate commerce and exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility which is located at a point not more than fifty (50) air miles from the harvest area when operated during daylight hours are not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B relative to lighting devices requirements. They are, however, required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(5) [(e)] Except for transporters of hazardous materials under 601 KAR 1:025, motor vehicle operators who are operating a vehicle on an intrastate commerce basis are not required to be

twenty-one (21) years of age as set forth in 49 CFR 391.11(b)(1). However, they shall be at least eighteen (18) years of age.

(6) [(f)] Electric utility motor carriers while operating exclusively in intrastate commerce shall be exempt from the maximum and on-duty hours for drivers set forth in 49 CFR 395.3 during an emergency which requires their employees to work to restore electric power.

(7) [(g)] Motor carriers which operate exclusively in intrastate commerce shall be exempt from the drug testing requirements of 49 CFR Parts 391 and 394.

(8) A commercial vehicle driver who operates a commercial vehicle exclusively in intrastate commerce within Kentucky, may apply for a medical waiver of the requirements of 49 CFR Part 391 under the provisions of 601 KAR 11:040. If a medical waiver is issued, the waiver shall be in the possession of the commercial driver any time he is operating a commercial motor vehicle.

Section 4. [3.] Buses. Buses shall be maintained in a clean and sanitary condition so that the health of passengers will not be impaired. Seats shall be comfortable in order that passengers will not be subjected to unreasonable discomfort which might be detrimental to their health and welfare. Employees in charge of buses shall be courteous and helpful to passengers, properly caring for baggage so that it will not be damaged, and shall be acquainted with the routes traveled and schedules maintained, so that the passengers will not be subjected to unnecessary delays. All operators shall take into consideration the health and welfare of their passengers and control their operations in the public interest. Express and freight, mail bags, newspapers and baggage shall be so placed as not to interfere with the driver or with the safety and comfort of passengers. These items shall be protected from the weather but shall not be carried in the aisles or in such position as to block exits or doorways on the bus.

Section 5. [4.] Overcrowding of Passenger Vehicles. No bus operated by an authorized carrier, except city or suburban buses, shall transport passengers in excess of its load limit. No passenger shall be permitted to occupy the rear door-well of any bus vehicle that is equipped with a rear door-well.

Section 6. [5.] Out-of-service Criteria and Sticker. (1) The basic safety criteria to be followed by the Kentucky Transportation Cabinet in determining if a commercial driver or vehicle shall be declared unqualified or placed out-of-service shall be the "North American Uniform Out-of-service Criteria" adopted on February 15, 1990 by the Commercial Vehicle Safety Alliance. The criteria are incorporated by reference as a part of this administrative regulation.

(2) If a commercial vehicle is being operated [determined to be operating] either improperly registered or without registration or in violation of any safety regulation or requirement, officers of the Division of Motor Vehicle Enforcement are authorized to affix to the vehicle a notice indicating the nature of the violation and [,] requiring its correction before the motor vehicle is further operated. In accordance with Part II of the "North American Uniform Out-of-service Criteria", a law enforcement officer may impose restricted service conditions instead of placing the commercial motor vehicle out-of-service. Refusal of the vehicle operator to grant permission for a law enforcement [an] officer [of the Division of Motor Vehicle Enforcement] to conduct a safety inspection of [either] the vehicle [or its operator] shall be cause for the officer to place the vehicle out-of-service until the [such] permission is granted. Operation of a vehicle in violation of the out-of-service notice affixed to it shall constitute a separate violation of these regulations.

(3) If a commercial driver is determined to be unqualified to drive and is placed out-of-service but the commercial motor vehicle is not placed out-of-service, the motor carrier may provide a different driver for the commercial motor vehicle. However, the commercial driver placed out-of-service shall not again operate a commercial motor vehicle until he is once again qualified. Refusal of the commercial driver to grant permission for a law enforcement officer to conduct a safety inspection regarding the driver himself shall be cause for the officer to place the driver out-of-service until the permission is granted. Operating a commercial motor vehicle in violation of an out-of-service order shall constitute a separate violation of these regulations.

(4) The material incorporated by reference in this section may be reviewed at any of the weigh stations operated by the Transportation Cabinet. These weigh stations are generally in operation twenty-four (24) hours a day. Further, the material may be reviewed or copied at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, Corner of High and Clinton Streets, Frankfort, Kentucky 40622. The office hours there are 8 a.m. through 4:30 p.m. eastern time on regular Kentucky state government work days.

JEROME LENTZ, Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: January 7, 1991
FILED WITH LRC: January 15, 1991 at 11 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on February 27, 1991 at 9 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by February 22, 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 February 22, 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: The 4,000+ motor carriers based in Kentucky.

(a) Direct and indirect costs or savings to those affected: The vast majority of these motor carriers operate on an interstate basis and are already subject to the federal motor carrier safety regulations. The changes in 601 KAR 1:005 adopts the latest technical changes to these federal regulations. The substantive change to the administrative regulation allows a commercial driver who operates exclusively on an intrastate basis to apply for a medical waiver. We anticipate no more than 1,000 persons will apply for the medical waiver, but these are persons who are not legally able to operate a commercial motor vehicle under the current federal and state administrative regulations, but who have been driving anyway. (Most are unaware of the requirement for a biennial medical examination.)

1. First year: The cost of the additional medical examinations will be approximately $75 per person. However, of the 1,000 anticipated waiver applications, we anticipate 80% will be eligible for the medical waivers and therefore, able to retain or obtain jobs as commercial drivers. Assuming a salary of $20,000 per person the overall savings to the applicants will be almost $10 million.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The applicant for the medical waiver and his physician will be required under 601 KAR 11:040 to complete an application form and a medical report form.

(2) Effects on the promulgating administrative body: The Transportation Cabinet will be required to review the 1,000 applications for medical waiver. Physicians may have to be retained on contract to evaluate the applications and supplemental medical report forms of those persons who apply for the medical waiver.

(a) Direct and indirect costs or savings: The cost to the Transportation Cabinet will be the cost of reviewing the applications.

1. First year: The cost the first year which is the only year new applications will be accepted will be $60,000.

2. Continuing costs or savings: Since no new applications will be accepted after the first year, the review of the updated medical report forms each year will be accomplished at a cost of $20,000.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The Transportation Cabinet will have to carefully monitor each of the persons granted a medical waiver to ensure that the person continues to safely operate a commercial motor vehicle.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The federal regulations were adopted to comply with Kentucky's motor carrier safety assistance program grant. The concept of a medical waiver for commercial drivers who operate exclusively within one state was very recently brought forth by the US DOT. At first it was assumed that anyone who operated a commercial vehicle and was required to obtain a commercial driver's license would be required to meet the federal medical standards. However, U.S. DOT has determined that anyone who has a state medical waiver issued prior to April 1, 1992 will be able to obtain a commercial driver's license that is valid only within the state of issuance. Because there are many people who have been safely operating a commercial vehicle for years who cannot meet the federal medical standards, the Transportation Cabinet decided to issue medical waivers, but only after careful evaluation of all applicants.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Tiering was applied in the latest amendment to this administrative regulation by allowing some persons to apply for a medical waiver.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 98-554, the Motor Carrier Safety Act of 1984 enacted 49 USC 2507. This federal statute requires that effective October 30, 1989 no state law or regulation may be in effect or enforced with respect to commercial motor vehicle safety which is in direct conflict with or less stringent than the federal regulations.

2. State compliance standards. The state safety regulations, with certain exceptions, adopt the federal motor carrier safety regulations for intrastate operations relating to qualification of drivers, vehicle operation standards, parts and accessories necessary for the safe operation of a motor vehicle, accident reporting, driver hours of service, inspection of motor vehicles, and standards for the transportation of hazardous materials. An exemption of certain lighting equipment requirements is given to farmers and forestry products transporters operating during daylight hours. In addition age requirements are lower for those drivers operating exclusively on an intrastate basis and drug testing programs are not required of those motor carriers which operate exclusively in intrastate commerce.

3. Minimum or uniform standards contained in the federal mandate. The federal motor carrier regulations are as stated in response 2 above except that they are applicable only to interstate operations. The federal mandate requires that intrastate operations be treated approximately the same.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There are no requirements stricter than the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

PUBLIC PROTECTION & REGULATION CABINET
Public Service Commission
(Proposed Amendment)

807 KAR 5:041. Electric.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.280(2)
NECESSITY AND FUNCTION: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishing of any commodity by the utility. This regulation establishes general rules which apply to electric utilities.

Section 1. Definitions. For purposes of this regulation:
(1) "Applicant" means for purposes of Section 21 of this regulation the developer, builder or other person, partnership, association, corporation or governmental agency applying for the installation of an underground electric supply system.
(2) "Building" means a structure enclosed within exterior walls or fire walls, built, erected and framed of component structural parts and designed for less than five (5) family occupancy.
(3) "Customer" means for purposes of Section 21 of this regulation the developer, builder or other person, partnership, association, corporation or governmental agency applying for installation of an underground electric supply system.
(4) "Customer premises" means the building for which service is intended or in use.
(5) "Distribution system" means electric service facilities consisting of primary and secondary conductors, transformers, and necessary accessories and appurtenances for furnishing electric power at utilization voltage.
(6) "Multiple-occupancy building" means a structure enclosed within exterior walls or fire walls, built, erected and framed of component structural parts and designed to contain five (5) or more individual dwelling units.
(7) "Subdivision" means a tract of land which is divided into ten (10) or more lots for the construction of new residential buildings, or for construction of two (2) or more new multiple occupancy buildings.

Section 2. General Requirements. Every utility shall furnish adequate service and facilities at rates filed with the commission, and in accordance with regulations of the commission and applicable rules of the utility. Energy shall be generated, transmitted, converted and distributed by the utility, and utilized, whether by the utility or the customer, in such manner as to obviate undesirable effects upon the operation of standard services or equipment on the utility, its customers and other utilities.

Section 3. Acceptable Standards. A utility shall construct and maintain its plant and facilities in accordance with good accepted engineering practices. Unless otherwise specified by the commission, the utility shall use applicable provisions in the following publications as standards of accepted good engineering practice for construction and maintenance of plant and facilities, herein incorporated by reference:
(1) National Electrical Safety Code; ANSI C-2. 1990 [1987] Edition, available by contacting the IEEE Service Center, 445 Hoes Lane, P.O. Box 1331, Piscataway, New Jersey 08855-1331. This material is also available for inspection and copying, subject to copyright law, at the offices of the Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602, Monday through Friday between the hours of 8 a.m. to 4:30 p.m. local time. [National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02169;]
(2) National Electrical Code; ANSI-NFPA 70. 1990 [1987] Edition, available by contacting the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02169. This material is also available for inspection and copying, subject to copyright law, at the offices of the Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602, Monday through Friday between the hours of 8 a.m. to 4:30 p.m. local time.
(3) American National Standard Code for Electricity Metering; ANSI C-12.1. 1982 Edition, available by contacting the Institute of Electrical and Electronics Engineers, Inc., 345 E. 47th Street, New York, New York 10017;
(4) USA Standard Requirements, for Instrument Transformers; ANSI Standard C57.13, 1978 Edition, available by contacting the IEEE Service Center, 445 Hoes Lane, P.O. Box 1331, Piscataway, New Jersey 08855-1331. This material is also available for inspection and copying, subject to copyright law, at the offices of the Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602, Monday through Friday between the hours of 8 a.m. to 4:30 p.m. local time. [the Institute of Electrical and Electronics Engineers, Inc., 345 E. 47th Street, New York, New York 10017.]
(5) The adoption and applicability of the National Electrical Code as a standard of utility construction is limited to electric utility auxiliary buildings which are not an integral part of a generating plant, substation, or control center. Integral part is defined as essential to the operation or necessary to make complete.
(6) All materials incorporated by reference above are available for public inspection and copying at the Public Service Commission of Kentucky, 730 Schenkel Lane, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m.

Section 4. Generating Station Meter Records. Every utility shall install such watt-hour meters as necessary to obtain a record of output of its generating station or stations. Every utility purchasing electrical energy shall install such meters as necessary to furnish a proper record of its purchases, unless such instruments are installed by the selling company.

Section 5. Maintenance or Continuity of Service. (1) Each utility shall make all reasonable efforts to prevent interruptions of service, and when such interruptions occur shall endeavor to reestablish service with the shortest possible delay. Whenever service is necessarily interrupted or curtailed for the

purpose of working on equipment, it shall be done at a time if practicable, that will cause least inconvenience to customers, and those customers which may be seriously affected shall be notified in advance, except in cases of emergency.

(2) Each utility shall keep a record of: time of starting and shutting down the principal units of its power station equipment and feeders for major divisions; indications of sufficient switchboard instruments to show voltage and quantity of the load; all interruptions to service affecting the entire distribution system of any single community or important division of a community; and date and time of interruption, date and time of restoring service, and when known, cause of each interruption.

(3) When complete distribution systems or portions of communities have service furnished from unattended stations, the utility shall keep these records to the extent practicable. The records of unattended stations shall show interruptions which require attention to restore service, with estimated time of interruption. Breaker or fuse operations affecting service shall also be indicated even though duration of interruption may not be known.

Section 6. Voltage and Frequency. (1) Each utility shall adopt a standard nominal voltage or standard nominal voltages, as required by its distribution system for its entire constant-voltage service, or for each of several districts into which the systems may be divided, which standard voltages shall be stated in every schedule of rates of each utility or in its terms and conditions of service.

(2) Voltage at the customer's service entrance or connection shall be maintained as follows:

(a) For service rendered primarily for lighting purposes, variation in voltage between 5 p.m. and 11 p.m. shall not be more than five (5) percent plus or minus the nominal voltage adopted, and total variation of voltage from minimum to maximum shall not exceed six (6) percent of the nominal voltage.

(b) 1. For service rendered primarily for power purposes, voltage variation shall not at any time exceed ten (10) percent above or ten (10) percent below standard nominal voltage.

2. Where a limited amount of lighting is permitted under these contracts, the entire load shall be considered power as far as voltage variation is concerned.

(c) Where utility distribution facilities supplying customers are reasonably adequate and of sufficient capacity to carry actual loads normally imposed, the utility may require that starting and operating characteristics of equipment on customer premises shall not cause an instantaneous voltage drop of more than four (4) percent of standard voltage nor cause objectionable flicker in other customer's lights.

(d) Equipment supplying constant current circuits shall be adjusted to furnish as nearly as practicable the rated current of the circuit supplied, and in no case shall the current vary more than four (4) percent above or below the circuit rating.

(3) Each utility supplying alternating current shall adopt a standard frequency of sixty (60) hertz which shall be stated in the schedule of rates of each utility.

(4) A frequency meter monitor shall be maintained for each system frequency. Accuracy of the frequency meter shall be checked each day and frequency shall be governed within limits as set forth in this section so that the frequency meters on the system are correct once daily.

(5) The following shall not be considered a violation of this section: Voltage variations in excess of those caused by operation of power apparatus on customer premises which require large starting currents and affect only the user of such apparatus, by action of the elements and infrequent and unavoidable fluctuations of short duration due to system operation.

(6) Greater variation of voltage than specified under this section may be allowed if service is supplied directly from a transmission line, if emergency service, or if in a limited or extended area in which customers are widely scattered or business done does not justify close voltage regulation. In such cases the best voltage regulation shall be provided that is practicable under the circumstances.

Section 7. Voltage Surveys and Records. (1) Every utility shall have two (2) or more portable indicating voltmeters and two (2) or more recording or graphic voltmeters of type and capacity suited to the voltage supplied. Every utility shall make a sufficient number of voltage surveys to indicate the service furnished from each center of distribution. To satisfy the commission of its compliance with voltage requirements, each utility shall keep at least one (1) of these instruments in continuous service at some representative point on its system. All records of the most recent voltage surveys taken within the last three (3) calendar years shall be available for inspection by the utility's customers and commission staff.

(2) Each graphic recording voltmeter shall be checked with a working standard indicating voltmeter when it is placed in operation and when it is removed, or periodically if the instrument is in a permanent location. Notations on each chart shall indicate beginning time and date of registration and when the chart was removed, as well as the point where voltage was taken, and results of the check with indicating voltmeter.

Section 8. Servicing Utilization Control Equipment. (1) Utilities shall service and maintain any equipment they use on customer's premises and shall adjust thermostats, clocks, relays, or time switches, if such devices must be so adjusted to provide service in accordance with their rate provisions.

(2) Time switches used by the utility for controlling equipment such as water heaters and street lights shall be of such quality that the timing mechanism may be adjusted to be accurate within ten (10) minutes per month. Time switches used by the utility for controlling street lighting or display lighting shall be inspected or monitored at least once a month and, if in error, adjusted. Time switches shall also be adjusted upon complaint if found in error or when service interruptions cause them to be in error by one-half (1/2) hour or more.

(3) Time switches and control devices used by the utility for controlling off-peak appliances shall be inspected or monitored periodically and adjusted if in error, and also adjusted upon complaint if found in error or whenever service interruptions result in error of two (2) hours

or more or in supplying service to off-peak appliances during peak periods.

Section 9. Measuring Customer Service. (1) All energy sold within the State of Kentucky shall be measured by commercially acceptable measuring devices owned and maintained by the utility, except where it is impracticable to meter loads, such as multiple street lighting, temporary or special installations, in which case consumption may be calculated. The utility shall meter its own electrical energy use except when such service is for emergency or incidental lighting such as outdoor substations, or at remote points on its transmission or distribution lines. All other electrical quantities which the utility's tariff indicates are to be metered shall be metered by commercially acceptable instruments owned and maintained by the utility.

(2) The utility shall regard each point of delivery as an independent customer and meter the power delivered at each point. Combined meter readings shall not be taken at separate points, nor shall energy used by more than one (1) residence or place of business on one (1) meter be measured to obtain a lower rate.

(3) Metering facilities located at any point where energy may flow in either direction and where the quantities measured are used for billing purposes shall consist of meters equipped with ratchets or other devices to prevent reverse registration and be so connected as to separately meter energy flow in each direction.

(4) Whenever possible reactive meters required to meet the conditions of a given rate schedule shall be either all ratcheted or none shall be ratcheted. Reactive metering shall not be employed for determining average power factor for billing purposes where energy may flow in either direction or where a customer may generate an appreciable amount of his own requirements.

(5) Meters which are not direct reading and those operating from instrument transformers shall have the multiplier plainly marked on the dial of the instrument or otherwise suitably marked and all charts taken from recording meters shall be marked with the record date, meter number, customer and chart multiplier.

(6) The register ratio shall be marked on all electro-mechanical meter registers. Meters already in service may be so marked when they are tested.

(7) The watt-hour constant for the meter itself shall be placed on all watt-hour meters. Meters already in service shall be so marked when they come to the meter shop.

Section 10. Service Connections. (1) The utility shall pay all costs of a service drop or an initial connection to its line with the customer's service outlet, except the attachment of the wire support to customer premises. When the customer's outlet is inaccessible to the utility, or the customer desires that the service outlet on any building be at a location other than that closest to the utility's line, cost of such special construction as necessary shall be borne by the customer. The utility shall furnish at its expense an amount of wire, labor and material equivalent to that furnished for a like service connection not requiring such special construction.

(2) Underground service requirements and regulations shall be established by each utility and be on file with the commission.

(3) All equipment and material furnished by the utility at its own expense shall remain the property of the utility and may be removed by it at any reasonable time after discontinuance of service.

Section 11. Distribution Line Extensions. (1) Normal extensions. An extension of 1,000 feet or less of single phase line shall be made by a utility to its existing distribution line without charge for a prospective customer who shall apply for and contract to use the service for one (1) year or more and provides guarantee for such service. The "service drop" to customer premises from the distribution line at the last pole shall not be included in the foregoing measurements. This distribution line extension shall be limited to service where installed transformer capacity does not exceed 25 KVA. Any utility which extends service to a customer who may require polyphase service or whose installed transformer capacity will exceed 25 KVA may require the customer to pay in advance additional cost of construction which exceeds that for a single phase line where the installed transformer capacity does not exceed 25 KVA.

(2) Other extensions.

(a) When an extension of the utility's line to serve an applicant or group of applicants amounts to more than 1,000 feet per customer, the utility may, if not inconsistent with its filed tariff, require total cost of the excessive footage over 1,000 feet per customer to be deposited with the utility by the applicant or applicants, based on the average estimated cost per foot of the total extension.

(b) Each customer receiving service under such extension will be reimbursed under the following plan: Each year, for a refund period of not less than ten (10) years, the utility shall refund to the customer(s) who paid for the excessive footage the cost of 1,000 feet of extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed and not to extensions or laterals therefrom. Total amount refunded shall not exceed the amount paid the utility. No refund shall be made after the refund period ends.

(c) For additional customers connected to an extension or lateral from the distribution line, the utility shall refund to any customer who paid for excessive footage the cost of 1,000 feet of line less the length of the lateral or extension.

(3) An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year, for a period of not less than ten (10) years, the utility shall refund to the applicant who paid for the extension a sum equivalent to the cost of 1,000 feet of the extension installed for each additional customer connected during the year. Total amount refunded shall not exceed the amount paid to the utility. No refund shall be made after the refund period ends.

(4) Nothing contained herein shall be construed as to prohibit the utility from making extensions under different arrangements if such arrangements have been approved by the commission.

(5) Nothing contained herein shall be construed to prohibit a utility from making at

its expense greater extensions than herein prescribed, if similar free extensions are made to other customers under similar conditions.

(6) Upon complaint to and investigation by the commission, a utility may be required to construct extensions greater than 1,000 feet upon a finding by the commission that such extension is reasonable.

Section 12. Distribution Line Extensions to Mobile Homes. (1) All extensions of up to 150 feet from the nearest distribution line shall be made without charge.

(2) Extensions greater than 150 feet from the nearest distribution line and up to 300 feet shall be made if the customer pays the utility a "customer advance for construction" of fifty (50) dollars in addition to any other charges required by the utility for all customers. This advance shall be refunded at the end of one (1) year if service to the mobile home continues for that length of time.

(3) For extensions greater than 300 feet and less than 1,000 feet from the nearest distribution line, the utility may charge an advance equal to reasonable costs incurred by it for that portion of service beyond 300 feet plus fifty (50) dollars. Beyond 1,000 feet the extension policies set forth in Section 11 of this regulation shall apply.

(a) This advance shall be refunded to the customer over a four (4) year period in equal amounts for each year service is continued. The customer advance for construction of fifty (50) dollars shall be added to the first of four (4) refunds.

(b) If service is discontinued for a period of sixty (60) days, or the mobile home is removed and another does not take its place within sixty (60) days, or is not replaced by a permanent structure, the remainder of the advance shall be forfeited.

(c) No refunds shall be made to any customer who did not make the advance originally.

(4) If a utility implements specific requirements pertaining to mobile homes, such requirements shall be subject to approval by the commission and comply with the provisions of this regulation.

Section 13. Testing Equipment and Standards. (1) Each utility shall maintain sufficient laboratories, meter testing shops, standards, instruments and facilities to determine accuracy of all types of meters and measuring devices used by the utility except as provided in 807 KAR 5:006, Section 13.

(2) The following testing equipment shall be available as minimum requirements for each utility or agency making tests or checks for a utility pursuant to 807 KAR 5:006, Section 13(2):

(a) One (1) or more working watt-hour standards and associated devices of capacity and voltage range adequate to test all watt-hour meters used by the utility.

(b) One (1) or more watt-hour standards, which shall be the utility's master watt-hour standards, used for testing the working watt-hour standards of the utility. These standards shall be of an approved type, shall be well compensated for both classes of temperature errors, practically free from errors due to ordinary voltage variations, and free from erratic registration. These master watt-hour standards shall be of capacity and voltage range adequate to test all working watt-hour standards at all loads and voltages at which they are used. These standards shall be kept permanently at one place and not used for routine testing.

(c) Working indicating instruments, such as ammeters, voltmeters and watt-meters, of such various types required to determine the quality of service to customers.

(d) A voltmeter and ammeter, which shall be master indicating instruments, and which shall be used for testing of working indicating and recording instruments. These instruments shall be of an approved type and of accuracy class and range sufficient to determine accuracy of working instruments to within five-tenths (0.5) percent of all ranges and scale deflections at which working instruments are used. They shall be kept permanently at one place and not used for routine testing.

(3) The utility's master watt-hour standards shall not be in error by more than plus or minus three-tenths (0.3) percent at 100 percent power factor, nor more than plus or minus five-tenths (0.5) percent at fifty (50) percent power factor at loads and voltages at which they are used, and shall not be used to check or calibrate working standards unless the master standard has been certified as to accuracy by the commission within the preceding twelve (12) months. Each master watt-hour standard shall have a history card and calibration data available, and when used to calibrate working standards, correction for any error of the master standard shall be applied.

(4) All working watt-hour standards when regularly used shall be compared with a master standard at least once in every four (4) weeks. Working watt-hour standards infrequently used shall be compared with a master standard before they are used.

(5) Working watt-hour standards shall be adjusted, if necessary, so that their accuracy will be within plus or minus three-tenths (0.3) percent at 100 percent power factor and within plus or minus five-tenths (0.5) percent at fifty (50) percent lagging power factor at all voltages and loads at which the standard may be used. A history and calibration record shall be kept for each working watt-hour standard showing all pertinent data and name of person performing tests.

(6) After having adjusted working watt-hour standards to the accuracy specified above, service measuring equipment shall be adjusted to within the accuracies required, assuming working watt-hour standards to be 100 percent accurate.

(7) If calibration charts are attached to working watt-hour standards and the error indicated is applied to all tests run and the accuracy on any range has not varied more than two-tenths (0.2) percent during the past twelve (12) regular test periods, accuracy limits may be extended to plus or minus five-tenths (0.5) percent at 100 percent power factor and plus or minus seven-tenths (0.7) percent at fifty (50) percent lagging power factor at all voltages and loads at which the standard may be used.

(8) The utility's master indicating instruments shall not be in error by more than plus or minus five-tenths (0.5) percent of indication at commonly used scale deflections and shall not be used to check or calibrate working indicating instruments unless the master instrument has been checked and adjusted, if necessary, and certified as to accuracy by the

commission within the preceding twenty-four (24) months. A calibration record shall be maintained for each instrument.

(9) All working indicating instruments shall be checked against master indicating instruments at least once in each six (6) months. If the working instrument is found appreciably in error at zero or in error by more than one (1) percent of indication at commonly used scale deflections, it shall be adjusted. A calibration record shall be maintained for each instrument showing all pertinent data and name of person performing tests.

Section 14. Check of Standards by Commission. (1) Each utility, and/or agency making tests or checks for a utility, shall submit to the commission Meter Standards Laboratory, its master watt-hour standard once in each year, and its master indicating voltmeter and ammeter once in each two (2) years.

(2) At the discretion of the commission any or all of these required tests may be made at the utility's or agency's testing facility by means of portable transfer standards. If the standards satisfy the requirements of the commission a Certificate of Accuracy shall be issued by the commission's Division of Engineering.

(3) Each utility which normally checks its own master watt-hour standards and master indicating instruments against primary standards such as precision watt-meters, volt boxes, resistances, standard cells, potentiometers, and timing devices, shall calibrate the master watt-hour standards and indicating instruments before they are submitted to the commission for test, and attach to them a record of such calibration.

Section 15. Testing of Metering Equipment. (1) Testing of any unit of metering equipment shall consist of a comparison of its accuracy with a standard of known accuracy. All metering equipment shall be in good order, and shall be adjusted to as close to zero error as possible.

(2) No meter or measuring device shall be deliberately set in error by any amount. Because of unavoidable irregularities of work done on a commercial scale, some accuracy tolerance shall be allowed. Meters shall be set as near as practicable to 100 percent accuracy but in no case shall the inaccuracy exceed one (1) percent. Further, meters with defective parts shall be repaired regardless of their accuracy.

(3) Metering equipment, including instrument transformers and demand meters, shall be tested for accuracy prior to being placed in service, periodically in accordance with the schedule below, upon complaint, when suspected of being in error, or when removed from service for any cause.

Period Test Schedule	
Self-Contained Meters	
Single phase	8 years
3 wire network	8 years
Polyphase	6 years
Meters used with instrument transformers	
Single phase	6 years
Polyphase	4 years
Demand Meters	
Indicating block-interval and lagged-demand meters	same as associated watt-hour meter
Graphic and pulse operated recording demand meters	2 years
Instrument Transformers	
Current: high burden test	same as associated watt-hour meter
Potential: secondary voltage test	same as associated watt-hour meter
Var-hour Meters	same as associated watt-hour meter
Direct Current Watt-hour Meters:	
Up to and including 6 KW	4 years
Over 6 KW through 100 KW	2 years
Over 100 KW	1 year

(4) Tests may be made at a meter shop, on the customer's premises, or in a mobile shop.

Section 16. Sample Testing of Single Phase Meters. A utility desiring to adopt a scientific sample meter testing plan for single phase meters shall submit its application to the commission for approval. Upon approval the sample testing plan may be followed in lieu of the periodic test prescribed in Section 15(3) of this regulation. The plan shall include the following:

(1) Meters shall be divided into separate groups to recognize differences in operating characteristics due to changes in design, taking into consideration date of manufacture and serial number.

(2) The sampling procedure shall be based upon accepted statistical principles.

(3) The same sampling procedure shall be applied to each group.

(4) Each utility authorized to test meters by sample meter testing plan shall comply with the following conditions:

(a) The number of meters in addition to the sample shall be taken from those meters in each group longest in service since last test unless a particular meter type is known to be increasing the percentage of meters requiring test for the sample group. In such a case where a particular meter type is increasing the percentage of meters requiring test in any group, these meters may be selected first regardless of test date with any additional tests as required for that group coming from those in that group longest in service since last test. Each year the utility shall use the following table to determine the percentage of the total meters in each group to be tested.

Percentage of Meters Within Limits of 2% Fast or Slow (Indicated by Sample)		Percentage of Meters to be Tested the Next Year
99.0	100.0	2
98.0	98.9	4
97.0	97.9	6
96.0	96.9	8
95.0	95.9	10
93.0	94.9	12
91.0	92.9	14
Less than	91.0	16

(b) Provided, however, that no meter shall remain in service without periodic test for a

period longer than twenty-five (25) years.

(5) Whenever a meter is found to be more than two (2) percent fast or slow, refunds or back billing shall be made for the period during which the meter error is known to have existed or if not known for one-half (1/2) the elapsed time since the last test but in no case to exceed three (3) years. This provision shall apply only when sample testing of single phase meters has been approved by the commission and utilized by the utility.

Section 17. Test Procedures and Accuracy Requirements. (1) Meters and associated devices shall be tested at the loads indicated below and adjusted as close as practicable to zero error when found to exceed the tolerance prescribed below.

A. C. Watt-hour Meters

% of Test Current	Power Factor	Allowable Tolerance
100	1.0	+ or - 1.0%
10	1.0	+ or - 1.0%
100	0.5	+ or - 1.0%

D. C. Watt-hour Meters

% of Test Current	Allowable Tolerance
100	1.0%
10	1.0%

(a) Only one (1) test run shall normally be required at each test configuration. However if the test indicates the meter is more than two (2) percent in error fast or slow, additional tests shall be made to verify accuracy prior to refunding or back billing the customer.

(b) When a meter is tested on complaint or request, additional test runs shall be made and care exercised to insure that any trouble with the meter will be detected.

(c) For refund and back billing purposes, accuracy of the meter shall be determined by adding the average registration at light load (ten (10) percent of test current) and the average registration at full load (100 percent of test current) and dividing by two (2).

(2) Demand meters. A demand meter, demand register, or demand attachment used to measure customer's service shall:

(a) Be in good mechanical and electrical condition.

(b) Have proper constants, indicating scale, contact device, and resetting device.

(c) Not register at no load.

(d) Be accurate to the following degrees:

1. Graphic meters which record quantity-time curves and integrated-demand meters shall be accurate to within plus or minus two (2) percent of full scale throughout their working range. Timing elements measuring specific demand intervals shall be accurate to within plus or minus two (2) percent and the timing element which serves to provide a record of the time of day when demand occurs shall be accurate to within plus or minus four (4) minutes in twenty-four (24) hours.

2. Lagged-demand meters shall be accurate to within plus or minus two (2) percent at final indication.

(3) Instrument transformers.

(a) Instrument transformers used in conjunction with metering equipment to measure customer's service shall:

1. Be in proper mechanical condition and have electrical insulation satisfactory for the service on which used.

2. Have characteristics such that the combined inaccuracies of all transformers supplying one (1) or more meters in a given installation shall not exceed the following:

	100% Power Factor		50% Power Factor	
	10% Current	100% Current	10% Current	100% Current
Purchased after Jan. 1, 1942	1%	.75%	3%	2%
Purchased prior to Jan. 1, 1942	2%	1.50%	5%	3%

(b) Meters used in conjunction with instrument transformers shall be adjusted so that verall accuracies will come within the limits specified in this regulation.

(c) Instrument transformers shall be tested with the meter with which they are associated by making an overall test, or may be checked separately. If transformers are tested separately, meters shall also be checked to see that overall accuracy of installation is within the prescribed accuracy requirements.

(d) Results of tests of instrument transformers shall be kept on record and be available for use during the life of the transformer.

(e) Phase shifting transformers shall have secondary voltages under balanced line voltage conditions within one (1) percent plus or minus of the voltage impressed on the primary.

Section 18. Location of Meters. (1) Meters shall be installed in a clean, dry, safe, convenient place as free as possible from vibration. Meters shall be easily accessible for reading, testing, and making necessary adjustments and repairs, and where indoor type meters are necessary they shall not be placed in coal or wood bins or on partitions forming bins, nor on any unstable supports. Unless absolutely unavoidable, meters shall not be installed in attics, sitting rooms, bathrooms, bedrooms, restaurant kitchens, over doors, over windows, or in any location where visits of the meter reader or tester will cause annoyance to the customer or a severe inconvenience to the utility.

(2) Districts subject to flood are excepted from this rule as far as it applies to the location of meters.

(3) Proper provision shall be made by the customer for installation of the utility's meter. Unless the meter is to be mounted upon a panel or installed within a cabinet, such provision shall consist of a board not less than three-quarters (3/4) of an inch in thickness which shall be mounted not less than five (5) or not more than seven (7) feet from the floor, and in general as near as possible to point of entrance of service. At least six (6) inches clear space shall be available, on all sides of the meter board and not less than thirty (30) inches in front of it. The above provisions as to method of mounting and height from floor do not apply to the installation of weatherproof outdoor meters . Electric meters shall not be

installed close to either water or gas meters or anything liable to damage the meter, thereby constituting a hazard to customer's safety and continuous service.

(4) When more than one (1) meter is installed without a meter cabinet in the same building, proper space shall be allotted and provision made by the customer for locating the meters at one (1) place. When a number of meters are placed in the same cabinet or upon the same board, each meter shall be tagged or marked to indicate the circuit metered by it.

Section 19. Overhead and Underground Wire Entrances. (1) The overhead wire entrance shall be located on the exterior of the building nearest the utility's lines at a point not less than twelve (12) nor more than thirty (30) feet above the ground. When proper ground clearance cannot be obtained due to height of building, a proper supporting structure shall be provided by the customer unless arrangements can be made with the utility whereby their overhead service wires can be carried to the building in such a manner that these wires will not constitute an obstruction to free passage of vehicles or fire fighting apparatus.

(2) Approval shall be obtained from the utility as to the proper location for a service entrance.

(3) New service drops, both overhead and underground, shall be installed in accordance with the National Electrical Safety Code.

Section 20. Operation of Illegal Gambling Devices. (1) When an electric utility, subject to the jurisdiction of this commission, is notified in writing by a federal or state law enforcement agency, the Attorney General of Kentucky, a Commonwealth's Attorney or a County Attorney acting in his official capacity, that electric energy furnished by it is being used or will be used for operating an illegal gambling device, it shall discontinue rendering electric service to such customer, after reasonable notice to the customer. No damages, penalty or forfeiture, civil or criminal, shall be found against any electric utility for any act done in compliance with any such notice received from the law enforcement agency or officer. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate judicial determination that such service should not be discontinued, or should be restored.

(2) As provided by KRS 278.230, any electric utility subject to commission jurisdiction shall furnish to the commission upon request any records or information in the possession of such electric utility that may assist in the enforcement of this rule.

Section 21. Underground Electric Distribution Systems for New Residential Customers. (1) Purpose of rules. To formulate requirements for underground electric distribution systems for all new customers of those systems which will insure safe and adequate service and which will be uniformly applicable within a utility's service area.

(2) Applicability. New residential customers and subdivisions as defined below after the effective date of this rule.

(3) Rights of way and easements.

(a) The utility shall construct, own, operate and maintain distribution lines only along easements, public streets, roads and highways which are by legal right accessible to the utility's equipment and which the utility has legal right to occupy, and on public lands and private property across which rights of way and easements satisfactory to the utility may be obtained without cost or condemnation by the utility.

(b) Rights of way and easements suitable to the utility for underground distribution facilities shall be furnished by the applicant in reasonable time to meet service requirements. The utility may require that the applicant make the area in which underground distribution facilities are to be located accessible to the company's equipment, remove all obstructions from such area, stake to show property lines and final grade, perform rough grading to reasonable approximation of final grade, and maintain clearing and grading during construction by the utility. The utility may require that suitable land rights be granted to it, obligating the applicant and subsequent property owners to provide continuing access to the utility for operation, maintenance or replacement of its facilities, and to prevent any encroachment in the utility's easement or substantial changes in grade or elevation.

(4) Installation of underground distribution system within new subdivision.

(a) Where appropriate contractual arrangements have been made, the utility shall install within the subdivision an underground electric distribution system of sufficient capacity and suitable materials which, in its judgment, will assure that the property owners will receive safe and adequate electric service for the foreseeable future.

(b) Facilities required to be underground:

1. All single phase conductors installed by the utility shall be underground. Appurtenances such as transformers, pedestal-mounted terminals, switching equipment and meter cabinets may be placed above ground.

2. Three (3) phase primary mains or feeders required within a subdivision to supply local distribution or to serve individual three (3) phase loads may be overhead unless underground is required by governmental authority or chosen by the applicant, in either of which case the differential cost of underground shall be borne by the applicant.

(c) If the applicant has complied with the requirements herein and with the utility's specifications on file with the commission, and has given the utility not less than 120 days written notice prior to anticipated date of completion (i.e., ready for occupancy) of the first building in the subdivision, the utility shall complete installation thirty (30) days prior to estimated completion date. (Subject to weather and ground conditions and availability of materials and barring extraordinary or emergency circumstances beyond reasonable control of the utility.) However, nothing in these regulations shall be interpreted to require the utility to extend service to portions of subdivisions not under active development.

(5) Schedule of charges.

(a) Within sixty (60) days after the effective date of these rules, each utility shall file with the commission a statement setting forth the utility's policy with respect to electric

underground extensions. Such policy shall provide for payment by the applicant for the difference between the cost of providing underground facilities and that of providing overhead facilities. The payment made by applicant shall be expressed in terms of an amount per foot of conductor or other appropriate measure.

(b) The utility's policy as filed with the commission shall set forth an "estimated average cost differential," if any, between the average or representative cost of underground distribution systems and of equivalent overhead distribution systems within the utility's service areas. The payment made by applicant as provided for in paragraph (a) of this subsection shall not be more than the estimated average cost differential and shall be nonrefundable.

(c) Detailed supporting data used to determine estimated average cost differential shall be concurrently filed by the utility with the commission and shall be updated annually.

(d) Applicant may be required to deposit the entire estimated cost of the extension. If this is done, the amount deposited in excess of the normal charge for underground extensions, as provided in paragraph (a) of this subsection, shall be refunded to the applicant over a ten (10) year period as provided in Section 11 of this regulation.

(e) Upon agreement by both parties, if the applicant chooses to perform all necessary trenching and backfilling in accordance with utility specifications, the utility shall credit applicant's cost in an amount equal to the utility's cost for trenching and backfilling.

(f) Utility extension from the property or boundary of the subdivision to its existing supply facilities shall normally be made overhead, and any deposit required for that extension is subject to refund under Section 11 of this regulation. Upon request, such extension may be made underground, if the applicant agrees to pay the excess cost for the underground extension, which excess cost shall be nonrefundable.

(g)1. Point of service shall be that point where utility facilities join customer facilities, irrespective of the location of the meter. Such point of service shall normally be either at the property line or at the corner of the building nearest the point at which underground systems enter the property to be served, depending upon whether the utility or the customer owns the underground service lateral.

2. If established utility practice dictates service termination at the customer's property line, the utility shall credit the applicant fifty (50) dollars or the equivalent cost of an overhead service line to the applicant's meter base, whichever is greater.

3. Where established utility practice does not dictate service termination at the customer property line, the utility shall include in its underground plan the furnishing, installation, ownership, and maintenance of the service lateral to the meter base providing the applicant installs in the building adequate electric service entrance capacity to the satisfaction of the utility to assure that the underground service conductors will be adequate to handle present and future load requirements of the building. In this instance the utility will determine the size and type of service lateral conductors and appurtenances to be used in any installation.

4. If, by mutual agreement of the parties, service terminates at some other point on the building or property, the applicant shall pay the full cost of any additional extension required in excess of that provided for in paragraph (g)1, 2 and 3 of this subsection.

(h) When an existing utility-owned supply circuit or service lateral requires replacement or reinforcement due to added loads, etc., the utility at its expense will replace or reinforce it.

(i) Nothing in this regulation shall be construed to prevent any utility from assuming any part of the cost differential of providing underground distribution systems within subdivisions, provided the utility demonstrates to the commission that such practice will not result in increased rates to the general body of rate payers.

(j) The utility shall not be obligated to install any facility within a subdivision until satisfactory arrangements for payment of charges have been completed by the applicant.

(6) Cooperation by applicant. Charges specified in these rules are based on the premise that each applicant will cooperate with the utility in an effort to keep the cost of construction and installation of the underground electric distribution system as low as possible and make satisfactory arrangements for payment of the above charges prior to installation of the facilities.

(7) Construction. All electrical facilities shall be installed and constructed to comply with applicable codes, rules and regulations of the commission.

Section 22. Deviations from Rules. In special cases for good cause shown the commission may permit deviations from these rules.

GEORGE EDWARD OVERBEY, JR., Chairman
JIM THORNBERRY, Commissioner
THEODORE COLLEY, Secretary

APPROVED BY AGENCY: January 11, 1991
FILED WITH LRC: January 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 26, 1991 at 9 a.m. at the Public Service Commission's Office, Hearing Room No. 2, 677 Commanche Trail, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by February 21, 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: Lee M. MacCracken, Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Lee M. MacCracken

(1) Type and number of entities affected: This regulation affects in varying degrees all of the 29 electric utilities under the jurisdiction of the commission.

(a) Direct and indirect costs or savings to those affected: There is no discernible fiscal impact since the utilities are already operating under the 1990 editions of each code. The regulation as amended will conform to current industry practice.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None have been identified.

(b) Reporting and paperwork requirements: There are no additional reports or paperwork requirements.

(2) Effects on the promulgating administrative body: There will be no effects on the agency since monitoring compliance with the regulation will not be changed.

(a) Direct and indirect costs or savings: There will be no fiscal impact on the agency.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: There are none that affect the agency.

(3) Assessment of anticipated effect on state and local revenues: There is no impact on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Utilities affected are currently operating under the updated 1990 edition of each code. The input of those affected has been requested and received; adoption of the updated 1990 editions reflects practices generally accepted in the industry.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: These changes do not conflict with current laws and regulations.

(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: No additional comments.

TIERING: Was tiering applied? No. This is not a new regulation. Tiering was not necessary as the amendments simply: 1) reflect the incorporation by reference of updated versions of codes previously incorporated (Sections 3(1) and 3(2)); 2) substitute new addresses (Section 3(1) and 3(4)); 3) add the address of the Public Service Commission to bring the subsections into compliance with KRS 13A.224(3)(c); and 4) add a provision to clarify and to avoid confusion with 807 KAR 5:006, which provides for refunds or backbilling when a utility is not utilizing a sample meter testing plan (Section 16(5)).

PUBLIC PROTECTION & REGULATION CABINET
Public Service Commission
(Proposed Amendment)

807 KAR 5:061. Telephone.

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.280(2)

NECESSITY AND FUNCTION: KRS 278.280(2) provides that the commission shall prescribe rules for the performance of any service or the furnishings of any commodity by the utility. This regulation establishes general rules which apply to telephone utilities.

Section 1. Definitions. (1) "Access line" means wires or channels used to connect network interface at the subscriber premises with the central office.

(2) "Average busy season; busy hour traffic" means the average traffic volume for the busy season, busy hours.

(3) "Base rate area" means the developed portion or portions within each exchange service area as set forth in telephone utility tariffs, maps or descriptions. Access line service within this area is furnished at uniform rates without mileage charges.

(4) "Basic or regular service" includes all one (1), two (2), four (4) and eight (8) party access line service.

(5) "Busy hour" means the two (2) consecutive half-hours during which the greatest volume of traffic is handled in the central office.

(6) "Busy season" means that period of the year during which the greatest volume of traffic is handled in the central office.

(7) "Calls" means telephone messages attempted by a customer.

(8) "Central office" means a unit of a telephone utility, including switching equipment and appurtenant facilities used to establish connections between customer lines or between customer lines and trunk or toll lines to other central offices within the same or at other exchanges.

(9) "Class of service" means the various categories of telephone service generally available to customers, such as business or residence.

(10) "Customer or subscriber" means any person, firm, partnership, corporation, municipality, cooperative, organization or governmental agency provided with telephone service by any telephone utility.

(11) "Customer trouble report" means any oral or written report from a subscriber or user of telephone service relating to a physical defect or difficulty with the operation of telephone facilities.

(12) "Direct distance dialing (DDD)" means customer dialing over the nationwide intertoll telephone network of calls to which toll charges are applicable. No operator assistance is required for DDD calls.

(13) "Exchange" means a geographical area established by a telephone utility for the administration of telephone service. It may embrace a city, town, or village and its environs or a portion thereof. It may consist of one (1) or more central offices together with associated plant used in furnishing communication service in that area.

(14) "Extended area service (EAS)" means the provision of toll free calling between or among

two (2) or more exchange areas.

(15) "Grade of service" means the number of parties served on a telephone line such as one (1) party, two (2) party, four (4) party, etc.

(16) "Intercept service" means a service arrangement provided by the utility whereby calls placed to a disconnected, discontinued, or improperly listed telephone number are intercepted and the calling party is informed that the called telephone number has been disconnected, discontinued, changed, or that calls are being received by another telephone. This may be accomplished by recording or by operator.

(17) "Message" means a completed customer telephone call.

(18) "Outside plant" means telephone equipment and facilities installed on, along, over or under streets, alleys, highways, or on private rights-of-way between central office and customer's location or between central offices.

(19) "Regrade" means an application for a different classor grade of service.

(20) "Service line" means those facilities owned and maintained by a customer or group of customers. Lines of those facilities are connected with facilities of a telephone utility at an agreed point for communication service.

(21) "Service objectives," as construed in these regulations, shall mean a designated number or percentage, applicable to various service measures, maintenance of which shall indicate a minimum satisfactory level of service.

(22) "Special service" means unusual and complex services such as data terminals, teletypewriter, full period circuits, wide area telephone service (WATS), or other items that require special engineering, installation or manufacturing to provide service.

(23) "Switching service" means switching performed for service lines.

(24) "Tariff" means the entire body of rates, tolls, rentals, charges, classifications, regulations and rules, adopted by a public utility in accordance with laws governing the provisions of public utility service.

(25) "Telephone utility" means any person, firm, partnership, cooperative, organization or corporation furnishing telephone service to the public under the jurisdiction of the commission.

(26) "Toll connecting trunks" means a general classification of trunks carrying toll traffic and ordinarily extending between a local office and a toll office.

(27) "Toll station" means an access line and associated equipment connected to a toll line or directly to a toll board.

(28) "Traffic" means telephone call volume, based on number and duration of messages.

Section 2. General Provisions. This regulation governs furnishing of intrastate telephone service and facilities to the public by telephone utilities subject to the jurisdiction of the commission. These rules set forth reasonable service standards and procedures for rendering adequate and satisfactory service to the public.

Section 3. Acceptable Standards. Unless otherwise specified by the commission, the utility shall use applicable provisions in the following publications as standards of accepted good engineering practice for construction and maintenance of plant and facilities, incorporated in this regulation by reference. Copies are available at the Commission office, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

(1) National Electrical Safety Code; ANSI C2, 1990 [1987] Edition, available by contacting the IEEE Service Center, 445 Hoes Lane, P.O. Box 1331, Piscataway, New Jersey 08855-1331. This material is also available for inspection and copying, subject to copyright law, at the offices of the Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602, Monday through Friday between the hours of 8 a.m. to 4:30 p.m. local time.

(2) National Electrical Code; ANSI/NFPA 70, 1990 [1987] Edition, available by contacting the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02169. This material is also available for inspection and copying, subject to copyright law, at the offices of the Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602, Monday through Friday between the hours of 8 a.m. to 4:30 p.m. local time.

Section 4. Basic Utility Obligations. (1) Each telephone utility shall provide telephone service to the public in its service area in accordance with its rules and tariffs on file with the commission. Such service shall meet or exceed standards set forth in this regulation.

(2) Each telephone utility shall continually review its operations to assure adequate service.

(3) Each telephone utility shall maintain records of its operations in sufficient detail necessary to permit review, and those records shall be available for inspection by the commission upon request.

(4) Each utility shall maintain records of various service objectives by exchange, district, or as otherwise approved by the commission. A records summary shall be submitted monthly to the commission. If the utility's performance falls below the service objective for two (2) consecutive months, the utility shall submit to the commission a report setting forth action taken or planned to correct performance levels.

(5) Where a telephone utility is generally operated in conjunction with any other enterprise, suitable records shall be maintained so that results of the telephone operation may be determined upon reasonable notice and request by the commission.

Section 5. Directories. (1) Telephone directories shall be published at least yearly for each exchange listing the name, location and telephone numbers of all customers, except public telephones and numbers unlisted at customer request, which can be called within the service area without a long distance charge.

(2) Upon issuance, a copy of each directory shall be distributed by each utility to all its subscribers served by that directory, and a copy of each directory shall be furnished to the commission.

(3) The name of the telephone utility, the area included in the directory, and the year of issue shall appear on the front cover. Information pertaining to emergency calls such as for police and fire departments shall appear conspicuously in the front part of directory pages.

(4) The directory shall contain such

instructions concerning placing local and long distance calls, calls to repair and information services, and location of telephone company business offices appropriate to the area served by the directory. Rates between frequently called points may also be included.

(5)(a) Information operators shall have access to records which include all listed telephone numbers, except public telephones and numbers that are unlisted at customer's request, in the area for which they are responsible for furnishing information service.

(b) Intercept operators shall have access to records which indicate the status of all telephone numbers in the area for which they are responsible for furnishing intercept service.

(6) In the event of an error in the listed number of any customer, the telephone utility shall intercept all calls to the listed number for ninety (90) days provided the number is not in service. In the event of an error or omission in the name listing of a customer, such customer's correct name and telephone number shall be in the files of information or intercept operators and the correct number furnished the calling party either upon request or interception.

(7) Whenever any customer's telephone number is changed after a directory is published, and if central office capacity exists to do so, the utility shall intercept all calls to the former number for ninety (90) days, and give the calling party the new number if the customer so desires.

(8) When a large group of number changes are scheduled due to additions or changes in plant, records or operations, reasonable notice shall be given to all customers so affected even though the additions or changes may be coincident with a directory issue.

Section 6. Exchange Maps. (1) Each telephone utility shall file maps with the commission showing the current exchange service area for each telephone exchange operated. Maps shall be in sufficient detail to reasonably permit locating exchange service area boundaries in the field. A copy of such map shall be included in the utility's tariff, in accordance with requirements of 807 KAR 5:011.

(2) With every revised map, the telephone utility so filing shall submit proof of notice of the proposed revision to each telephone utility whose exchange area adjoins exchange area boundary lines or is located reasonably near territory which would be changed by such revisions. This shall include provision for the signature of an official of each telephone utility concerned on the copy of the exchange maps filed with the commission.

Section 7. Tariffs. Each telephone utility shall file with its tariff the various exchange areas, base rate areas where they exist, conditions and circumstances under which service will be furnished, and definition of the classes and grades of service available to customers, in accordance with 807 KAR 5:011.

Section 8. Extensions of Service. (1) The utility shall extend service to applicants within the base rate area where it exists without a construction charge except in cases of special requirements as identified by the utility in its approved tariff.

(2) Each telephone utility shall make an extension of 750 feet or less, free of charge, from existing plant facilities to provide service to applicants who shall apply for and contract to use the service for up to one (1) year and guarantee payment for the service.

(3) Other extensions.

(a)1. When an extension to serve an applicant or a group of applicants amounts to more than 750 feet per applicant, the utility may, if not inconsistent with its filed tariff, require the total cost of excessive footage over 750 feet per customer to be paid to the utility by the applicant or applicants, based on average estimated cost per foot of the total extension.

2. Each customer receiving service under such extension will be reimbursed under the following plan: Each year for a refund period of not less than ten (10) years, the utility shall refund to any customer who paid for the excessive footage the cost of 750 feet of the extension in place for each additional customer connected to the extension installed and not to extensions or laterals therefrom. Total amount refunded shall not exceed the amount paid the utility. After the refund period ends, no refund will be required.

(b) An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year for a period of not less than ten (10) years the utility shall refund to the applicant who paid for the extension a sum equivalent to the cost of 750 feet of the extension installed for each additional customer connected during the year. Total amount refunded shall not exceed the amount paid to the utility. After the refund period ends, no refund shall be required.

(4) Nothing contained in this regulation shall be construed to prohibit a utility from making at its expense greater extensions than prescribed, if similar free extensions are made to other customers under similar conditions.

(5) Upon complaint to and investigation by the commission, a utility may be required to construct extensions greater than 750 feet upon a finding by the commission that such extension is reasonable.

(6) Nothing contained in this regulation shall be construed to prohibit the utility from making extensions under different arrangements provided such arrangements have been approved by the commission.

Section 9. Grade of Service. (1) Within the base rate area, no telephone utility shall place more than four (4) customers on any local exchange access line. Within the service area no telephone utility shall connect more customers on any line than are contemplated under the grade of service charged the customer on such line.

(2) On rural lines where multiparty service is provided, no more than eight (8) customers shall be connected to any local exchange access line. The telephone utility may regroup customers in such a manner as necessary to carry out the provisions of this regulation.

Section 10. Provision of Service. (1) It shall be the service objective of all utilities to fill ninety (90) percent of applications for regular service within five (5) working days of receipt unless applicant specifically requests a later date.

(2) The service objective for regular regrades shall be to fill ninety (90) percent of applications within thirty (30) days unless applicant specifically requests a later date.
(3) Applications for special service shall be filled as expeditiously as equipment and facilities permit.
(4) All applications which are not filled within five (5) working days for initial regular service and within thirty (30) days for regular regrades shall be considered as held applications.
(5) The utility shall keep a record by exchanges showing name and address of each applicant, date of application, date service desired, class and grade of service applied for, and any reason for inability to provide new or regrade service to applicant.
(6) When, because of shortage of facilities, a utility is unable to supply telephone service on dates requested by applicant, first priority shall be given to furnishing those services which are essential to public health and safety. In cases of prolonged shortage or other emergency, the commission may require establishment of a priority plan subject to its approval for clearing held orders, and may request periodic reports concerning progress being made.
(7) If circumstances beyond the control of the utility make it impossible to provide service within the time limits specified above, the utility shall promptly notify applicant of the reason for delay and give him a commitment date based upon best available information.

Section 11. Public Telephone Service. In each exchange, the telephone utility shall supply at least one (1) public coin-activated telephone that will be available on a twenty-four (24) hour basis. This public telephone shall be located in a prominent location in the exchange and shall be lighted at night. The utility may establish additional public telephone service at other locations. The commission may direct additional public telephone service upon finding that public convenience would be served.

Section 12. Discontinuance of Service. (1) When a telephone utility is notified in writing by the commission, federal or state law enforcement agency, Attorney General of Kentucky, a Commonwealth's attorney, or a county attorney acting within the agency or official's jurisdiction, that any facility furnished by it is being used or will be used for transmitting or receiving gambling information, that utility shall discontinue or refuse, to lease, furnish, or maintain such facility, after reasonable notice to the subscriber. No damages, penalty or forfeiture, civil or criminal, shall be recovered from any telephone utility for any act done in compliance with any notice received from the commission or law enforcement agency.
(2) Nothing in this section shall be deemed to prejudice the right of any person affected by this regulation to secure an appropriate judicial determination that such facility should not be discontinued or removed, or should be restored.
(3) Nothing in this regulation shall be construed to prevent transmission of information for use in legitimate news reporting of sporting events or contests by recognized news media.

Section 13. Customer Billing. Bills to customers shall be rendered regularly and shall contain clear listings of all charges. The utility shall comply with reasonable customer requests for an itemized statement of charges. All toll charges shall be itemized separately.

Section 14. Adequacy of Service. (1) Each utility shall employ recognized engineering and administrative procedures to determine adequacy of service being provided to the customer.
(2) Traffic studies shall be made and records maintained to the extent and frequency necessary to determine that sufficient equipment and an adequate operating force are provided at all times including the busy hour, busy season.
(3) Each telephone utility shall provide for operator assistance on a twenty-four (24) hour per day basis.
(4) Each utility shall employ adequate procedures for assignment of facilities. The assignment record shall be kept current and checked periodically to determine if adjustments are necessary to maintain proper balance in all groups.

Section 15. Dial Service Requirements. Sufficient central office capacity and equipment shall be provided to meet the following minimum requirements during the busy season:
(1) Dial tone within three (3) seconds on at least ninety-five (95) percent of telephone calls.
(2) No more than five (5) percent of dialed, local interoffice calls shall experience blockage due to an equipment or all-trunk busy condition.
(3) Sufficient toll connecting or interexchange trunks shall be provided by each utility in its service area so that no more than three (3) percent of calls offered to the telephone final trunk group will encounter an all-trunks busy condition.
(4) Each utility shall employ appropriate procedures to determine adequacy of central office equipment and local interoffice and EAS trunks.

Section 16. Grounded Circuits. The utility shall not construct any telephone lines less than a two (2) wire circuit or equivalent.

Section 17. Transmission Requirements. Telephone utilities shall furnish and maintain adequate plant equipment and facilities to provide satisfactory transmission of communications between customers in their service areas. Transmission shall be at adequate volume levels and free of excessive distortion. Levels of noise and crosstalk shall not impair communications.

Section 18. Minimum Transmission Objectives. (1) Transmission objectives set forth in this regulation are based upon use of standard Federal Communications Commission registered telephone sets connected to a minimum forty-eight (48) volt dial central office and measured at a frequency of 1,000 cycles.
(2) Access lines shall have a loop resistance not exceeding the operating design of associated central office equipment.
(3) Telephone utilities shall, as nearly as possible, design access line loops having a transmission loss of no more than eight and

five-tenths (8.5) decibels measured to the network interface.

(4) Overall transmission loss, including terminating equipment, on local interoffice trunks shall be no more than seven (7) decibels.

(5) Whenever feasible, overall transmission loss, including terminating equipment, on intertoll trunks and terminating links shall be no more than five (5) decibels.

Section 19. Provisions for Testing. Each telephone utility shall provide test facilities to determine the operating and transmission capabilities of circuit and switching equipment.

Section 20. Selective Ringing. Each telephone utility shall provide full selective ringing to all subscribers.

Section 21. Traffic Rules. (1) Suitable practices shall be adopted by each telephone utility that furnishes operator services concerning operating methods to be employed by operators with the objective of providing efficient and agreeable service to customers. The utility shall comply with provisions of the Communications Act of 1934 in maintaining secrecy of communications.

(2) When a utility is notified by a customer that he has reached a wrong number on a call provided by that utility, the customer shall be given credit on his bill when the claim has been substantiated.

Section 22. Answering Time. (1) Utilities that furnish operator services shall provide adequate personnel for operator assisted calls and operator number identification (ONI) to meet the service objective so that the average speed of answering time shall not exceed eight (8) seconds.

(2) The service objective for calls to the utility's repair service shall be an average speed of answering time no greater than twenty (20) seconds.

Section 23. Maintenance of Plant and Equipment. Each telephone utility shall have a written preventative maintenance program aimed at achieving efficient operation of its system to render safe, adequate and continuous service at all times. The written program shall include a plan depicting the types and frequency of preventive maintenance performed on outside plant, central office equipment, vehicles and buildings. The utility shall maintain records descriptive of its preventative maintenance program indicating both accomplished and planned work, carried out on a routine periodic basis.

Section 24. Emergency Operations. (1) Each telephone utility shall have a written plan to meet service emergencies resulting from failures of power service, sudden and prolonged increase in traffic, fire, storm, or acts of God. Each telephone utility shall train employees in procedure to be followed in an emergency.

(2) All central offices and toll centers shall adequately provide for emergency power. Each central and/or toll office shall have a minimum of four (4) hours of battery reserve. In exchanges exceeding 5,000 lines and in toll offices, a permanent auxiliary power unit shall be installed. In offices without installed emergency power facilities there shall be a mobile power unit available of suitable capacity which can be delivered and connected within two (2) hours, or one-half (1/2) the battery reserve time, whichever is greater.

Section 25. Service Interruption. (1) Each utility shall have arrangements to receive customer trouble reports twenty-four (24) hours per day and to clear trouble as quickly as possible during regular working hours, consistent with the bona fide needs of the customer and personal safety of utility personnel.

(2) Each telephone utility shall maintain an accurate record of trouble reports made by its customers. This record shall include appropriate customer identification; service affected; time, date and nature of report; action taken to clear trouble or satisfy complaint; and date and time of trouble clearance or other disposition. This record shall be available to the commission or its authorized representatives upon request, and shall be retained for at least one (1) year.

(3) The service objective shall be to clear eighty-five (85) percent of out-of-service troubles within twenty-four (24) hours of the report received by the utility, unless the customer specifically requests a later time.

(4) The service objective of the utility shall be to maintain service so that the average rate of customer trouble reports in an exchange is no greater than eight (8) per 100 access lines per month.

(5) When a customer's access line is reported to be out of order and remains out of order in excess of twenty-four (24) consecutive hours, the utility shall refund to the customer upon request the pro rata part of that month's charges for the period of days during which the telephone was out of order. This refund may be accomplished by a credit on a subsequent bill for telephone service.

Section 26. Construction Work near Utility Facilities. Telephone utilities shall, when requested, furnish to contractors appropriate information concerning location of underground conduit, cable, and other equipment in order to prevent any interruption of service to telephone customers. Nothing in this regulation is intended to affect the responsibility, liability or legal rights of any party under applicable laws or statutes.

Section 27. Customer Service. A customer may be required to take service of a different type or insufficient quantity if the use of service interferes unreasonably with necessary service of other customers.

Section 28. Deviations from Rules. In special cases for good cause shown the commission may permit deviations from these rules.

GEORGE EDWARD OVERBEY, JR., Chairman
JIM THORNBERRY, Commissioner
THEODORE COLLEY, Secretary

APPROVED BY AGENCY: January 11, 1991

FILED WITH LRC: January 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 26, 1991 at 9 a.m. at the Public Service Commission's Office, Hearing Room No. 2, 677 Commanche Trail, Frankfort, Kentucky 40601. Individuals interested in attending this hearing

shall notify this agency in writing by February 21, 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: Lee M. MacCracken, Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Lee M. MacCracken

(1) Type and number of entities affected: This regulation affects in varying degrees all of the 45 telephone utilities under the jurisdiction of the commission.

(a) Direct and indirect costs or savings to those affected: There is no discernible fiscal impact since the utilities are already operating under the 1990 editions of each code. The regulation as amended will conform to current industry practice.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None have been identified.

(b) Reporting and paperwork requirements: There are no additional reports or paperwork requirements.

(2) Effects on the promulgating administrative body: There will be no effects on the agency since monitoring compliance with the regulation will not be changed.

(a) Direct and indirect costs or savings: There will be no fiscal impact on the agency.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: There are none that affect the agency.

(3) Assessment of anticipated effect on state and local revenues: There is no impact on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Utilities affected are currently operating under the updated 1990 edition of each code. The input of those affected has been requested and received; adoption of the updated 1990 editions reflects practices generally accepted in the industry.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: These changes do not conflict with current laws and regulations.

(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: No additional comments.

TIERING: Was tiering applied? No. This is not a new regulation. Tiering was not necessary as the amendments simply reflect the incorporation by reference of updated versions of codes previously incorporated; add addresses; and add the address of the Public Service Commission to bring the sections into compliance with KRS 13A.224(3)(c) (Sections 3(1) and 3(2)).

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:006. Technical requirements; AFDC.

RELATES TO: KRS 205.010, 205.200(2), (3), 45 CFR 205.52, 205.10, 232.11-12, 232.40-48, 233.10, 233.40, 233.50, 45 CFR 233.90, 233.100, 250

STATUTORY AUTHORITY: KRS 194.050, 205.200(2), (3)

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children (AFDC) in accordance with Title IV-A of the Social Security Act. KRS 205.200(2) requires that the conditions of eligibility to receive AFDC money grants be prescribed by regulations in conformity with the Social Security Act and federal regulations. This regulation sets forth the technical requirements of residence, deprivation, living with a relative, age, one (1) category of assistance, work registration, job opportunities and basic skills (JOBS) program participation, cooperation in child support enforcement activities and potential entitlement for other programs for eligibility for AFDC.

Section 1. Definitions. (1) "Assessment" means the ongoing evaluation of an individual's educational and vocational potential.

(2) "Barriers" are any hardships the individual shall overcome to participate in education, training or employment.

(3) "Case manager" means the Department for Social Insurance (DSI) individual who:

(a) Determines ongoing AFDC or medical assistance (MA) or food stamp (FS) eligibility and benefit levels for all case action in the household of a JOBS participant;

(b) Aids the JOBS participant by brokering services for the participant;

(c) Identifies and resolves barriers to the extent possible; and

(d) Delivers JOBS related services to the participant.

(4) "Conciliation" is a process in which participation problems in the JOBS program can be resolved.

(5) "JOBS" means a program which assists recipients of AFDC in obtaining the necessary education and training that will lead to gainful employment and self-support.

(6) "Target population" means that group composed of each individual who:

(a) Is receiving AFDC, and who has received AFDC for any thirty-six (36) of the sixty (60) months immediately preceding the most recent month for which application has been made;

(b) Makes application for AFDC and has received AFDC for any thirty-six (36) of the

sixty (60) months immediately preceding the most recent month for which application has been made;

(c) Is a custodial parent under the age of twenty-four (24) who:

1. Has not completed a high school education and, at the time of application for AFDC, is not enrolled in high school or a high school equivalency course of instruction; or

2. Had little or no work experience in the preceding year; or

(d) Is a member of a family in which the youngest child is within two (2) years of being ineligible for AFDC because of age.

Section 2. Residence and Citizenship. (1) Residence. A resident is anyone who [is]:

(a) Is living in the state;

(b) Entered the state with a job commitment or seeking employment; and

(c) Is not receiving AFDC benefits from another state.

(2) Citizenship. AFDC shall be provided only to:

(a) Citizens;

(b) Aliens lawfully admitted for permanent residence; or

(c) Aliens otherwise permanently residing in the United States under color of law.

Section 3. Deprivation. (1) To be eligible for AFDC, a child shall be in need and shall be deprived of parental support of a natural or adoptive parent or care due to:

(a) Death;

(b) Continued absence from the home;

(c) Physical or mental incapacity; or

(d) Effective October 1, 1990, unemployment.

(2) A married child living with his spouse in the home of his parents is not deprived of parental support or care.

(3) A married child living in the home of his parents but divorced or legally separated from his spouse is deprived of parental support if he is dependent on the parent and a parent is:

(a) Dead;

(b) Incapacitated;

(c) Unemployed; or

(d) Continually absent from the home.

(4) Continued absence from the home.

(a) To be eligible for AFDC, a needy child shall be physically separated from the parent and:

1. The nature of the absence of the parent interrupts or terminates the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and

2. The known or indefinite duration of absence precludes counting on the parent's performance of his function in planning for the present support or care of the child.

(b) Absence may be voluntary or involuntary.

1. Voluntary absence includes:

a. Divorce;

b. Legal separation;

c. Marriage annulment;

d. Desertion of thirty (30) days or more;

e. Forced separation of seven (7) days or more; or

f. Birth out-of-wedlock.

2. Involuntary absence includes:

a. Commitment to a penal institution for thirty (30) days or more;

b. Long-term hospitalization;

c. Deportation; or

d. Single parent adoption.

(c) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

(5) Incapacity.

(a) All determinations regarding whether a child has been deprived of parental support or care by reason of the physical or mental incapacity of a natural or adoptive parent shall be in conformance with federal regulations [found at 45 CFR §233.90(c)(1)(iv)] and the criteria set forth in this subsection.

(b) Each determination shall be based on a full consideration and assessment of all medical, social, and economic factors involving a particular claimant.

(c) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in a parent's inability to support or care for the child.

1. Incapacity exists in each case when the following criteria are met:

a. It is medically determined that one (1) parent has a physical or mental defect, illness or impairment which was:

(i) Present at the time of application; and

(ii) Which has continued or is expected to last for a period of at least thirty (30) calendar days. This may include a period in which the claimant is undergoing planned diagnostic studies or evaluation of rehabilitation potential; and

b. It is determined by nonmedical evaluation that such defect, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

2. Factors to be considered in making the medical determination shall include:

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

b. Competent medical testimony relevant to:

(i) Whether a physical or mental defect, illness or impairment exists;

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

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

3. Factors to be considered in making the nonmedical evaluation shall include:

a. The claimant's:

(i) Age;

(ii) Employment history;

(iii) Vocational training;

(iv) Educational background; and

(v) Subjective complaints regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

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

4. In determining the extent and accessibility of available employment opportunities, the

limited employment opportunities of handicapped individuals shall be taken into account; and

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

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

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

5. A written report shall be made of the determination under this subsection.

6. Each claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing as provided in 904 KAR 2:055.

(6) Unemployment. The determination that a child is deprived of parental support due to the unemployment of a parent shall be based on the determination that the principal wage earner meets the criteria of unemployment and has a prior labor market attachment.

(a) Principal wage earner (PWE). The PWE is the parent who earned the greater amount of income in the twenty-four (24) months immediately preceding the month of application.

1. If the agency is unable to secure primary evidence of earnings to determine which parent is the PWE, the agency shall designate the PWE using the best evidence available.

2. If both parents earned identical amounts of income, or no income, the agency shall designate the parent meeting the criteria of unemployment, as specified in subsection (4)(b) of this section.

3. Earnings of each parent shall be considered in determining the PWE regardless of when their relationship began.

4. PWE designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(b) Unemployment. A parent shall be considered to be unemployed if:

1. Employed less than 100 hours in a calendar month; or

2. Employment exceeds 100 hours in a particular month, but the work is intermittent and the excess is of a temporary nature. This would be evidenced by the fact that the parent was under the 100 hour standard in the prior two (2) months and is expected to be under the 100 hour standard in the following month.

(c) Prior labor market attachment (PLMA).

1. PLMA is met if the parent:

a. Earned not less than fifty (50) dollars during each of six (6) or more calendar quarters ending on March 31, June 30, September 30 or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of the application;

b. Within twelve (12) months prior to application, received unemployment compensation; or

c. Is currently receiving unemployment compensation or if potentially eligible, has made application for unemployment insurance benefits.

2. In determining whether or not criteria in subsection (4)(c)1a of this section is met, the following shall be taken into consideration:

a. Participation in CWEP or WIN prior to October 1, 1990, and in JOBS after October 1, 1990, [a work or training program] shall be considered as earning an income in determining PLMA.

b. Full-time attendance, as defined by the school or institution, in educational activities may be substituted for two (2) of the six (6) calendar quarters.

c. Gross income from self-employment and farming qualify as earned income in determining prior labor market attachment. The self-employed individual does not have to realize a profit to meet this requirement.

(d) Restrictions. Unemployment shall not exist if the PWE:

1. Is on strike;

2. Is temporarily unemployed:

a. Due to weather conditions or lack of work;

b. If there is a job to return to; and

c. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

3. Is unavailable for full-time employment;

4. Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

5. Has not met the criteria of unemployment for at least thirty (30) days;

6. Has not applied for unemployment benefits, if potentially eligible;

7. Is not:

a. Registered for work under Section 8 of this regulation; or

b. Subject to JOBS, under Section 9 of this regulation; or

8. Has refused a bona fine offer of employment or training for employment without good cause in the thirty (30) days prior to AFDC-UP eligibility or during the course of receipt of AFDC-UP benefits. Good cause exists if criteria specified in 904 KAR 2:016, Section 4(4)(a)1, 2, 3, or 4 is met.

Section 4. Living with a Specified Relative. To be eligible for AFDC a needy child shall be living in the home of a relative as follows:

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

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

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

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

(b) Legal documents such as:

1. Hospital records;

2. Juvenile court records;

3. Wills; and

4. Other court records which clearly indicate the relationship of the alleged parent or relative; or

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

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

1. School records;

2. Bible records;

3. Immigration records;

4. Naturalization records;

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

(e) Rebuttal of paternity.

1. Effective April 1, 1987, in cases in which the parent or, in the absence of the parent, the caretaker relative alleges the evidence present in paragraphs (a) or (b) of this subsection is erroneous and provides substantiation of the erroneous information, the parent or caretaker relative shall provide a sworn statement or affidavit acknowledging the erroneous information and containing the correct information on the actual alleged parent.

2. Presence of the sworn statement or affidavit will serve as rebuttal to the evidence present in paragraphs (a) or (b) of this subsection and a determination of paternity will not be acknowledged.

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

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

(6) If the parent continues to exercise control over the child, a child is considered as living in the home even when temporarily absent for:

(a) Medical care;
(b) Attendance at boarding school;
(c) College or vocational school;
(d) Emergency foster care; or
(e) Short visits with friends or relatives.

Section 5. Age and School Attendance. (1) A child may be eligible for AFDC from birth to age eighteen (18).

(2) A child may be eligible to age nineteen (19) if:

(a) A full-time student in a secondary school; or

(b) The equivalent level of vocational or technical training; and

(c) Expected to complete the program prior to or during the month of their 19th birthday.

(3) Full- and part-time is defined in 904 KAR 2:016, standards for need and amount; AFDC.

(4) Unless he has indicated an intention not to reenter school, a child is considered in regular attendance in months in which he is not attending because of:

(a) Official school or training program vacation;
(b) Illness;
(c) Convalescence; or
(d) Family emergency.

Section 6. One Category of Assistance. (1) A child or adult relative shall not be eligible for AFDC if receiving supplemental security income (SSI).

(2) If a child who receive SSI meets the AFDC requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for AFDC if all other eligibility factors are met.

Section 7. Strikers. (1) A family shall be ineligible for benefits for any month in which the natural or adoptive parent, with whom the child is living is, on the last day of such month, participating in a strike; and

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

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

Section 8. Work Registration. (1) In a case based on the deprivation of unemployment, the PWE shall register for work with the DES if:

(a) He resides in a non-JOBS county; or

(b) He resides in a JOBS county and is exempt from participation as specified in Section 9(1)(e) of this regulation.

(2) Failure of the PWE to register for work shall <u>result in removal of the needs of the sanctioned individual and the second parent, unless the second parent has volunteered or is participating in JOBS</u> [cause the case to be ineligible].

Section 9. Job Opportunities and Basic Skills (JOBS) Training Program. (1) Exemptions. Effective October 1, 1990, all AFDC recipients are required to participate in the JOBS program if the program is available in the county of residence unless the recipient:

(a) Is a child who:

1. Is under age sixteen (16); or

2. Attends, full time, an elementary secondary, vocational or technical school (unless he was enrolled in school through the JOBS program);

(b) Is ill and the illness or injury is serious enough to temporarily prevent entry into employment or training;

(c) Is incapacitated to the extent that the physical or mental impairment would prevent the recipient from participating in the JOBS program. This may include a period of recuperation after child birth if prescribed by a woman's physician;

(d) Is sixty (60) years old or older;

(e) Resides in a county which offers the JOBS program but in a location in which travel time to the JOBS activity would exceed two (2) hours round trip by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility;

(f) Is needed in the home because another member of the household requires the individual's presence due to illness or incapacity;

(g) Is working at least thirty (30) hours per week;

(h) Is pregnant and the child is expected to be born within the following six (6) month period;

(i) Is the parent or other relative who is personally providing care for a child under age three (3), except as specified in subsection (5)(c) of this section;

(j) Is a full-time VISTA volunteer.

(2) Volunteers. All persons in active JOBS counties who are exempt as specified in

subsection (1) of this section may volunteer to participate in the JOBS program.

(a) The DSI shall give first priority for JOBS services to volunteers within the target population to be served.

(b) A volunteer who is exempt, as specified in subsection (1) of this section and who stops participating without good cause, shall lose priority status for JOBS services if he volunteers at a later time.

(c) A volunteer who is not exempt and who stops participating without good cause shall be subject to sanctions, as specified in subsection (10) of this section.

(3) Components. All JOBS counties shall offer the following services and activities:

(a) Education is provided:

1. Below the postsecondary level:

a. High school or equivalent;

b. Basic or remedial education; and

c. English as a second language; or

2. At the postsecondary level if:

a. The occupational assessment indicates that the participant has the aptitude to perform a specific job for which this education and training is required;

b. The participant has or is capable of achieving the basic literacy skills required by the occupation; and

c. Jobs are available in the specific occupation for which education and training is needed.

(b) Job skills training which includes vocational training for a participant in technical job skills and equivalent knowledge and abilities in a specific occupational area.

(c) Job readiness activities that help prepare participants for work by familiarizing them with workplace expectations, attitudes and appropriate behavior.

(d) Job development and job placement activities for soliciting public and private employers' job openings, marketing participants, and securing job interviews for participants.

(4) Optional components. All JOBS counties shall offer job search, which provides group and individual assistance and training with job-seeking activities, and at least one (1) of the following components:

(a) On-the-job training in which a JOBS participant is hired by a private or public employer and receives job training or skills essential to the full and adequate performance of that job;

(b) Community work experience program which provides unpaid work experience and training to assist participants to move promptly into regular public or private employment.

(c) Work supplementation in which JOBS [AFDC] funds are used to develop and subsidize jobs for AFDC recipients. A [portion of the] participant's AFDC grant shall be reduced and that portion paid to the employer instead of to the participant to subsidize the individual's wages. This component shall be implemented effective January 1, 1991.

(5) JOBS participation requirements.

(a) Assessment. When an AFDC recipient has been identified as a JOBS participant, the individual shall be referred to a JOBS case manager. The case manager shall make an assessment of the individual's employability. The assessment shall include consideration of basic skills, work skills, occupational skills, and barriers. The assessment shall be based on:

1. Education, child care and other supportive service needs;

2. The individual's proficiencies, skills deficiencies, and prior work experience;

3. The needs of the family of the participant;

4. Any other relevant factors.

(b) Employability plan. Based on the findings of the assessment, the agency and participant shall jointly develop an employability plan. This plan shall contain:

1. An employment goal for the participant;

2. Services to be provided by the agency (including child care);

3. JOBS activities to be undertaken to achieve the employment goal;

4. Other needs of the family.

(c) Special participation requirements for education.

1. An AFDC parent under age twenty (20) who resides in a JOBS county shall be required to participate in educational activities if:

a. The parent is not otherwise exempt;

b. The parent lacks a high school diploma or has basic skills in reading or math below the 8.9 grade level.

2. For purposes of this requirement, the exemption contained at subsection (1)(i) of this section shall not qualify the participant for exemption from JOBS educational activities.

3. The agency may require a parent aged eighteen (18) or nineteen (19) to participate in work or training activities instead of education if:

a. The parent fails to make good progress in successfully completing educational activities; or

b. Prior to any assignment of the individual to educational activities it is determined, based on an educational assessment and the employment goal established in the individual's employability plan, that participation in educational activities is inappropriate for the parent.

(d) Participation for parents with children under age six (6). Participants with children under age six (6) who are not required to participate in education (as specified in subsection (5)(c) of this section) shall not be required to participate in the JOBS program for more than twenty (20) hours per week.

(6) Self-initiated JOBS activities. Self-initiated JOBS activities refer to approved activities of individuals who of their own accord began education or training activities. These individuals shall be in good standing at an institution of higher education or school or other entity offering a course of vocational or technical training. Activity below the postsecondary level shall be included if it is determined to be appropriate for the participant's employability plan. Both exempt and nonexempt individuals may be approved for self-initiated education or training for their JOBS activity. The participant shall be attending:

(a) At least half time, as defined by the institution;

(b) A JTPA-funded program, if in training;

(c) A public source or private institution that is licensed by the Kentucky Board for Proprietary Education or recognized by the appropriate regulatory agency or licensing body for the state in which the training is located; or

(d) Other education or training which would

otherwise be an approved JOBS activity, for example:

1. GED;
2. Literacy;
3. Other approved education attended less than half time.

(7) Good and satisfactory progress.

(a) Each participant in an education or training component shall meet good and satisfactory progress requirements. Good and satisfactory progress criteria for all JOBS educational activities and approved self-initiated education is established by the educational institution. Good and satisfactory progress shall be measured and reported to the DSI at the following intervals:

1. Literacy, adult basic education, or general educational development. Good and satisfactory progress is measured at the end of seventy-five (75) hours or the 12th month of instruction, whichever comes first.

2. High school. Good and satisfactory progress shall be measured at the end of each semester or quarter.

3. Technical. Good and satisfactory progress shall be measured at regularly scheduled intervals, as defined by the institution.

4. Proprietary school. Good and satisfactory progress shall be measured at the end of each regularly scheduled grading period as defined by the institution, never to exceed a twelve (12) month period.

5. College. Good and satisfactory progress shall be measured at the end of a semester or quarter.

6. DES components. Good and satisfactory progress shall be measured on a monthly basis.

(8) Conciliation. A conciliatory meeting shall be conducted in the following instances:

(a) At the request of a JOBS participant;

(b) At the request of a component provider; or

(c) When a situation is identified which could result in a sanction (as specified in subsection (10) of this section).

(d) The DSI, the DES, or both agencies jointly shall conduct the conciliatory meetings. During the meetings, the agency shall determine if additional services are needed to assist with JOBS participation. Participation shall be monitored for thirty (30) days following the initial meeting to ensure that the dispute has been resolved. The thirty (30) day period may be extended for an additional thirty (30) days, if necessary.

(e) At the conclusion of the conciliation period, the participant shall be notified in writing of the results of the conciliation.

(9) Good cause.

(a) Good cause for noncompliance in the JOBS program or refusal to accept employment shall be found if:

1. The participant is personally providing care for a child under age six (6) and employment or JOBS participation would require the individual to work more than twenty (20) hours per week;

2. Necessary child care is not available;

3. Employment would result in a net loss of cash income;

4. The individual is unable to engage in employment or training for mental or physical reasons including participation in a drug and alcohol rehabilitation program;

5. Unavailability of transportation (including unavailability due to costs which exceed the reimbursement) with no readily accessible alternative means of transportation available;

6. Travel time to the work site or JOBS component site exceeds two (2) hours round trip daily;

7. Illness of another household member requiring the presence of the participant;

8. The participant is temporarily incarcerated;

9. Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin or political beliefs occurs;

10. Work demands or conditions render continued employment unreasonable. Examples are:

a. Consistently not being paid on schedule; or

b. The presence of a risk to the individual's health or safety;

11. Wage rates are decreased subsequent to acceptance of employment;

12. The participant accepts a better job which, because of circumstances beyond the control of the recipient, does not materialize;

13. A household emergency occurs, such as:

a. Death of a member of the immediate family;

b. Entry into a spouse abuse center;

c. Natural disasters;

d. Court appearance;

e. Victim of crime; or

f. Flooded basement; or

14. The participant receives temporary military assignment.

(b) The duration of good cause criteria may vary according to individual circumstances.

(10) Sanctions.

(a) When an AFDC recipient fails to comply with the requirements of the JOBS program, he shall be subject to JOBS and AFDC sanctions. Failure to comply shall be found when the participant:

1. Fails without good cause to participate in the required interview, assessment, and employability plan activities;

2. Fails without good cause to participate in the program;

3. Refuses without good cause to accept employment; or

4. Terminates employment or reduces earnings without good cause.

(b) Persons who have failed to comply without good cause shall be sanctioned, as follows:

1. The participant is excluded from JOBS activities and services;

a. For the first failure to comply, until the failure to comply ceases;

b. For the second failure to comply, until the failure to comply ceases, or three (3) months, whichever is longer; and

c. For any subsequent failure to comply, until the failure to comply ceases, or six (6) months, whichever is longer.

2. In determining the amount of the AFDC grant, the agency shall not take into account the needs of the sanctioned individual, beginning with the first administratively feasible month after JOBS sanctions begin. In a case based on unemployment, the agency shall not take into account the needs of the sanctioned individual <u>and</u> [or] the second parent, unless the second parent is participating in JOBS.

3. A sanctioned individual shall participate in a designated activity for two (2) weeks before the failure to comply is considered to have ceased. At that time, the sanctions shall be terminated.

[Section 10. Jobs Through Employment and Training (JET). (1) Effective June 1, 1989, unless exempt from work registration, an individual who has applied for or is receiving AFDC shall be ineligible for benefits if he refuses to participate in the JET Program without good cause. The JET program shall close effective September 30, 1990. During the month of October 1990, JET participants in an education or skills training component shall continue their participation as a self-initiated participant in the JOBS program.]

[(2) Individuals exempt from JET are as follows:]

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

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

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

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

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

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

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

[1. Employment by the caretaker relative of less than thirty (30) hours per week;]

[2. Less than full-time school attendance (or for college attendance, enrollment) by the caretaker relative;]

[3. Less than full-time school attendance (or for college attendance, enrollment) and less than fifteen (15) hours per week employment by the caretaker relative;]

[4. Attendance by the child under age six (6) in nursery school;]

[5. Additional brief and infrequent absences include:]

[a. Visits by the child under age six (6) with relatives, friends, the absent parent, neighbors, etc.;]

[b. Visits by the caretaker relative with relatives, friends, neighbors, etc.;]

[c. Routine shopping and errands;]

[d. Doctor's visits; and]

[e. Short-term hospitalization (less than thirty (30) days.]

[6. If a parent or other caretaker relative is absent from the child for reasons other than these listed, the absence is not considered brief and infrequent.]

Section 10. [11.] Cooperation in Child Support Enforcement Activities. (1) Inclusion of a specified relative in the AFDC budget is dependent upon his cooperation in child support activities and refusal, except for "good cause," results in ineligibility of the relative with AFDC payments on behalf of the child made to a protective payee.

(2) If, after exclusion from the grant for failure to cooperate, the individual states that he is willing to cooperate and wishes to be reinstated, a supplemental application must be completed. If eligibility criteria are met, the individual will be added to the grant effective with the month of application and the protective payee will be removed.

(3) The Cabinet for Human Resources shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate.

(4) The applicant or recipient shall be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:

(a) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the child; or

(b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself to such an extent that it would reduce his capacity to care for the child(ren) adequately; or

(c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction; and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(e) The applicant or recipient is being assisted by a public or licensed private social agency to resolve whether to keep the child or release him for adoption and discussion has not gone on for more than three (3) months and the cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

(5) Specific requirements in determining the existence of good cause and the time limits for providing substantiation of claims are made.

Section 11. [12.] Potential Entitlement for other Programs. (1) All applicants or recipients shall apply for any benefit [or benefits] if potential entitlement exists.

(2) Failure to apply results in ineligibility for AFDC.

Section 12. [13.] Furnishing of Social Security Account Numbers. All applicants or recipients shall furnish social security account numbers.

Section 13. [14.] Assignment of Rights to Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any child support owed for the child not to exceed the amount of AFDC payments made to the recipient.

Section 14. [15.] Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any medical support owed for the child not to exceed the amount of medical assistance payments made on behalf of the recipient.

Section 15. [16.] Material Incorporated by Reference. (1) Forms necessary for participation in the JOBS program are being incorporated effective October 1, 1990.

(2) Material incorporated by reference may be

inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: December 19, 1990
FILED WITH LRC: December 27, 1990 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 21, 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 February 16, 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: It is anticipated that by the end of State Fiscal Year 1991 we will have a maximum of 9,900 families affected by the AFDC-UP Program. However, it is not possible to project how many of these potential applicants will be affected by the change in the law.
(a) Direct and indirect costs or savings to those affected:
1. First year: Since we cannot identify the number of families affected, we cannot anticipate savings to this group.
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: Since we cannot identify the number of families affected, we cannot anticipate savings to the promulgating administrative body.
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: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Federal and state statutes mandate that the adminstrative process for AFDC be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 607(b)(1)(B)(v) and 42 USC 607(d)(1)(C).
2. State compliance standards. The state compliance standards are the same as the federal minimum requirements.
3. Minimum or uniform standards contained in the federal mandate. 42 USC 607(b)(1)(B) is amended to add provision (v) which states that the needs of the sanctioned individual and those of the second parent (unless participating in the Job Opportunities and Basic Skills (JOBS) Program) will be removed from the AFDC case for failure to register for work in a non-JOBS area. This provision became effective retroactive to October 1, 1990.
42 USC 607(d)(1) is amended to add provision (C) which states that participation in the Community Work Experience Program (CWEP) and Work Incentive (WIN) Program prior to October 1, 1990, qualify as quarters of work in the AFDC-UP program. This provision became effective with passage in November 1990.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:015. Supplemental programs for the aged, blind and disabled.

RELATES TO: KRS 205.245, 20 CFR 416.2095, 20 CFR 416.2096
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources is responsible under Title XVI of the Social Security Act as amended by Public Law 92-603 to administer a state funded program of supplementation to all December, 1973, recipients of aid to the aged, blind and disabled, referred to as AABD, disadvantaged by the implementation of the Supplemental Security Income Program, referred to as SSI. KRS 205.245 provides not only for the mandatory supplementation program but also for supplementation to other needy aged, blind and disabled persons. The cabinet shall operate a supplement program for certified personal care homes (PCH) which accept state supplementation recipients and have a thirty-five (35) percent mentally ill or mentally retarded (MI or MR) population in all of the PCH's occupied licensed personal care beds. Personal care services are described in 902 KAR 20:036. This regulation

sets forth the provisions of the supplementation program.

Section 1. Mandatory State Supplementation. Mandatory state supplementation payments shall be equal to the difference between the AABD payment for the month of December, 1973, plus any other income available to the recipient as of that month and the total of the SSI payment and other income. Also included are those former aged, blind or disabled recipients ineligible for SSI due to income but whose special needs entitled them to an AABD payment as of December, 1973. Mandatory payments shall continue until the needs of the recipient as recognized in December, 1973, have decreased or income has increased to the December level.

(1) The mandatory payment is increased only when income as recognized in December, 1973, decreases, the SSI payment is reduced but the recipient's circumstances are unchanged, or the standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(2) In cases of man and wife, living together, income changes after September, 1974, will result in increased mandatory payment only if total income of the couple is less than December, 1973, total income.

Section 2. Optional State Supplementation. Optional state supplementation is available to those persons meeting technical requirements and resource limitations of the aged, blind or disabled medically needy program as contained in 907 KAR 1:011 and 907 KAR 1:004 (except when specified in 904 KAR 2:015) who require special living arrangements and who have insufficient income to meet their need for care. Special living arrangements include residence in a personal care home as defined in 902 KAR 20:036 or family care home as defined in 902 KAR 20:041 or situations in which a caretaker must be hired to provide care other than room and board. A supplemental payment is not made to or on behalf of an otherwise eligible individual when the caretaker service is provided by the spouse, parent (of an adult disabled child or a minor child), or adult child (of an aged or disabled parent) who is living with the otherwise eligible individual. When this circumstance exists and a person living outside the home is hired to provide caretaker services, the supplemental payment may be made. Application for SSI, if potential eligibility exists, is mandatory.

Section 3. Resources Considerations. In determining countable resources and the effect of resources on eligibility, the following policies are applied.

(1) Consider resources according to policies for the medically needy as contained in 907 KAR 1:004, except as noted in subsection (2) of this section.

(2) The upper limit for resources for an individual and for a couple is set at $1,700 and $2,550, respectively, effective January 1, 1986; at $1,800 and $2,700, respectively, effective January 1, 1987; at $1,900 and $2,850, respectively, effective January 1, 1988; and at $2,000 and $3,000, respectively, effective January 1, 1989.

(3) Resources determined in accordance with subsection (1) of this section to be in excess of excluded amounts must be considered countable resources when determining whether the individual or couple exceeds the upper limits specified in subsection (2) of this section. If resources exceed the upper limits, the individual or couple is ineligible.

Section 4. Income Considerations. Establish the amount of income according to policies for the medically needy in 907 KAR 1:004. In determining the amount of optional supplementation payment, total net income of the applicant or recipient, or applicant or recipient and spouse, including any payments made to a third party in behalf of an applicant or recipient, is deducted from the standard of need with the following exceptions:

(1) Income of the ineligible spouse is conserved for the needs of the ineligible, non-SSI spouse or minor dependent children in the amount of one-half (1/2) of the SSI standard for an individual for each person adjusted by deduction of sixty-five (65) dollars and one-half (1/2) of the remainder from monthly earnings of spouse. Income of the eligible individual is not conserved for the needs of the ineligible spouse or minor dependent children. When conserving for the needs of the minor dependent children, income of the children shall be appropriately considered so that the amount conserved does not exceed the allowable amount. When the eligible individual and spouse each have earnings, the earnings shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(2) If one (1) member of a couple is institutionalized and the SSI spouse maintains a home, income in the amount of the SSI standard for one (1) is conserved for the spouse.

Section 5. Standard of Need. (1) The standard, based on living arrangement, from which income as computed in Section 4 of this regulation is deducted to determine the amount of optional payment is as follows:

(a) Personal care home: not less than $690 [655], effective January 1, 1991 [7/90];

(b) Family care home: not less than $510 [484], effective January 1, 1991 [1/1/90];

(c) Caretaker.

1. Single individual, or eligible individual with ineligible spouse (one who is not aged, blind, or disabled): not less than $440 [417], effective January 1, 1991 [1/1/90];

2. Married couple, both eligible (aged, blind, or disabled), with one (1) requiring care: not less than $638 [605], effective January 1, 1991 [1/1/90];

3. Married couple, both eligible and both requiring care: not less than $682 [647], effective January 1, 1991 [1/1/90].

(2) In couple cases, both eligible, the couple's income is combined prior to comparison with the standard of need, and one-half (1/2) of the deficit is payable to each.

(3) The standard includes forty (40) dollars personal needs allowance which shall be retained by the client.

Section 6. Temporary Stay in a Medical Institution. A recipient of optional or mandatory state supplementation shall have continuation of state supplementation benefits during a temporary stay in a hospital,

psychiatric hospital, skilled nursing facility or intermediate care facility.

Section 7. Residency. (1) To be eligible, an applicant or recipient shall be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law. An alien shall have been admitted for permanent residence. The applicant or recipient shall also be a resident of Kentucky. Generally, this means the individual shall be residing in the state for other than a temporary purpose; however, there are exceptions with regard to applicants for or recipients of a state supplementary payment and institutionalized individuals. The residency criteria specified in federal regulations at 42 CFR 435.403 shall be applicable except as specified in Section 6 of this regulation.

(2) Supplemental payments may be made to Kentucky residents residing outside the state only when the individual has been placed in the other state by this state. In these situations, the other requirements for eligibility shown in other sections of this regulation shall be applicable, except that with regard to the requirement shown in Section 6 of this regulation, the licensure shall be in accordance with a similar licensure act of the other state. If there is no similar licensure act in the other state, the payment may be made only if this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131. To be eligible for a supplemental payment while placed out-of-state the individual shall require the level of care provided in the out-of-state placement, there shall be no suitable placement available in Kentucky, and the placement shall be preauthorized by staff of the Department for Social Insurance.

(3) When determining residency, ability of the individual to indicate intent (to become a Kentucky resident) shall be considered if the individual is institutionalized. The individual is considered incapable of indicating intent if:

(a) His I.Q. is forty-nine (49) or less or he has a mental age of seven (7) or less, based on tests acceptable to the department; or

(b) He is judged legally incompetent; or

(c) Medical documentation, or other documentation acceptable to the state, supports a finding that he is incapable of indicating intent.

(4) An individual is institutionalized if he is residing in a facility providing some services other than room and board. Personal care facilities are considered to be institutions.

(5) For any noninstitutionalized individual under age twenty-one (21) whose eligibility for a supplemental payment is based on blindness or disability, his state of residence is Kentucky if he is actually residing in the state.

(6) For any noninstitutionalized individual age twenty-one (21) or over, his state of residence is Kentucky if he is residing in the state and has the intention to remain permanently or for an indefinite period (or, if incapable of indicating intent, is simply residing in the state).

(7) For any institutionalized individual living in Kentucky who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence is Kentucky if:

(a) The state of residence of the individual's parents, or his legal guardian if one has been appointed, is Kentucky; or

(b) The state of residence of the parent applying for the supplemental payment on behalf of the individual is Kentucky, when the other parent lives in another state and there is no appointed legal guardian.

(8) For any institutionalized individual living in Kentucky who became incapable of indicating intent at or after age twenty-one (21), the state of residence is Kentucky if he was living in Kentucky when he became incapable of indicating intent. If this cannot be determined, the state of residence is Kentucky unless he was living in another state when he was first determined to be incapable of indicating intent.

(9) For individuals subject to determinations of residency pursuant to subsections (7) and (8) of this section, the state of residency is Kentucky when the individual is residing in Kentucky, and a determination of residency applying those criteria does not show the individual to be a resident of another state.

(10) For an individual subject to a determination of residency pursuant to subsections (7) and (8) of this section, the state of residence is Kentucky when Kentucky and the state which would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status; i.e., when a similarly situated individual in either state would by written agreement between the states be considered a resident of the state in which he is actually residing.

(11) For other institutionalized individuals (i.e., those individuals who are both age twenty-one (21) or over and capable of indicating intent), the state of residence is Kentucky if the individual is residing in Kentucky with the intention to remain permanently or for an indefinite period.

(12) Except in subsections (3) through (11) of this section, any individual placed by the cabinet in an institution in another state may, with appropriate preauthorization, be considered a resident of Kentucky, and any individual placed in an institution in Kentucky by another state may not be considered a resident of Kentucky.

(13) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky so long as he continues to reside in Kentucky. An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(14) An individual eligible for and receiving a supplemental payment in October, 1979, shall be considered a Kentucky resident through July 4, 1984, even if he does not meet the residency requirements specified in this section, so long as the individual continues to reside in Kentucky and his receipt of supplementary payments has not since October, 1979 been interrupted by a period of ineligibility.

(15) Except in the preceding provisions of this section, a former Kentucky resident who becomes incapable of indicating intent while residing out of this state may be considered a Kentucky resident if he returns to this state

and he has a guardian, parent or spouse residing in this state. This individual may not be considered a Kentucky resident on the basis of this subsection whenever, subsequent to that time, he leaves this state to reside in another state except when the provisions of subsection (11) of this section are met. An individual leaving the state may, however, reestablish Kentucky residency by returning to the state if he has a guardian, parent or spouse residing in this state.

(16) No aged, blind, or disabled person shall be eligible for state supplementation while residing in a personal care home or family care home unless such home is licensed under KRS 216B.010 to 216B.131.

Section 8. Mentally Ill or Mentally Retarded Supplement. Certified PCH may qualify for quarterly supplement payments of fifty (50) cents per diem for each state supplementation recipient in their care as of the first calendar day of each qualifying month. In order to qualify, PCH shall meet the following criteria:

(1) The PCH shall be licensed in accordance with KRS 216B.010 to 216B.131.

(2) The PCH shall care for residents who have a primary or secondary diagnosis of mental retardation (such as mild or moderate, or other ranges of retardation whose needs can be met in a personal care home) or mental illness (excluding such diagnoses as organic brain syndrome, senility, chronic brain syndrome, Alzheimer's). An individual whose medical history includes a previous hospitalization in a psychiatric facility shall meet the criteria of mental illness, regardless of the present diagnosis.

(3) The PCH shall care for a thirty-five (35) MI or MR percent population in all of its occupied licensed PCH beds.

(4) The PCH shall not be eligible for payments during the time it is rated by the Office of Inspector General as "conditional". Rating requirements are specified in KRS 216.550 and 900 KAR 2:030.

(5) The PCH shall have a licensed nurse or certified medication technician (CMT) on duty for at least four (4) hours during the first or second shift. The PCH may not decrease licensed nurse or CMT staffing hours in effect prior to July 1990, as a result of this minimum requirement.

(6) The PCH shall file an application with the Department for Social Insurance (DSI) by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter. Quarters shall begin in January, April, July and October. Once certified, eligibility continues as long as criteria continues to be met.

(7) For state fiscal year (SFY) 1991 implementation only, PCH interested in being certified for the MI or MR supplement shall file a letter of intent with DSI by July 31, 1990. To assure adequate time for the MI or MR training and certification process for both the cabinet and the PCH, the letter of intent shall secure money for the first and second quarters of SFY 1991.

(8) The PCH shall provide DSI with its tax identification number and address annually and with a monthly report of all residents of the PCH (including resident's social security number) who were residents of the PCH on the first day of the month. In order to maintain confidentiality, the PCH shall annotate the monthly listing with a star which indicates a resident has a MI or MR diagnosis and note with a check mark those residents who receive state supplementation but are not mentally ill or mentally retarded. A star and a check mark shall indicate the resident is both MI or MR and a recipient of state supplementation. The monthly report shall be used for certification, payment, and audit purposes. The monthly report shall be postmarked to DSI by the fifth working day of the month. For implementation in SFY 1991, facilities which file a timely letter of intent with DSI shall file the monthly reports for July and August, 1990, on or before August 15, 1990.

(9) The PCH shall notify DSI when its MI or MR percentage goes below thirty-five (35) percent for all personal care residents. Facilities may be randomly audited to verify percentages and payment accuracy.

Section 9. Training. The PCH licensed nurse or CMT shall attend MI or MR training provided through the Department for Mental Health and Mental Retardation Services. Other staff may be trained in order to assure the facility always has at least one (1) certified staff employed for certification purposes.

(1) MI or MR training shall be provided through a one (1) day workshop. Training will cover at least the following:

(a) Importance of proper medication administration.

(b) Side affects and adverse medication reactions especially with regard to psychotropics.

(c) Signs and symptoms of an acute onset of a psychiatric episode.

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bi-polar disorder, mental retardation, etc.

(e) Guidance in the area of supervision versus patient rights for the MI or MR population.

(f) How to provide necessary activities to meet the needs of mentally ill or mentally retarded residents.

(2) Initial training shall include the licensed nurse or CMT and may include the owner or operator. These individuals shall be trained in the quarter during which the application is filed. For implementation in SFY 1991 only, the initial training shall take place in the quarter during which the letter of intent is filed or the following quarter. To assure that a certified staff member is always employed at the facility, a maximum of five (5) may be trained during a year (one (1) additional staff member in each of the quarters following the initial training). If staff turnover results in the loss of the licensed nurse or CMT and five (5) staff have been trained, the PCH shall request in writing to DSI an exemption of the five (5) staff rule. The PCH shall have on staff a licensed nurse or CMT who has received the MI or MR training or is enrolled in the next scheduled MI or MR training workshop at the closest location.

(3) The Department for Mental Health and Mental Retardation Services will provide a certificate to direct care staff who complete the workshop.

(4) DSI shall pay twenty-five (25) dollars for each staff member receiving training up to the

maximum of five (5) staff per year, in accordance with 904 KAR 2:050.

Section 10. MI or MR Certification. The Office of the Inspector General, Division of Licensing and Regulation, shall visit PCH to certify their eligibility to participate in the MI or MR supplement. The PCH's initial MI or MR certification may be separate from the annual survey. However, after the initial MI or MR certification, the certification shall be in effect until the subsequent licensure survey, which can be greater than or less than twelve (12) months.

(1) Written notification to DSI from the PCH shall be postmarked within five (5) working days after staff have completed the training workshop. DSI shall notify the Division of Licensing and Regulation that the facility is ready to be certified.

(2) The Division of Licensing and Regulation shall review records, observe and interview residents and staff during the certification process. The Division of Licensing and Regulation shall review records to assure the following criteria is met:

(a) Certification is on file at the PCH to verify staff training by the Department for Mental Health and Mental Retardation Services.

(b) The PCH's certified staff have trained all other direct care staff through in-service training or orientation regarding the information obtained at the MI or MR training workshop. The PCH shall maintain documentation of attendance at the in-service training for all direct care staff.

(c) Activities are being regularly provided and meet the needs of the residents. When residents do not attend group activities, activities shall also be designed to meet the needs of individual residents, for example, reading or other activity which may be provided on an individual basis. Individualized care plans are not required to meet this criteria.

(d) Medication administration meets licensure requirements and licensed nurse or CMT demonstrates a knowledge of psychotropic drug side affects.

(3) The Division of Licensing and Regulation shall be provided the MI or MR training package to assure survey staff are aware of what has been taught for MI or MR certification purposes.

(4) The Division of Licensing and Regulation shall also review the PCH copy of the listing submitted to DSI prior to performing their record review during the MI or MR certification process.

(5) If thirty-five (35) percent MI or MR population is met on the day of the visit, the PCH shall be deemed to have an ongoing qualifying percentage effective with month of request for certification. This certification shall be in effect until next annual survey which can be greater than or less than twelve (12) months. The PCH is responsible for notifying DSI, within ten (10) working days, when the MI or MR population goes below thirty-five (35) percent of all occupied personal care beds in the facility.

(6) The Office of the Inspector General, Division of Licensing and Regulation, shall provide a form to DSI monthly identifying certified PCH eligible for MI or MR supplement. This information shall be provided by the fifth working day of each month for the prior month.

(7) The Office of Inspector General, Division of Licensing and Regulation, shall inform DSI monthly of PCH which receive a conditional rating. This information shall be provided by the fifth working day of each month for the prior month.

Section 11. Hearings and Appeals. Applicants or recipients of benefits under programs described herein who are dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 904 KAR 2:055.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: December 20, 1990
FILED WITH LRC: January 4, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 21, 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 February 16, 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: 6,500 recipients of state supplementation.

(a) Direct and indirect costs or savings to those affected: for 1991: 1) Recipients in Personal Care Homes receive a $35 increase per month. 2) Recipients in Family Care Homes receive a $26 increase per month. 30 Recipients in Caretaker situations receive the following increases: Single individual - $23; couple (one requiring care) - $33; couple (both requiring care) - $35.

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: Increase in cost-of-living for state supplementation recipients.

1. First year: $327,400 cost, already anticipated in the state budget.
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 method assessed; set forth through department policy.
(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 5.4% increase in the cost-of-living is applied uniformly to all recipients of state supplementation. Departmental policy mandates that the administrative process for state supplementation be implemented in a like manner on a statewide basis, thereby prohibiting tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 CFR 416.2095 and 20 CFR 416.2096.
2. State compliance standards. This amended regulation includes the 1991 cost-of-living increases, to place the state in compliance with federal SSI increases.
3. Minimum or uniform standards contained in the federal mandate. Maintain state supplementation payment and pass-along cost-of-living increases.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

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

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 435, 42 USC 1396a, b, c, d, p, r-5
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance [in accordance with requirements of Title XIX of the Social Security Act]. KRS 205.520(3) empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the resource and income standards by which eligibility of the medically needy is determined.

Section 1. Definitions. The following definitions shall be applicable:
(1) "Spouse" means a person legally married to another under state law.
(2) "Institutionalized spouse" means an individual who is in a medical institution or nursing facility, or participates in a home and community based services (HCBS) waiver program, with a spouse who is not in a medical institution or nursing facility or HCBS waiver program so long as such individual is likely to be in the medical institution or nursing facility or waiver program for at least thirty (30) consecutive days while the community spouse remains out of a medical institution or nursing facility or HCBS waiver program.
(3) "Community spouse" means the spouse of an institutionalized spouse, who remains at home in the community and is not living in a medical institution or nursing facility or participating in an HCBS waiver program.
(4) "Medical institution or nursing facility" means a hospital, skilled nursing facility, or intermediate care facility (including intermediate care facility for the mentally retarded).
(5) "Continuous period of institutionalization" means thirty (30) or more consecutive days of institutional care in a medical institution or nursing home (or both) and may include thirty (30) consecutive days of receipt of home and community based waiver services (or a combination of both). A continuous period of institutionalization terminates when an individual has been out of a medical institution or nursing facility, or HCBS waiver program, for thirty (30) consecutive days.
(6) "Likely to remain" in an institution means a determination by the cabinet based on a physician's written statement that an individual in a medical institution, nursing facility, or HCBS waiver program is expected to remain in that setting or program for thirty (30) consecutive days.
(7) "Countable resources" are resources not subject to exclusion in the Medicaid Program.
(8) "State spousal resource standard" means the amount of couples' combined countable resources determined necessary by the cabinet for community spouses to maintain themselves in the community.
(9) "Spousal protected resource amounts" are resources deducted from couples' combined resources for community spouses in eligibility determinations for institutionalized spouses; amounts above spousal protected resource amounts are used to determine eligibility for institutionalized spouses.
(10) "Spousal resource allowances" means the differences in the dollar value of resources protected for community spouses and the value of the resources actually held in the name of community spouses.
(11) "Resource assessment" means the assessment, at the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse upon request by either spouse, of the joint resources of a couple when a member of the couple enters a medical institution or nursing facility or becomes a participant in an HCBS waiver program.
(12) "Support right" means the right of institutionalized spouses to receive support from community spouses under state law.
(13) "Assigned support right" means the assignment of the support right of an institutionalized individual to the state or Medicaid program.
(14) "Undue hardship" means that Medicaid eligibility of the institutionalized spouse

cannot be established on the basis of assigned support rights and the spouse is subject to discharge from the medical institution, nursing facility, or HCBS waiver program due to inability to pay.

(15) "Other family members" means children who are either minor or dependent, dependent parents and dependent siblings of either member of a couple and who reside with the community spouse.

(16) "Minors" means the couples' minor children (under age twenty-one (21)) who live with a community spouse and are being claimed as dependents by either spouse under the Internal Revenue Service Code (IRSC).

(17) "Dependent children" means the couples' children age twenty-one (21) and above who live with the community spouse and are claimed as dependents by either spouse under the IRSC.

(18) "Dependent parents" means parents of either member of a couple who live with the community spouse and are claimed as dependents by either spouse under the IRSC.

(19) "Dependent siblings" means a brother or sister of either member of a couple (including half-brothers and half-sisters and siblings gained through adoption) who reside with the community spouse and are claimed as dependents by either spouse under the IRSC.

(20) "Otherwise available income" means income to which community spouses have access and control. <u>If the community spouse is working, the amount of madatory deductions such as taxes is not considered available; court ordered payments and other obligations such as child support are also deducted from otherwise available income.</u>

(21) "Gross income" means nonexcluded income which would be used to determine eligibility prior to income disregards.

(22) "Community spouse maintenance standard" means the income standard to which community spouses' income is compared for purposes of determining the amount of allowances used in the posteligibility calculation.

(23) "Other family members maintenance standard" means an amount equal to one-third (1/3) of the difference between the income of other family members and the standard maintenance amount.

(24) "Standard maintenance amount" means one-twelfth (1/12) of the income official poverty line (defined by the federal Office of Management and Budget and revised annually in accordance with sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981) for a family unit of two (2) members (with revisions of the official poverty line applied for medical assistance provided during and after the second calendar quarter that begins after the date of publication of the revisions) multiplied by 122 percent effective September 30, 1989, and multiplied by 133 percent effective July 1, 1991, and multiplied by 150 percent effective July 1, 1992.

(25) "Monthly income allowances" means amounts deducted in the posteligibility calculation for maintenance needs of community spouses and other family members. The allowances are based on the deficit remaining after spouses' and other family members' income is compared to appropriate maintenance needs standards.

(26) "Significant (or extreme) financial duress" exists when either member of a couple establishes to the satisfaction of a hearing officer that the community spouse needs income above the level permitted by the community spouse maintenance standard to provide for medical, remedial, or other support needs of the community spouse so as to permit the community spouse to remain in the community.

Section 2. Resource Limitations and Exclusions of the Medically Needy. The following provisions are applicable with regard to computation of allowable resources:

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

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

(3) Equity of $6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, is excluded from consideration. Effective with regard to determinations of eligibility made on or after May 1, 1990, the value of property (including the tools of a tradesperson and the machinery and livestock of a farmer) that is essential for self-support for the individual or spouse, or family group in the instance of families with children, and which is used in a trade or business or by the individual or member of the family group as an employee is excluded from consideration as a resource. In addition, for AFDC related MA only cases the value of otherwise countable real property (whether income producing or nonincome producing) may be excluded from consideration for six (6) months if a good faith effort is being made to dispose of the property properly; an additional three (3) months may be allowed for the disposal at the request of the recipient if efforts to dispose of the property within the six (6) month period have been unsuccessful.

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

(5) Burial reserves of up to $1,500 per individual, which may be in the form of burial agreement(s) (prepaid burials or similar arrangements), trust fund(s), life insurance policies, or other identifiable funds are excluded from consideration. The cash surrender value of life insurance is considered when determining the total value of burial reserves. When burial funds are commingled with other funds, the applicant has up to thirty (30) days to separately identify the burial reserve amount. Effective with regard to determinations of eligibility made on or after August 1, 1990, interest or other appreciation of value of an excluded burial space is excluded as income or a resource so long as such amount is left to accumulate as a part of the burial space.

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

(7) Resources determined in accordance with subsections (3), (4), and (5) of this section, or Section 21 of this regulation, to be in

excess of excluded amounts must be considered countable resources when determining whether the individual or family group exceeds the upper limits specified in subsection (1) of this section. If resources exceed the upper limits, the individual or family group is ineligible.

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

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

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

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

(d) Disaster relief assistance is excluded from consideration.

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

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

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

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

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

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

(j) Federal Republic of Germany reparation payments shall not be considered available income in the posteligibility treatment of income of individuals in nursing facilities or hospitals or who are receiving home and community based services under a waiver.

(k) Social Security cost of living adjustments on January 1 of each year shall not be considered as available income for qualified Medicare beneficiaries until after the month following the month in which the official poverty guideline promulgated by the Department of Health and Human Services, U.S. Government, is published.

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

Section 4. Income Limitations of the Medically Needy. Eligibility from the standpoint of income is determined by comparing adjusted income as defined in Section 5 of this regulation, of the applicant, applicant and spouse, or applicant, spouse and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	$2,600	$217
2	3,200	267
3	3,700	308
4	4,600	383
5	5,400	450
6	6,100	508
7	6,800	567

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

Section 5. Additional Income Considerations. (1) In comparing income with the scale as contained in Section 4 of this regulation, gross income is adjusted as follows in all cases with exceptions as contained in Section 6 of this regulation:

(a) Effective with regard to determinations of eligibility made on or after October 1, 1989, in Aid to Families with Dependent Children (AFDC) related medical assistance cases, the standard work related expenses of adult members and out-of-school youth are deducted from gross earnings. For those with either full-time or part-time employment the standard work expense deduction is ninety (90) dollars per month. All earnings of an in-school child are disregarded. Full-time and part-time employment, and school attendance, shall be as defined in 904 KAR 2:016, Standards for need and amount; AFDC.

(b) Effective with regard to determinations of eligibility made on or after October 1, 1989, in AFDC related medical cases, dependent care as a work expense is allowed (but only when the dependent is included in the assistance unit) for full-time and part-time employment (as defined in 904 KAR 2:016, Standard for need and amount; AFDC). The dependent care work expense

shall be deducted after all other disregards have been applied. The dependent care work expense allowed shall not exceed, per month, $200 for full-time or part-time employment per child under age two (2), and $175 for full-time employment or $150 for part-time employment per child age two (2) and above and for each incapacitated adult.

(c) Effective with regard to determinations of eligibility made on or after October 1, 1989, in AFDC related medical assistance cases, any advanced payment or refund relating to the federal earned income tax credit shall be disregarded.

(2) The following special factors are applicable for pregnant women, infants and children eligible pursuant to Section 1902(l) of the Social Security Act:

(a) Effective with regard to determinations of eligibility made on or after July 1, 1990, pregnant women and children under age one (1) may have family income up to, but not to exceed, 185 percent and children age one (1) or over but under age six (6) may have family income up to, but not to exceed, 133 percent of the official poverty income guidelines as promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of March 1 of the particular state fiscal year;

(b) Pregnant women, infants and children who would be eligible under provisions of 42 USC 1396a(l) [1902(l)] of the Social Security Act except for income in excess of the allowable standard may not become eligible by spending down to the official poverty guidelines;

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

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

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

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

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

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

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

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

Section 6. Specified Individuals in Long-term Care Facilities. For aged, blind or disabled individuals in long-term care facilities not subject to treatment as the institutionalized spouse of a community spouse as shown in Section 21 of this regulation, the following requirements with respect to income limitations and treatment of income shall be applicable.

(1) In determining eligibility, the appropriate medically needy standard or special income level is used as are appropriate disregards and exclusions from income. In determining patient liability for the cost of institutional care, gross income is used as shown in subsections (2) and (3) of this section.

(2) Income protected for basic maintenance, effective March 1, 1991 [July 1, 1986], is forty (40) dollars monthly plus any mandatory, nondiscretionary deductions from income in lieu of the figure shown in Section 4 of this regulation. Mandatory nondiscretionary deductions include such items as minimum state and federal taxes, but does not include items such as court-ordered child support, alimony, and similar payments resulting from actions by the recipient. All income in excess of the amount protected for basic maintenance [forty (40) dollars] is applied to the cost of care except as follows:

(a) Available income in excess of the basic maintenance allowance [forty (40) dollars] is first conserved as needed to provide for needs of the minor children up to the appropriate family size amount from the scale as shown in Section 4 of this regulation.

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

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

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

(5) Effective with regard to determinations of eligibility made on March 16, 1989 and thereafter, Supplemental Security Income (SSI) or state supplementation payments received by specified institutionalized Medicaid eligible individuals in accordance with 42 USC 1382 [Section 1611](e)(1)(G) [of the Social Security

Act] shall be excluded from consideration as either income or a resource, and such payments may not be used in the posteligibility process to increase the patient liability.

Section 7. Spend-down Provisions. No technically eligible individual or family is required to utilize protected income for medical expenses before qualifying for medical assistance. Individuals with income in excess of the basic maintenance scale as contained in Section 4 of this regulation may qualify for medical assistance in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period; effective October 1, 1988, medical expenses incurred in periods prior to the quarter for which spend-down eligibility is being determined may be used to offset excess income so long as such medical expenses remain unpaid at the beginning of the quarter and have not previously been used as spend-down expenses. Effective for determinations of eligibility for periods beginning on or after February 1, 1989, the incurred costs may be reimbursed under another public program of the state or political subdivision of the state and still be considered incurred costs of the applicant or recipient.

Section 8. Consideration of State Supplementary Payments. For an individual receiving state supplementary payments, that portion of the individual's income which is in excess of the basic maintenance standard is applied to the special need which results in the supplementary payment.

Section 9. Special Needs Contributions for Institutionalized Individuals. Voluntary payments made by a relative or other party on behalf of a long term care facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the Medical Assistance Program. Examples of such special services or items include television and telephone service, private room or bath, private duty nursing services, etc.

Section 10. Pass-through Cases. Increases in social security payments due to cost of living increases but for which the individual would be eligible for supplemental security income benefits or state supplementary payments, and which are received after April 1, 1977, shall be disregarded in determining eligibility for medical assistance benefits; such individuals shall remain eligible for the full scope of program benefits with no spend-down requirements. Beginning on November 1, 1986, the additional amount specified in 42 USC 1383c(b) [Section 12202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)] shall be disregarded, i.e., that amount of social security benefits to which certain widows or widowers were entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) such individuals would be eligible for federal supplemental security income benefits; eligibility as a result of such disregard shall not exist prior to July 1, 1986. To be eligible, applicants must apply by July 1, 1988.

Section 11. Relative Responsibility. For purposes of the Medical Assistance Program, spouses are considered responsible for spouses and parents are considered responsible for dependent minor children. Effective for determinations of eligibility made on or after December 1, 1987, children under age twenty-one (21) living with parents (but not including children age eighteen (18) and above who are blind or disabled) are considered dependent minor children for purposes of deeming of income and resources under the Medicaid Program even if such children are emancipated under state law. This responsibility, with regard to income and resources, is determined as follows:

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

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

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

(a) Determine the potential spend-down amount of the eligible individual by comparing the countable income to the Medically Needy Income Level (MNIL) for one (1) as shown in Section 4 of this regulation.

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

(c) If the ineligible spouse's income is more than one-half (1/2) of the MNIL for a family size of one (1), combine the income of the ineligible spouse with that of the eligible individual and compare that figure with the MNIL for a couple to determine continuing eligibility or the spend-down amount. Effective December 1, 1989, if the ineligible spouse's income is less than one-half (1/2) of the MNIL for a family size of one (1), the income is disregarded and the income of the eligible individual is compared with the MNIL for a family size of one (1).

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

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

(4) In cases of aged, blind, or disabled couples, living apart for any reason other than institutionalization, both of whom are concurrently applying for or receiving MA only,

income and resources are considered in relation to resource and income limitations for a family size of two (2), or if other dependents live with either spouse, the family size including such dependents, but only for the first six (6) months after the month of separation, that such couple lives apart; however, if mutual consideration of income and resources causes the individuals to lose eligibility as a couple, eligibility for the individuals is determined in accordance with subsection (5) of this section. If the separation is due to the institutionalization of a spouse, mutual consideration of income for the institutionalized spouse ceases in the month of separation and for the community spouse in the month after the month of separation but resources are considered mutually available to each other the month of separation, and for the six (6) months following that month unless such would act to preclude eligibility of the individual in long-term care (except when the resource rule shown in Section 21 of this regulation is applicable due to a continuous period of institutionalization beginning on or after September 30, 1989).

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

(6) For an individual whose case is being worked as if he were a single individual due to living apart from his spouse, as shown in Section 11(4) and (5) of this regulation, who has jointly held resources with his spouse, one-half (1/2) of the jointly held resource would be considered a resource; except that the entire amount of a jointly held checking or savings account is considered a resource if the resource may be accessed independently of the spouse.

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

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

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

(10) When a recipient (but not including a child) in a family case has income and resources considered in relation to family size and enters a long term care facility, his income and resources are considered in the same manner as previously for up to one (1) year with, effective with regard to determinations of eligibility made on or after <u>March 1, 1991</u> [February 1, 1988], the individual allowed <u>the</u> [forty (40) dollars as his] basic maintenance standard <u>as shown in Section 6(2) of this regulation</u>. When a child in a family case is in the long term care facility, eligibility of the child is determined in the same manner for up to a year but his liability for the cost of care is determined by allowing to the child from his own income <u>the basic maintenance standard as shown in Section 6(2) of this regulation</u> [forty (40) dollars] and considering the remainder available for the cost of care. (Note: in this situation any welfare payment made to the child is disregarded when determining liability for cost of care.) The eligibility of the individual, with regard to income and resources, shall be determined on the basis of living apart from the other family members whenever it becomes apparent that the separation will last for more than one (1) year.

Section 12. Treatment of Income of the Stepparent or Parent/Legal Guardian of a Minor Parent/Legal Guardian (referred to as a "Grandparent") and Effect on Eligibility of the Assistance Group Effective with Regard to Determinations of Eligibility Made On or After June 1, 1989. An incapacitated (as determined by the department) stepparent's income, or a grandparent's income, is considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. When the stepparent or grandparent living in the home is not being included in the family case, the stepparent's gross income is considered available to the spouse or the grandparent's gross income is considered available to the minor parent in accordance with the policies set forth in this section.

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

(a) The first seventy-five (75) dollars of the

gross earned income of the stepparent or grandparent who is employed full time or part time (with full-time and part-time employment as defined in Section 5(1) of this regulation).

(b) An amount equal to the medically needy income limitations scale as shown in Section 4 of this regulation for the appropriate family size, for the support of the stepparent or grandparent and any other individuals (not including the spouse or minor parent) living in the home but whose needs are not taken into consideration in the medical assistance eligibility determination and are claimed by the stepparent or grandparent as dependents for purposes of determining his federal personal income tax liability.

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

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

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

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

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

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

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

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

Section 13. Companion Cases. When spouses or parent(s) and children living in the same household apply separately for assistance, relative responsibility must be taken into consideration.

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

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

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

(4) A parent in a family case may request that one (1) or more children be technically excluded from the determination of eligibility due to income while a regular application for Medicaid eligibility is processed for other children in the family group. In this circumstance, the income and resources of the technically excluded child(ren) and the technically excluded child(ren)'s needs are excluded in the budgeting process when determining eligibility of the family group. A separate spend-down case(s) may then be established for the technically excluded child(ren); the income, resources and needs of the responsible relative or parent are included in the budget in accordance with usual criteria, and income/resources and needs of siblings in the other case may also be included in budgeting for the spend-down case if that works to the advantage of the technically excluded child(ren) for whom eligibility is being determined in the spend-down case. Excess income in the spend-down case may be spent-down using uncovered incurred medical care costs of any member of the family included in the budgeting process for the spend-down case.

Section 14. Treatment of Lump-sum Income. The following policy is effective with regard to determinations of eligibility made on or after August 1, 1990: for adult related cases, lump-sum income is counted as income in the

month received to the extent feasible; any portion of the income remaining is considered as a resource for the following months and considered in relation to resource limitations; the exception to the treatment of lump sum income is specified in Section 2(8)(i) of this regulation; for AFDC related cases, lump sum income is divided by the medically needy income level and prorated over the resultant number of months. Effective February 1, 1989, lump sum income for individuals eligible under the federal poverty level standards specified in Section 5(2) and (3) of this regulation would be divided by the appropriate standard for the eligible group and prorated over the resultant number of months.

Section 15. Transferred Resources. (1) Effective for determinations of eligibility made on or after October 1, 1989, an individual who transferred property on or before June 30, 1988 for less than fair market value must have a period of ineligibility for medical assistance computed beginning with the month in which the resources were transferred. The period of ineligibility shall be equal to the lesser of twenty-four (24) months or the number of months derived by deducting from the uncompensated excess value the actual cost of care on a monthly basis if the individual is institutionalized or $500 for each month from the month of transfer if not institutionalized.

(2) Effective for determinations of eligibility on or after October 1, 1989, when an institutionalized individual (defined as an individual in a skilled nursing facility, general intermediate care facility, or a participant in the home and community based services waiver program) applies for medical assistance a period of ineligibility for payments for such service must be computed if at any time during the thirty (30) month period immediately preceding the application (but on or after July 1, 1988) the individual (or his spouse with regard to transfers occurring after December 19, 1989) disposed of property for less than fair market value. The period of ineligibility for such service (beginning with the month in which the resources were transferred) shall be equal to the lesser of thirty (30) months or the number of months derived by dividing the total uncompensated value of the resources so transferred by the average cost, to a private patient at the time of the application, of nursing facility services in the state (either intermediate care or skilled nursing care as appropriate for the level of care).

(3) An individual shall not be ineligible for medical assistance or an institutional type of service by virtue of subsection (1) or (2) of this section to the extent that the conditions specified in 42 USC 1396p [Section 1917](c)(2)(B), (C) and (D) of the Social Security Act] or Section 21 of this regulation are met, nor shall an individual be ineligible for medical assistance or an institutional type of service due to transfer of resources for less than fair market value except in accordance with this section.

(4) The disposal of a resource, including liquid assets, at less than fair market value shall be presumed to be for the purpose of establishing eligibility unless the individual shows the transfer was in accordance with 42 USC 1396p [Section 1917](c)(2)(B) or (C)(i) [of the Social Security Act] or presents convincing evidence that the disposal was exclusively for some other purpose. If the purpose of the transfer is in accordance with 42 USC 1396p [Section 1917](c)(2)(B) or (C)(i) or is for some reason other than to qualify for medical assistance or if the transferred resource was considered an excluded resource at the time it was transferred, the value of the transferred resource is disregarded. If the resource was transferred for an amount equal to at least the assessed value for tax purposes, the resource will be considered as being disposed of for fair market value. Notwithstanding the preceding, if the assessed agricultural value is used for tax purposes the transfer is required to be for an amount equal to the fair market value.

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

(6) If retention would result in ineligibility, the cabinet will compute a period of ineligibility for medical assistance or an institutional type of service as provided for in subsections (1) and (2) of this section.

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

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

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

Section 16. Special Provisions for AIS/MR Recipients. Medical assistance eligibility for participants in the program of alternative intermediate services for the mentally retarded (AIS/MR) shall be determined taking into consideration the special provisions contained in this section and in Section 21 of this regulation.

(1) Usual institutional deeming rules shall be applicable.

(2) AIS/MR services program participants who participate in the AIS/MR program for thirty (30) consecutive days (including any actual days of institutionalization within that period) and who have income not in excess of 300 percent of

the SSI standard for an individual shall be determined to be eligible as categorically needy under a special income level (i.e., the special income level is 300 percent of the SSI standard). Income protected for basic maintenance of the AIS/MR participant in the posteligibility determination of patient liability for individuals eligible as medically needy or on the basis of the special income level of 300 percent of the federal SSI standard shall be the standard for the federal supplemental security income program in addition to the SSI general exclusion.

(3) If an AIS/MR services program participant has income in excess of 300 percent of the SSI standard, eligibility of the participant is determined in the usual manner for an individual who is institutionalized, with the cost of AIS/MR services projected if eligibility is determined on a monthly basis.

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

(5) In the posteligibility determination of available income the personal needs allowance includes, effective March 1, 1991, any mandatory, nondiscretionary deductions from income (such as state and federal taxes but not including such items as court-ordered child support, alimony, and similar payments resulting from actions by the recipient).

Section 17. Special Provisions for Hospice Recipients. Medical assistance eligibility for participants under the Medicaid hospice benefit shall be determined (when necessary to establish eligibility for medical assistance benefits for cases with income in excess of the usual basic maintenance standard) taking into consideration the special provisions contained in this section.

(1) Income protected for basic maintenance of the hospice participant in the posteligibility determination of patient liability for noninstitutionalized individuals eligible on the basis of the special income level of 300 percent of the federal SSI standard shall be the standard for the federal supplemental security income (SSI) program in addition to the SSI general exclusion. For the noninstitutionalized medically needy participants (all of whom must spend-down on a quarterly basis), the amount protected for basic maintenance is the usual medically needy standard as shown in Section 4 of this regulation plus the SSI general exclusion. For the institutionalized medically needy the amount protected for basic maintenance in the eligibility determination is the medically needy standard for the appropriate family size plus the SSI general exclusion. If a hospice participant is institutionalized in a long-term care facility, the basic maintenance amount is forty (40) dollars per month.

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

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

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

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

(6) In the posteligibility determination of available income the personal needs allowance includes, effective March 1, 1991, any mandatory, nondiscretionary deductions from income (such as state and federal taxes but not including such items as child support, alimony, and similar payments resulting from actions by the recipient).

Section 18. Special Provisions for Recipients Participating in the Home and Community Based Services Waiver Program. Medical assistance eligibility for participants under the home and community based (HCB) services waiver program shall be determined (when necessary to establish eligibility for medical assistance benefits for cases with income in excess of the usual basic maintenance standard) taking into consideration the special provisions contained in this section and in Section 21 of this regulation.

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

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

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

(4) Usual institutional deeming rules shall be applicable.

(5) In the posteligibility determination of available income the personal needs allowance includes, effective March 1, 1991, any mandatory, nondiscretionary deductions from income (such as state and federal taxes but not including such items as child support, alimony, and similar payments resulting from actions by the recipient).

Section 19. Treatment of Potential Payments from Medicaid Qualifying Trusts. When an individual (or his spouse for the individual's benefit) creates (other than by will) a trust (or similar legal device) with amounts payable to the same individual, such trust shall be considered a "Medicaid qualifying trust" if the trustee(s) of the trust are permitted to exercise discretion as to the amount of the payments from the trust to be paid to the individual. In this circumstance the amount considered available to the trust beneficiary shall be the maximum amount the trustee(s) may (using the trustee's discretion) pay in accordance with the terms of the trust, regardless of the amount actually paid. The cabinet may, however, consider as available only that amount actually paid if to do otherwise would create an undue hardship upon the individual; the criteria for determining "undue hardship" shall be established by the cabinet.

Section 20. Resource Assessment. Pursuant to 42 USC 1396r-5 [Section 1924](c)(1)(B) [of the Social Security Act as amended], an assessment of the joint resources of an institutionalized spouse and the community spouse shall be made upon request of either spouse at the beginning of a continuous period of institutionalization of the institutionalized spouse and upon receipt of relevant documentation of resources. The cabinet shall complete the assessment within forty-five (45) days when the necessary documentation or verification is provided in a timely manner. When the resource assessment is complete, each spouse shall receive a copy of the assessment and notification that the right of appeal of such assessment shall exist at such time as the institutionalized spouse applies for medical assistance.

Section 21. Protection of Income and Resources of Couple for Maintenance of Community Spouse. 42 USC 1396r-5 [Section 1924 of the Social Security Act, as amended], provides for special treatment of income and resources for certain institutionalized spouses. The income eligibility and posteligibility provisions are effective October 1, 1989 for persons institutionalized on or after September 30, 1989. The resource provisions are effective with regard to determinations of eligibility made on or after October 1, 1989 for institutionalized persons beginning a continuous period of institutionalization on or after September 30, 1989.

(1) Supersedes other provisions. The provisions of this section supersede any other provisions of this regulation which is inconsistent with them.

(2) Nonapplicability. Except as specifically provided, this section does not apply to the determination of what constitutes income or resource or the methodology and standards for determining and evaluating income and resources.

(3) Provisions for treatment of income. The following income provisions shall be applicable.

(a) Separate treatment of income. During any month in which an institutionalized spouse is in the institution, except as provided in paragraph (b) of this subsection, no income of the community spouse shall be deemed available to the institutionalized spouse.

(b) Attribution of income. In determining the income of an institutionalized spouse or community spouse, after the institutionalized spouse has been determined or redetermined to be eligible for medical assistance, except as otherwise provided in this section and regardless of any state laws relating to community property or the division of marital property, the provisions of 42 USC 1396r-5 [Section 1924](b)(2)(A), (B), (C), and (D) [of the Social Security Act, as amended], shall be applicable.

(4) Provisions for treatment of resources. The following resource provisions shall be applicable:

(a) Attribution of resources at time of initial eligibility determinations. In determining the resources of an institutionalized spouse at the time of application for benefits under Medicaid, regardless of any state laws relating to community property or the division of marital property, except as provided in paragraph (b) of this subsection, all the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse.

(b) Nonattributed resources. The following protected amounts shall be deducted from couples' combined countable resources at time of determination of initial eligibility of the institutionalized spouse:

1. The state spousal resource standard; and, if applicable
2. Additional amounts transferred under a court support order; or, if applicable
3. An additional amount designated by a hearing officer.

(c) Exceptions to resource ineligibility by assignment of support rights. The institutionalized spouse shall not be ineligible by reason of resources determined under paragraphs (a) and (b) of this subsection to be available for the cost of care in the following circumstances:

1. When the institutionalized spouse has assigned to the cabinet any rights to support from the community spouse;
2. When the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but the state has the right to bring a support proceeding against a community spouse without such assignment; or
3. When the cabinet determines that denial of eligibility would work an undue hardship.

(d) Separate treatment of resources after eligibility for benefits established. During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for Medicaid benefits, no resources of the community spouse shall be deemed available to the institutionalized spouse. Resources of the institutionalized spouse protected for the needs of the community spouse but not transferred to the community spouse by the time of the second regularly scheduled redetermination of eligibility (i.e., one (1) year from the month of the initial determination of eligibility) shall be considered available to the institutionalized spouse.

(e) Excess value of an automobile. The equity value of an automobile in excess of prescribed limits which would otherwise be considered available is not included as a countable resource.

(5) Protecting income for the community spouse. The following provisions are applicable with regard to protecting income for the community spouse:

(a) The following allowances are to be offset from income of an institutionalized spouse. After an institutionalized spouse is determined or redetermined to be eligible for Medicaid, in determining the amount of the spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the spouse's monthly income the following amounts in the following order:

1. A personal needs allowance of forty (40) dollars plus, effective March 1, 1991, any mandatory, nondiscretionary deductions from income (such as court-ordered child support, alimony and similar payments resulting from actions by the recipient);

2. A community spouse monthly income allowance, but only to the extent income of the institutionalized spouse is made available to (or for the benefit of) the community spouse;

3. A family allowance determined in accordance with the definition of other family members maintenance standard; and

4. Amounts for incurred expenses for medical or remedial care for the institutionalized spouse.

(b) Establishment of the community spouse maintenance standard. The community spouse maintenance standard is set at $1,500 per month, to be increased for each calendar year after 1989 by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved; the maintenance standard may be increased for an individual, as appropriate, by a hearing officer.

(c) Court ordered support. If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall not be less than the amount of the monthly income so ordered.

(6) Permitting transfer of resources to community spouse. The following provisions shall be applicable with regard to transfers of resources from an institutionalized spouse.

(a) Permitted transfer. An institutionalized spouse may, without regard to the usual prohibition against disposal of assets for less than fair market value, transfer to the community spouse (or to another for the sole benefit of the community spouse) an amount equal to the community spouse resource allowance, but only to the extent the resources of the institutionalized spouse are transferred to (or for the sole benefit of) the community spouse. The transfer shall be made as soon as practicable after the initial determination of eligibility, taking into account such time as may be necessary to obtain a court order under paragraph (c) of this subsection.

(b) Establishment of the community spouse resource allowance. The community spouse resource allowance is set at $60,000, to be increased for each calendar year after 1989 by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved; for an individual, the allowance may be a higher amount established by a hearing officer, or a higher amount transferred under a court order as specified in paragraph (c) of this subsection.

(c) Transfers under court orders. As specified in 42 USC 1396r- [Section 1924] (f)(3) [of the Social Security Act, as amended], if a court has entered an order against an institutionalized spouse for the support of a community spouse, the usual prohibition against disposal of assets for less than fair market value shall not apply to amounts of resources transferred pursuant to such order for the support of the spouse of a family member.

(7) Prohibited transfers. Except for transfers of resources to the community spouse as specified in subsection (6) of this section, the transfer of resource policies defined in Section 15 of this regulation apply.

(8) Requirement for notice and fair hearings. The following notice and fair hearings requirements are applicable:

(a) Notice. Upon a determination of eligibility for Medicaid of an institutionalized spouse or a request by either the institutionalized spouse, or the community spouse, or a representative acting on behalf of either spouse, the cabinet shall notify both spouses (if upon determination of Medicaid eligibility of the institutionalized spouse) or the spouse making the request (if that is the situation) of the amount of the community spouse monthly income allowance, of the amount of any family allowance, of the method for computing the amount of the community spouse resources allowance, and of the spouse's right to a fair hearing under this subsection respecting ownership or availability of income or resources, and the determination of the community spouse monthly income or resource allowance.

(b)1. Fair hearings. Both the institutionalized spouse and community spouse are entitled to a fair hearing if dissatisfied with the determination of the following:

a. The community spouse monthly income allowance;

b. The amount of monthly income determined to be otherwise available to the community spouse;

c. The attribution of resources at time of initial eligibility determination; or

d. The determination of the community spouse resource allowance.

2. Revision of monthly maintenance needs allowance. If either the institutionalized spouse or community spouse establishes during the hearing that the community spouse needs income, above the level otherwise provided by the monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, there shall be substituted, for the monthly maintenance needs allowance otherwise provided for, an amount adequate to provide such additional income as is necessary.

3. Revision of community spouse resource allowance. If either spouse establishes during the hearing process that the community spouse resource allowance (in relation to the amount of income generated by such an allowance) is inadequate to raise the community spouse's income to the monthly maintenance needs allowance, there shall be substituted, for the community spouse resource allowance otherwise

allowed, an amount adequate to provide such a monthly maintenance needs allowance.

Section 22. Effective Date. The amendments to this regulation shall be effective with regard to determinations of eligiblity made on or after January 1, 1991 except as specified in Sections 6, 16, 17, 18, and 21 of this regulation.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: January 4, 1991
FILED WITH LRC: January 14, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 21, 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 February 16, 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: About 1,000 QMB recipients annually.
(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: $900,000 annually (cost)
2. Continuing costs or savings: $900,000 annually (cost)
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Tiering is not appropriate for Medicaid eligibility regulations.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:011. Technical eligibility requirements.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 435, 45 CFR 233.100, 42 USC 402, 416, 423, 1382c, 1395i, 1396a, b, c, d, PL 99-603
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, referred to as MA, to Kentucky's indigent citizenry. This regulation sets forth the technical eligibility requirements of the MA Program.

Section 1. The Categorically Needy. All individuals receiving Aid to Families with Dependent Children, Title IV-E benefits, Supplemental Security Income or Optional or Mandatory State Supplementation shall be [are] eligible for MA as categorically needy individuals. In addition, the following classifications of needy persons shall be [are] included in the program as categorically needy and thus eligible for MA participation.
(1) Children in foster family care or private nonprofit child caring institutions dependent in whole or in part on a governmental or private agency;
(2) Children in psychiatric hospitals or medical institutions for the mentally retarded;
(3) Pregnant women;
(4) Children of unemployed parents;
(5) Children in subsidized adoptions dependent in whole or in part on a governmental agency;
(6) Families terminated from the Aid to Families with Dependent Children (AFDC) program because of increased earnings, hours of employment or loss of earnings disregards;
(7) Children (but not their parents) who meet the income and resource requirements of the Aid to Families with Dependent Children program, who were born after September 30, 1983 and who are under the age of five (5); and effective July 1, 1987, children (but not their parents) who meet the income and resource requirements of the Aid to Families with Dependent Children Program, who are under eighteen (18) years of age (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19));
(8) A child(ren) born to a woman eligible for and receiving medical assistance, so long as the child(ren) has not reached his first birthday, resides in the household of the woman, and the woman remains (or would remain if pregnant) eligible for such assistance. In this situation, an application is deemed to have been made and the child found eligible for MA as of the date

of birth;

(9) Effective June 1, 1987, individuals in institutions meeting appropriate patient status criteria who (if not institutionalized) would not be eligible for supplemental security income (SSI) or optional state supplementation benefits due to income, shall [may] be eligible under a special income level which is set at 300 percent of the SSI benefit amount payable for an individual with no income. Eligibility for similar hospice participants and similar participants in the waiver projects of home and community based services for the mentally retarded and the aged, blind or disabled shall [may] also be determined under this provision. Eligibility of an individual whose gross income exceeds 300 percent of the previously specified SSI benefit amount shall [may] not be determined in accordance with this provision;

(10) Effective July 1, 1987, qualified severely impaired individuals as specified in 42 USC 1396a(a)(10)(A)(i)(II) [Section 9404 of P.L. 99-509] and Sections 2, 3 and 4 of P.L. 99-643 (to the extent such coverage is mandatory in this state);

(11) Effective July 1, 1987, individuals who lose SSI eligibility but would be eligible for SSI benefits except for entitlement to or an increase in child's insurance benefits based on disability as specified in Section 6 of P.L. 99-643;

(12) Effective February 1, 1989, individuals specified in Section 9116 of P.L. 100-203 who lose SSI or state supplementation payments as a result of receipt of benefits under 42 USC 402(e) or (f) [Section 202(e) or (f) of the Social Security Act], would be eligible for SSI or SSP except for such benefits, and are not entitled to hospital insurance benefits under the Medicare program; [Part A of Title XVIII; and]

(13) Effective with regard to determinations of eligibility for periods beginning on or after July 1, 1990, women during pregnancy (and as though pregnant through the end of the month containing the 60th day of a period beginning on the last day of pregnancy), and infants and children under six (6) years of age, as specified in 42 USC 1396a(1)(1) [Section 1902(1) of the Social Security Act], subject to the following:

(a) Pregnant women, infants and children are required to meet the income requirements for this eligibility group as specified in 907 KAR 1:004, Resource and income standard of medically needy; and

(b) When an infant or child eligible under this provision is receiving covered inpatient services on a birthday which will make him ineligible due to age, the infant or child will remain eligible until the end of the stay for which the covered inpatient services are furnished so long as the infant or child remains otherwise eligible except for age; and

(14) Effective with regard to determination of eligibility for periods beginning on or after January 1, 1991, participants in a work supplementation program under the Title IV-A program (Aid to Families with Dependent Children (AFDC)) and any child or relative of the participating individual (or other individual living in the same household as the participating individual) who would be eligible for AFDC if there was no work supplementation program.

Section 2. The Medically Needy. Other individuals (including children as shown in Section 1(7) of this regulation), and pregnant women meeting income and resource standards of the medically needy program), meeting technical requirements comparable to the categorically needy group, but with sufficient income to meet their basic maintenance needs may apply for MA with need determined in accordance with income and resource standards prescribed by regulation of the Cabinet for Human Resources. Included within the medically needy eligible groups are pregnant women during the course of their pregnancy; a woman who, while pregnant, is eligible for, has applied for, and has received medical assistance, shall continue to be eligible as though she were pregnant until the end of the month containing the 60th day of a period beginning on the last day of her pregnancy (i.e., the day on which her child is born or the pregnancy is otherwise terminated).

Section 3. Qualified Medicare Beneficiaries and Qualified Disabled Working Individuals. (1) Effective January 1, 1989, coverage is extended to qualified Medicare beneficiaries as specified in 42 USC 1396a(a)(10)(E) [Section 301 of the Medicare Catastrophic Coverage Act of 1988], subject to the income and resource limitations shown in 907 KAR 1:004, and for the scope of benefits specified in 907 KAR 1:006. A qualified Medicare beneficiary must be eligible for and receiving Medicare Part A benefits, and may be determined eligible for benefits as a qualified Medicare beneficiary eligible individual effective for the month after the month in which the determination is made but not retroactively and not for the month in which the determination is made.

(2) Effective July 1, 1990, qualified disabled working individuals as defined in 42 USC 1396i-2 and 42 USC 1396d(s) [Section 1818 and 1905(s)] of the Social Security Act shall be eligible under Medicaid for payment of their Medicare Part A premiums as shown in 907 KAR 1:006.

Section 4. Technical Eligibility Requirements. Technical eligibility factors of families and individuals included as categorically needy under Section 1(1) through (6) of this regulation, or as medically needy under Section 2 of this regulation are:

(1) Children in foster care, private institutions, psychiatric hospitals or mental retardation institutions must be under eighteen (18) years of age (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19));

(2) Pregnant women are eligible only upon medical proof of pregnancy, except as otherwise specified in Section 2 of this regulation;

(3) Unemployment relating to eligibility of both parents and children is defined as:

(a) Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that the individual was under the 100 hour standard for the prior two (2) months and is expected to be under the standard during the next month;

(b) The individual has prior labor market attachment consisting of earned income of at

least fifty (50) dollars during six (6) or more calendar quarters ending on March 31, June 30, September 30, or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of application, or the individual within twelve (12) months prior to application received unemployment compensation;

(c) The individual is currently receiving or has been found ineligible for unemployment compensation;

(d) The individual is currently registered for employment at the state employment office, and available for full-time employment;

(e) The unemployed parent must not have refused suitable employment without good cause as determined in accordance with 45 CFR Section 233.100(a)(3)(ii);

(f) The unemployed parent must meet the requirements for independent employment search as specified herein. That is:

1. The unemployed parent must make not less than twenty-four (24) contacts with prospective employers in each three (3) month period following an approval, reinvestigation or reapproval.

2. The unemployed parent may not contact the same prospective employer more than once in each calendar month.

3. If the unemployed parent does not meet the requirement for the minimum number of employment contacts during the three (3) month period, the parent may, prior to or upon receipt of the advance notice of proposed discontinuance, meet the requirement for the number of contacts for the prior three (3) month period. These contacts shall not offset the requirement for employer contacts during the three (3) month period following the next approval, reinvestigation or reapproval.

(4) Under the definition contained in subsection (3) of this section, a parent shall not be considered as unemployed if he is:

(a) Temporarily unemployed due to weather conditions or lack of work when it is anticipated he can return to work within thirty (30) days; or

(b) On strike, or unemployed as a result of involvement in a labor dispute when such involvement would disqualify the individual from eligibility for unemployment insurance in accordance with KRS 341.360; or

(c) Unemployed because he voluntarily quit his most recent work for the purpose of attending school; or

(d) A farm owner or tenant farmer, unless he has previously habitually required and secured outside employment and currently is unable to secure outside employment; or

(e) Self-employed and not available for full-time employment.

(5) An aged individual must be at least sixty-five (65) years of age.

(6) A blind individual must meet the definition of blindness as contained in 42 USC 416 and 42 USC 1382c [Titles II and XVI of the Social Security Act] relating to RSDI and SSI.

(7) A disabled individual must meet the definition of permanent and total disability as contained in 42 USC 423 and 42 USC 1382c [Titles II and XVI of the Social Security Act] relating to RSDI and SSI.

(8) Families who lose AFDC eligibility on or after October 1, 1990 solely because of increased earnings or hours of employment of the caretaker relative or loss of earnings disregards may receive up to twelve (12) months of extended medical assistance for family members included in the AFDC grant prior to losing AFDC eligibility. The extended medical assistance shall be divided into two (2) transitional six (6) month benefit periods. Each transitional benefit period has specified eligibility and reporting requirements.

(a) The first transitional six (6) month benefit period begins with the month the family became ineligible for AFDC. To be eligible for this transitional benefit period, the family shall have correctly received AFDC in three (3) of the six (6) months immediately preceding the month the family became ineligible for AFDC; have a dependent child living in the home; and meet the reporting requirements relating to earnings and child care costs no later than the 21st day of the fourth month. When the family no longer has a dependent child living in the home, medical assistance for all family members, except the former dependent child, shall be terminated the last day of the month the family no longer includes a dependent child, with eligibility for the former dependent child(ren) determined in accordance with usual program requirements. If the reporting requirements are not met, the medical assistance benefits shall be denied for the second transitional six (6) month benefit period.

(b) To continue to receive medical assistance for the optional second transitional six (6) month benefit period, the family shall meet the following conditions: received medical assistance for the entire first transitional six (6) month period and met the reporting requirements; have a dependent child living in the home; gross income minus child care cost is less than 185 percent of the federal poverty income level; meet the reporting requirements no later than the 21st day of the fourth month, the seventh month, and the tenth month; and during the immediately preceding three (3) months the caretaker relative was employed or if unemployed in any one (1) or more months, it was due to involuntary loss of employment, illness or other good cause established to the satisfaction of the Medicaid program. When a family no longer has a dependent child living in the home, medical assistance for all family members, except the former dependent child, shall be terminated the last day of the month the family no longer includes a dependent child, with the eligibility for the former dependent child(ren) determined in accordance with usual program requirements. If the family's income exceeds the income standard or does not meet the reporting requirements, except for good cause established to the satisfaction of the Medicaid program, the medical assistance shall be terminated the last day of the appropriate reporting month.

(c) Good cause exists under the following circumstances: the specified relative was out-of-town for the reporting month; an immediate family member living in the home was institutionalized or died during the reporting month; the assistance group was the victim of a natural disaster such as flood, storm, earthquake or serious fire; or the assistance group moved and reported the move timely, but the move resulted in a delay in receiving or failure to receive the transitional medical assistance report form.

(9) Parents may be included for assistance in the cases of families with children including

natural and adoptive parents. Other relatives who may be included in the case (one (1) only) are caretaker relatives to the same extent they may be eligible in the Aid to Families with Dependent Children Program.

(10) An applicant who is deceased shall [may] have eligibility determined in the same manner as if he was alive, in order to pay medical bills during the terminal illness.

(11) Effective for determinations of eligibility made on or after January 1, 1989, including the usual determinations of retroactive eligibility for pending cases for periods prior to January 1, 1989, children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member. If a family member(s) is pregnant, the unborn child(ren) shall [will] be considered as a family member(s) for budgeting purposes.

(12) The following citizenship and residency requirements shall [will] be applicable:

(a) To be eligible, an applicant or recipient shall [must] be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law (except as specified in paragraph (b) of this subsection). An alien shall [must] have been admitted for permanent residence except as shown in paragraphs (b), (c) and (d) of this subsection. The applicant or recipient shall [must] also be a resident of Kentucky. Generally, this means the individual must be residing in the state for other than a temporary purpose; however, there are exceptions with regard to recipients of a state supplementary payment and institutionalized individuals. The conditions for determining state residency are specified in federal regulations at 42 CFR 435.403.

(b) Effective January 1, 1987, an alien not legally admitted to this country or residing in this country under color of law shall [may] be eligible for medical assistance under the following circumstances and conditions:

1. The alien must meet all other requirements for receipt of medical assistance, however, an alien qualifying as a categorically needy recipient need not actually receive an AFDC or federal supplemental security income (SSI) cash payment so long as the alien meets the income resource and categorical requirements of the applicable cash assistance program;

2. The alien must have (or have had within the usual period for retroactive eligibility) an emergency medical condition, defined as a medical condition (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part;

3. Approval of eligibility shall be for a time limited period, with such period to include the month in which the medical emergency began and the next following month, with the added provision that the eligibility period shall [may] be extended for an appropriate period of time upon presentation to the cabinet of acceptable documentation that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period; and

4. The medical assistance to which the alien shall be entitled is limited to the medical care and services (including limited follow-up) necessary for the treatment of the emergency medical condition of the alien.

(c) Effective May 5, 1987, select groups of aliens who are illegally residing in this country may qualify for legalization of residence status under Section 201 of P.L. 99-603. Such aliens are prohibited from Medicaid eligibility for a period of five (5) years (beginning on the date temporary resident status is granted) except as follows:

1. The aged, blind or disabled may be eligible;

2. Children under age eighteen (18) may be eligible;

3. Pregnant women may be eligible for pregnancy related services only; and

4. All such aliens may qualify for emergency services to the extent specified in paragraph (b) of this subsection and with the limitations shown.

(d) Effective June 1, 1987, aliens qualifying for legalization of status as seasonal agricultural workers under Section 302 of P.L. 99-603 are subject to the same coverage limitations as shown in paragraph (c) of this subsection.

(13) An individual shall [may] be determined eligible for medical assistance for up to three (3) months prior to the month of application if all conditions of eligibility are met. The effective date of medical assistance shall [is] generally be the first day of the month of eligibility. For individuals eligible on the basis of unemployment, eligibility shall [may] not exist for the thirty (30) day period following the starting date of the unemployment. In these cases, the effective date of eligibility may be as early as the first day following the end of the thirty (30) day period if all other conditions of eligibility are met. For individuals eligible on the basis of desertion, a period of desertion must have existed for thirty (30) days, and the effective date of eligibility shall [may] not precede the first day of the month in which the thirty (30) day period ends. For individuals eligible on the basis of utilizing their excess income for incurred medical expenses, the effective date of eligibility shall be [is] the day the spend-down liability is met.

(14) "Child" means a needy dependent child under the age of eighteen (18) (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before the age nineteen (19)), who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States, and who is a recipient of or applicant for public assistance. Included within this definition is an individual(s) meeting the age requirement specified above, previously emancipated, who has returned to the home of his parents, or to the home of another relative, so long as such individual is not thereby residing with his spouse.

(15) Benefits shall be denied to any family for any month in which any legally liable caretaker relative with whom the child is living is, on the last day of such month, participating in a strike, and no individual's needs shall be considered in determining eligibility for

medical assistance for the family if, on the last day of the month, such individual is participating in a strike. The definition of a strike includes a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

(16) A responsible relative (but not a child) sanctioned (removed) from an AFDC or AFDC related medical assistance only case due to failure to meet a technical eligibility requirement shall [may] not be eligible for medical assistance as a medically needy individual unless such individual is separately eligible for medical assistance without regard to eligibility as a member of the group from which such individual has been sanctioned.

Section 5. Institutional Status. No individual shall be eligible for MA if a resident or inmate of a nonmedical public institution. No individual shall be eligible for MA while a patient in a state tuberculosis hospital unless he has reached age sixty-five (65). No individual shall be eligible for MA while a patient in a mental hospital or psychiatric facility unless he is under age twenty-one (21) or age twenty-two (22) if receiving such inpatient services on his 21st birthday or is sixty-five (65) years of age or over. No individual shall be eligible for MA while a patient in a skilled nursing facility or intermediate care facility classified by the Medicaid program as an institution for mental diseases unless such individual has reached age sixty-five (65).

Section 6. Emergency Shelters. Effective July 1, 1985, an individual (or family group) who is in an emergency shelter for a temporary period of time may be eligible for medical assistance even though the shelter is considered a public institution under certain conditions. These conditions are as follows:

(1) The individual (or family group) must be a resident of an emergency shelter no more than six (6) months in any nine (9) month period, effective with regard to determinations of eligibility for periods beginning on or after December 1, 1988.

(2) The individual (or family group) must not be in the facility serving a sentence imposed by the court, or awaiting trial.

(3) The individual (or family group) must be otherwise eligible when outside the emergency shelter; that is, eligibility must have existed immediately prior to admittance to the shelter, or it must exist immediately after leaving the shelter.

Section 7. Application for Other Benefits. As a condition of eligibility for medical assistance, applicants and recipients must apply for all annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so. Good cause shall be [is] considered to exist when such benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions. Annuities, pensions, retirement and disability benefits shall include, but [are] not be limited to, veterans' compensations and pensions, retirement and survivors disability insurance benefits, railroad retirement benefits, and unemployment compensation. Notwithstanding the preceding, no applicant or recipient shall be required to apply for federal benefits when the federal law providing for such benefits shows the benefit to be optional and that the potential applicant or recipient for such benefit need not apply for such benefit when to do so would, in his opinion, act to his disadvantage.

Section 8. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be [is] deemed to have made an assignment to the Cabinet for Human Resources of any medical support owed for the child not to exceed the amount of medical assistance payments made on behalf of the recipient.

Section 9. Third Party Liability as a Condition of Eligibility. Any individual (except as further specified in this section) applying for or receiving medical assistance shall be required as a condition of eligibility to cooperate with the Cabinet for Human Resources in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid Program unless such individual has good cause for refusing to cooperate as determined by the cabinet taking into consideration the best interests of the individuals involved. A failure of the individual to cooperate without good cause shall result in ineligibility of the individual. A pregnant woman eligible under poverty level standards shall not be required to cooperate in establishing paternity or securing support for her unborn child.

Section 10. Provision of Social Security Numbers. Each applicant for or recipient of medical assistance shall be required to provide a social security number as a condition of eligibility except as provided in this section. However, no one shall be denied eligibility or discontinued from eligibility due to a delay in receipt of a social security number from the Social Security Administration when appropriate application for such number has been made. Effective with regard to determinations or redeterminations of eligibility on or after June 1, 1990, if the specified relative refuses to cooperate with obtaining a social security number for the newborn child or other dependent children, the specified relative shall be ineligible due to failure to meet technical requirements. The newborn child or other dependent may still be eligible for medical assistance if financial eligibility requirements are met.

Section 11. Effective Date. The amendments to this regulation shall be effective with regard to determinations of eligibility made on or after January 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: January 4, 1991
FILED WITH LRC: January 14, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on

February 21, 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 February 16, 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: Potentially 2,000 recipients.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $2.6 million (costs)

2. Continuing costs or savings: $2.6 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: None

TIERING: Was tiering applied? No. Tiering is not appropriate for eligibility regulations.

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 and effective for services provided through December 25, 1990. The SMAC shall not be used for services provided on or after December 26, 1990.

(b) Effective with regard to services provided through December 25, 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 26, 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 FMAC, or AWP minus ten (10) 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) Effective with regard to services provided through December 25, 1990, 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. Effective with regard to services provided on or after December 26, 1990, if an AWP is not listed, reimbursement shall be the lesser of the 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) (AWP minus ten (10) percent or direct price as appropriate) 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 one (1) [two (2)] dispensing fee[s] 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 allowed [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 and no more than four (4) dispensing fees shall be allowed per drug within a calendar month for legend intravenous 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) Effective with regard to services provided through December 25, 1990, 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. Effective with regard to services provided on or after December 26, 1990, 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 two (2) cents per unit dose for unit dose drugs packaged in unit dose form by the manufacturer and four (4) 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 19, 1990
FILED WITH LRC: December 28, 1990 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 21, 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 February 16, 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 pharmacies 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: $8.3 million (savings)
2. Continuing costs or savings: $8.3 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 1:150. Payments for alternative home and community based services for the mentally retarded.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 USC 1396a, b, c, d, n; 42 CFR 441 Subpart G
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 payment provisions relating to home and community based services provided to the mentally retarded as an alternative to intermediate care facility services for the mentally retarded.

Section 1. Coverage. The Cabinet for Human Resources shall reimburse participating providers of alternative intermediate services for the mentally retarded (AIS/MR) for services rendered to eligible medical assistance recipients who meet patient status criteria for intermediate care for the mentally retarded, and who are authorized for the AIS/MR service by the cabinet. The covered service elements shall be those services [are] described and defined in 907 KAR 1:140, Alternative home and community based services for the mentally retarded, and services must be provided in accordance with the terms and conditions described therein. Payments shall [may] not exceed the limits specified in Section 3 of this regulation.

Section 2. Payment Amounts. (1) Residential services, including residential (home) training, personal care, and homemaker/home health aide, shall be paid for at the rate of forty-nine (49) [forty (40)] dollars per day.
(2) Case management services shall be paid for at the rate of fifty (50) [forty (40)] dollars per hour.
(3) Habilitation services shall be paid for at the rate of forty-eight (48) [forty (40)] dollars per hour; however, medical services and/or items (e.g., dentures, eyeglasses, hearing aids, etc.) prescribed for a recipient by an appropriate specialist as necessary to the client's habilitation but not otherwise covered by the medical assistance programs shall be paid for on the basis of reasonable cost. Minor home physical adaptations shall be paid for on the basis of reasonable cost not to exceed $1,500

per client per patient year. The "patient year" for a client begins on the first day of admittance of the client to the AIS/MR program, with a new patient year beginning for that client on that same day in each succeeding calendar year.

(4) [Effective June 1, 1987, all] Day habilitation services shall be paid for at the rate of six (6) [five (5)] dollars per hour.

(5) In-home support services shall be paid for at the following rates:

(a) In-home training services shall be paid for at the rate of forty-eight (48) [forty (40)] dollars per hour.

(b) Homemaker/home health aide support services shall be paid for at the rate of twenty-four (24) [twenty (20)] dollars per hour.

(c) Personal care services shall be paid for at the rate of twenty-four (24) [twenty (20)] dollars per hour.

(6) Respite care (twenty-four (24) hours or more) shall be paid for at the rate of forty (40) [thirty-two (32)] dollars per day. Respite care (less than twenty-four (24) hours) shall be paid for at the rate of four (4) [three (3)] dollars and fifty (50) cents per hour, with the total not to exceed the upper limit of forty (40) [thirty-two (32)] dollars for one (1) full day of care.

Section 3. Payment limits. (1) Payments shall be made on the above stated rate basis not to exceed the AIS/MR cluster annualized upper limit on payment.

(2) Under this system, an AIS/MR cluster shall [will] receive a total of Medicaid [Title XIX] payments during the year in the amount of the established rates for services rendered Medicaid [Title XIX] eligible recipients, so long as such payments (on a cumulative basis) do not exceed the annualized upper limits (total payment amount) which has been set for the cluster. Each cluster shall [will] also be required to maintain average expenditures per recipient (on a cumulative basis) as described by the Health Care Financing Administration, 42 CFR 441.303(d)(1), and interpreted for the AIS/MR cluster by the Cabinet for Human Resources.

(3) Utilizing the formula described in 42 CFR 441.303(d)(1) as a guideline and applying accumulated statistical data, the cabinet shall [will] set effective April 1 each year the annualized upper limits and averages to be applied to the AIS/MR cluster services for the waiver year April 1 through March 31, applicable for waiver years beginning April 1, 1985 and thereafter.

(4) The cabinet may reduce payment by the percentage amount which will assure that the payments to the cluster do not exceed the annualized upper limit or average expenditures. Reduction factors shall (to the extent possible) be applied in such a manner as to ensure as even flow of reimbursement to the AIS/MR cluster through the year, i.e., generally so as to ensure that the payments for any one (1) month do not exceed by a substantial amount the prorated annual amount.

(5) Any overpayment due the program at the end of the period as a result of exceeding the upper limit shall be recouped by settlement or by withholding payment.

Section 4. Implementation. The amendments to this regulation shall be effective with regard to services provided on or after January 1, 1991.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: January 8, 1991
FILED WITH LRC: January 10, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 21, 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 February 16, 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 alternative intermediate services for the mentally retarded 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:

1. First year: $2,985,700 (cost).

2. Continuing costs or savings: $2,985,700 (cost).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

PROPOSED REGULATIONS RECEIVED THROUGH NOON, JANUARY 15, 1991

COUNCIL ON HIGHER EDUCATION

13 KAR 1:020. Private college licensing.

RELATES TO: KRS 164.945, 164.946, 164.947 164.992
STATUTORY AUTHORITY: KRS 164.947
NECESSITY AND FUNCTION: This administrative regulation is promulgated pursuant to KRS 164.945 to 164.947 and 164.992 which require that the Council on Higher Education license nonpublic institutions to protect bona fide institutions and to protect citizens of the Commonwealth from fraudulent practices, unfair competition or substandard educational programs.

Section 1. Definitions. (1) "Accredited" means the approval of an accrediting agency.
(2) "Accrediting agency" means a national or regional agency which evaluates colleges and is recognized by the United States Department of Education, the Council on Postsecondary Accreditation, or the Council on Higher Education.
(3) The definition of "college" is governed by KRS 164.945.
(4) "Out-of-state college" means a college that is chartered, organized, or has its principal location outside Kentucky.
(5) "In-state college" means a college that is chartered by, organized within, and has its principal location in Kentucky.

Section 2. General Requirements. (1) A college which offers courses or conducts academic programs in Kentucky shall be licensed.
(2) An out-of-state college shall be licensed separately for each instructional site in Kentucky.
(3) A college awarding a diploma, associate degree, baccalaureate degree, mater's degree, doctoral degree, or other degree, whether the degree is earned or honorary, shall be licensed. If a college's program is also required to be licensed or approved by another state agency as well as the Council on Higher Education, the executive director shall attempt to coordinate the licensing function with that agency.
(4) A college shall offer only those degrees and degree programs, including honorary degrees, specifically authorized in the license. If a college is licensed to offer specific courses, only those courses authorized in the license shall be offered.

Section 3. Licensure Application Procedures. The following procedures shall be observed in considering applications for a license:
(1) Application for a license shall be in the form and manner prescribed by the executive director. Colleges not licensed as of the effective date of this administrative regulation shall submit an application for a license within sixty (60) days. Providing false or misleading information on any application may be deemed as sufficient grounds for denying licensure.
(2) Documents to accompany application. Each application shall be accompanied by copies of the following:
(a) College charter;
(b) College catalog;
(c) College constitution and bylaws;
(d) Student enrollment application;
(e) Student contract or agreement; and
(f) Documentation of accreditation, licensure or approval by appropriate agencies.
(3) Site visits. Within thirty (30) days of the receipt of a full and complete application for a license, or license renewal, the executive director may conduct, or may have conducted, a site visit at the location or locations where the applicant college offers, or proposes to offer, courses of instruction. Personnel conducting the site visits shall possess the expertise appropriate to the type of college to be visited. The purpose of a site visit shall be to make an assessment of the instructional program, library, faculty, student services, administration, financial status, facilities, and equipment and of such other factors which are of significance in determining the college's qualifications for licensure.
(4) Cost of site visits. A college applying for a license, or license renewal, or a college to which a site visit is necessary in order to administer KRS 164.945 to 164.947, may be required to bear the cost of the site visit. Costs connected with a site visit and subsequent visits as may be necessary, such as travel, meals, lodging, and honoraria are paid by the college. The estimated cost of the site visit, and final settlement regarding actual expenses incurred shall be made within thirty (30) days following the site visit. Failure to pay these costs may result in license suspension or revocation.
(5) New colleges. In the case of a proposed new college, the executive director may issue a license if he determines that the college may reasonably be expected to meet the standards set forth in these administrative regulations:
(a) Within three (3) years if the college proposes to award a degree no higher than an associate degree. Annual reports shall be submitted to the executive director demonstrating the progress being made in meeting the licensure standards.
(b) Within five (5) years if the college proposes to offer a baccalaureate or higher degree. Annual reports shall be submitted to the executive director demonstrating the progress being made in meeting the licensure standards.
(6) Action on license applications. Within thirty (30) working days of the completion of the site visit or within sixty (60) working days of the submission of an application, the executive director shall do one (1) of the following:
(a) Issue a license for a period of no less than two (2) years, nor more than five (5) years;
(b) Deny application for license; or
(c) Notify the applicant college of deficiencies which must be corrected before a license can be issued.
(7) Failure to apply for a license. If a college which is subject to the provisions of this administrative regulation fails to apply for a license, the executive director shall take the following action:
(a) Notify the college by registered mail of the requirement to obtain a license;
(b) If a license application is not received within sixty (60) days of notification, require the chief administrative officer to appear for a

hearing as provided in Section 9 of this administrative regulation;

(c) If the chief administrative officer does not appear for the hearing, refer the case to the appropriate county attorney for enforcement.

Section 4. License Renewal and Supplementary Application Procedures. (1) A college shall apply for license renewal on the date specified in the license.

(2) An application for license renewal, or a supplementary application, in such form and manner as may be prescribed the executive director, shall be required within thirty (30) days following any of these developments:

(a) Scheduled expiration of the licensure period;

(b) A change in the name of a college;

(c) A change in the principal location of a college;

(d) A change in ownership or governance of a college;

(e) Proposed additions or deletions of degree programs or majors, and other concentrations and specialties;

(f) Establishment of an instructional site away from the main campus of an in-state college for the purpose of offering courses for college credit which comprise at least twenty-five (25) percent of the course requirements for a degree program;

(g) Action by an accrediting agency which results in a college being placed in a probationary status for more than one (1) year, or which results in the loss of the college's accreditation; or

(h) Determination by the executive director that other sufficient cause exists which requires a supplementary application or an application for license renewal.

(3) Action on license renewal and supplementary applications. Within thirty (30) working days of the submission of a license renewal or supplementary application, the executive director shall do one (1) of the following:

(a) Renew the license for a period of no less than five (5) years nor more than ten (10) years;

(b) Amend the current license without changing the renewal date;

(c) Deny the renewal or supplementary application; or

(d) Notify the applicant college of deficiencies which must be corrected before a license can be issued.

Section 5. Annual Reports. Colleges shall submit an annual report to the executive director.

(1) The annual report for in-state colleges shall contain the following:

(a) Evidence of good standing with regard to student default rates in student loan programs administered by the Kentucky Higher Education Assistance Authority or the United States Department of Education if the college participates in state or federal student financial aid programs;

(b) A statement prepared by an independent certified public accountant confirming that the amount of the college's surety bond equals a penal sum equal to or in excess of the largest amount of prepaid tuition held by the college at any time;

(c) A current list of the college's agents;

(d) The student headcount enrollment for the fall term in each licensed program submitted through the Council on Higher Education data collection system; and

(e) The number of students completing each licensed program submitted through the Council on Higher Education data collection system.

(2) The annual report for the Kentucky site of out-of-state colleges shall contain the following:

(a) Evidence of good standing with regard to student default rates in student loan programs administered by the Kentucky Higher Education Assistance Authority and the United States Department of Education if the college participates in state or federal student financial aid programs;

(b) A statement prepared by an independent certified public accountant confirming that the amount of the college's surety bond equals a penal sum equal to or in excess of the largest amount of prepaid tuition held by the college at any time;

(c) A current list of the college's agents;

(d) The student headcount enrollment for the fall term in each licensed program submitted on forms provided by the executive director; and

(e) The number of students completing each licensed program submitted on forms provided by the executive director.

Section 6. License Expiration. A license shall automatically expire within sixty (60) days following any of these developments:

(1) A license renewal application is not submitted;

(2) An in-state college ceases operation; or

(3) An out-of-state college ceases operation at a Kentucky site.

Section 7. Standards for Licensure. The executive director may determine that an in-state college meets the standards and requirements of this section if the college has been accredited by an accrediting agency. The executive director shall determine that the following requirements or standards are met in considering applications for a license and for license renewal:

(1) Financial stability. The college shall present evidence of financial stability, including the following:

(a) A financial statement including assets and liabilities audited by an independent certified public accountant;

(b) The name of a bank or other financial institution as reference; and

(c) Evidence of good standing with regard to student default rates in student loan programs administered by the Kentucky Higher Education Assistance Authority and the United States Department of Education if the college participates in state or federal student financial aid programs.

(2) Surety bond.

(a) A college shall be responsible for the actions of its agents and shall file a surety bond covering the institution and its agents. The surety bond shall be for the protection of contractual and other rights of students, or of their parents or guardians.

(b) The surety bond shall be executed by a surety company qualified and authorized to do business in Kentucky and shall be made payable to the Council on Higher Education.

(c) The college shall be bonded in a penal sum equal to or in excess of the amount of prepaid tuition held by the institution at any given time of the year, but in no instance shall the penal sum of the bond be less than $10,000.

(d) The college shall provide a statement by an independent certified public accountant confirming that the amount of the bond equals a penal sum equal to or in excess of the largest amount of prepaid tuition held by the college at any time.

(e) If the surety bond is terminated, the college shall notify the executive director and the license shall automatically expire with the bond unless replacement bond is provided without a lapse in bonding.

(3) Personnel requirements.

(a) The college may be required to furnish information regarding the administrative offices, the directors, the owners, and the faculty.

(b) The chief administrator shall hold at least an earned baccalaureate degree from an accredited or licensed college and shall have sufficient experience to qualify for the position.

(c) Faculty members shall possess academic, scholarly, and teaching qualifications usually required for faculty in accredited colleges which offer degrees at comparable levels.

(d) There shall be a sufficient number of full-time faculty to insure continuity and stability of the educational program.

(e) Teaching loads of faculty members shall be consistent with recognized educational practices, and shall be appropriate to the field, the variety of courses assigned, class size, and other related factors.

(4) Facilities and equipment.

(a) The college shall be maintained and operated in compliance with the safety and health requirements set forth in local, city, and county ordinances, and federal and state law, including rules and regulations adopted pursuant thereto.

(b) Adequate and appropriate space shall be maintained for instruction in classrooms and laboratories. Enrollment shall not exceed the design characteristics of the facilities. The instructional program shall not be conducted in substandard facilities and the quality and quantity of equipment shall be adequate and appropriate for the program.

(5) Library. The library shall be appropriate to support the programs offered by the college:

(a) The collection of books, periodicals, newspapers, teaching aids, and other instructional materials and equipment shall be adequate for the needs of the educational program, shall be appropriately housed, and shall be readily accessible to the faculty and students.

(b) A program for continuous acquisition of current library materials and for the recording of all library holdings shall be clearly outlined and maintained.

(c) Library expenditures, express as a percentage of the total educational and general budget, shall be consistent with the percentage of library expenditures commonly observed in accredited colleges of similar types.

(d) A professionally trained and competent library staff, adequate to serve the needs of the students and to support the educational program, shall be provided.

(e) Sufficient seating and work space for a reasonable proportion of the faculty and students to be accommodated at one (1) time shall be provided.

(f) The physical environment of the library shall be conducive to reflective intellectual pursuits common to institutions of higher learning.

(g) A college which does not provide its own library facilities and must rely on other institutions to provide library resources shall demonstrate that permission to utilize library resources has been obtained prior to implementation of its programs. The extent of dependence on other libraries shall be clearly stated and the nature and details of the agreements or contracts with the participating libraries shall be explained and exhibited. The details of the contractual agreements with other libraries must meet the criteria outlined in the above standards.

(6) Curriculum. Earned degrees shall be bona fide academic degrees and the courses offered in degree programs shall be of collegiate quality as determined by the executive director using the following criteria:

(a) Courses offered in degree programs shall be consistent with those generally transferable for credit among accredited colleges in programs of corresponding degree levels, and for credit toward the baccalaureate degree if such programs are at the associate degree level; or

(b) Courses are not usually transferable because of the uniqueness of a program, or for other valid educational reasons are determined to be of collective quality.

(c) A college shall not offer a master's degree, a doctoral degree, or any other graduate-level degree, as determined by the executive director, unless the college is accredited.

(d) The college shall have a systematic program of curriculum revision in order to maintain the general standards of accredited colleges with similar programs.

(e) The college shall have a program of evaluation which includes a periodic assessment of the changes in student achievement.

(7) General education.

(a) A reasonable percentage of the total credits comprising associate degrees and baccalaureate degrees shall be earned in general education, including science-mathematics, social and behavioral sciences, and humanities. A college which offers an interdisciplinary general education program, a block-type program, or other unique general education program shall be considered to be in compliance with the general education requirement if the executive director determines that the program content and distribution are appropriately related to the degree and institutional purposes.

(b) A new college, and any existing college which initiates a new associate degree or baccalaureate degree program or major, or other concentration or specialty, after the effective date of these administrative regulations, shall comply fully from the outset with the general education requirements.

(8) Program supervision and instructional support. Regardless of location, type of program, method of instruction, or other characteristics, an instructional program for which degree credit is awarded shall include the following:

(a) Adequate supervision by the college; and
(b) Other instructional support as may be required to maintain a program of acceptable quality.

(9) Truth in advertising. A college shall observe the following standards in its advertising:

(a) Advertisements, announcements, and promotional material of any kind which are distributed in Kentucky shall not contain any statements that are untrue, deceptive, or misleading with respect to the college, its personnel, its services, or the content, accreditation status and transferability of its courses or degree programs.

(b) Advertisements, announcements, or other materials produced by or on behalf of the college shall not indicate that the college is "supervised," "recommended," "endorsed," or "accredited" by the Commonwealth of Kentucky, by the Council on Higher Education, or by any other state agency. An advertising statement, if any, shall be in exactly the following form: "(Name of College) is licensed by the Kentucky Council on Higher Education."

(10) Recruitment and enrollment procedures. A college shall furnish the following to each student prior to enrollment:

(a) The college's policies on grades, attendance, and conduct;
(b) A description of the instructional program;
(c) A detailed schedule of all charges, rentals, and deposits;
(d) The schedule of refunds of all charges, rentals, and deposits; and
(e) The student enrollment application, contract, or agreement.

(11) Student affairs.

(a) Students admitted to the college shall have completed a state-approved secondary school program or its equivalent.

(b) A student admitted to an instructional program shall have demonstrated a readiness for such instruction in the field or specialty, and the student's preparation, aptitude, and interest shall be determined to provide reasonable assurance that the student has the potential to benefit from the instruction offered.

(c) The college shall provide academic counseling by faculty or staff to each student at the time of admission and throughout the program.

(d) The college shall make assistance and counseling available to each student who completes a technical or vocational program for the purpose of assisting the student with an appropriate job placement or with transfer.

(e) The college shall maintain sufficient records for each student to provide an understanding of his background, to record his progress through the instructional program, and for reference purposes.

(f) Administrative officers of the college shall be knowledgeable of the federal and state laws and administrative regulations concerning the disclosure of student information and shall comply with such laws and administrative regulations.

(g) A college which plans to cease operation in Kentucky shall make adequate provision for the maintenance of student records. The location of student records shall be approved in advance by the executive director.

(h) The college shall establish suitable policies and procedures whereby a student is assured due process.

(12) College policies.

(a) The college shall maintain records in an orderly manner and make them available for inspection by the executive director or his designated representative.

(b) A catalog shall be published at least every two (2) years and shall include general information, administrative policies, and academic policies of the college as indicated below:

1. General information.

a. Official name and address of the college, name ü the chief administrative officers, members of the governing body, and names of principal owners.

b. The college's calendar for the period covered by the catalog including beginning and ending dates of each term or semester, registration and examination dates, legal holidays, and other important dates.

c. Names of faculty, including relevant education and experience.

d. Full disclosure of the philosophy and purpose of the institution and its capacity to fulfill these objectives.

2. Administrative policies.

a. Admissions policies and procedures, applicable to the various programs, including policies regarding granting of credit for previous education.

b. Policies and procedures regarding student conduct and behavior and the process for dealing with cases which culminate in probation or dismissal.

c. Schedules for all tuition and instructional charges, and refund schedules for such tuition and instructional charges.

d. Statement of financial aid available to students.

e. Procedures for obtaining transcripts in a timely fashion and at reasonable cost.

3. Academic policies.

a. Policy on class attendance.

b. Description of grading system.

c. Description of the degree, diploma, certificate, and other programs, including the course requirements and the time normally required to complete each.

d. Full description of the nature and objectives of all degrees offered.

(c) Refund policy on tuition and other instructional charges. The refund policy shall meet the following minimum requirements:

1. If tuition and other instructional charges are collected in advance of enrollment and the student fails to enroll, then not more than $100, or not more than ten (10) percent of such tuition and other instructional charges for a term or semester, whichever is less, shall be retained by the college.

2. If notification of withdrawal is given by the student, or if the student fails, without explanation to the proper college authority, to attend classes for a period of thirty (30) days during which classes are in session, the college shall officially withdraw the student from the college and shall refund an amount reasonably related to the period for which the student is not enrolled and shall refund 100 percent of all other tuition and other fees collected by the institution for subsequent enrollment or registration periods.

a. After completion of fifty (50) percent of

the enrollment period, the college is not required to make refunds of tuition or other fees for that period but shall refund 100 percent of tuition or other fees collected by the institution for subsequent enrollment periods.

b. In all other cases, including illness or accident, the college shall make a settlement which is fair and reasonable.

c. Refunds shall be made within thirty (30) days after notification of withdrawal has been received by the college.

3. Notwithstanding the provisions as set forth herein, if a college is accredited by an accrediting agency which is has a specific refund policy which is more favorable to the student, then such policy shall be followed.

4. An out-of-state college shall refund in accordance with the policies indicated herein unless its policy is more favorable to the student, in which case the latter shall be followed.

Section 8. Consumer Complaint Procedure. A person with a complaint or grievance involving misrepresentation against a college licensed under these administrative regulations shall make a reasonable effort to resolve the complaint or grievance directly with the college. If a mutually satisfactory solution cannot be reached, the following procedure shall be followed:

(1) A written statement of the complaint shall be submitted to the executive director which contains evidence relevant to the complaint and documentation that a reasonable effort was made to resolve the complaint directly with the college.

(2) The executive director shall review the facts as presented and may intervene to bring the matter to a satisfactory conclusion through facilitation, but such facilitation shall not include legal action on behalf of any party.

(3) If the executive director determines that the college may no longer be in compliance with the provisions of this administrative regulation, the college may be required to document its continuing compliance with this administrative regulation in the form and manner determined by the executive director.

Section 9. Hearings and Appeals. (1) The executive director may, for cause, require the chief administrative officer, or other officers, of a college to appear for a hearing in order to determine the facts in the case. At such hearings, the officer, or other officers, of the college may be accompanied by counsel of their own choosing and at their expense. If the findings warrant, the executive director may impose the sanctions authorized in this section.

(2) Sanctions. Probation, suspension of license, or revocation of license.

(a) If it is determined, on the basis of the procedures described herein, that the public interest requires that sanctions be imposed, one (1) or more of the following steps may be taken:

1. Place the college's license in a probationary status for a designated period not to exceed one (1) year while deficiencies are being corrected;

2. Suspend the college's license for a period not to exceed one (1) year;

3. Revoke the college's license; or

4. Refer the case to other officials for appropriate action.

(b) A college which is sanctioned, whether such sanction is probation, suspension of license, or revocation of license, shall comply with the terms of such sanction.

(c) Any expense incurred in site visits, and for other purposes related to the removal of such sanctions, shall be borne by the college, notwithstanding the provisions of Section 3(4) of this regulation.

(3) A college may appeal the actions of the executive director regarding the denial of issuance of a license or license renewal or the imposition of sanctions according to the following procedure:

(a) A college shall notify the executive director of the intent to appeal an action within fourteen (14) days of the receipt of the letter notifying the college of the action taken;

(b) The executive director shall appoint a person to serve as the appeals officer;

(c) The appeal shall be presented in writing no later than sixty (60) days following the receipt of notification of intent to appeal. The appeal shall be considered on the written record alone;

(d) The appeals officer shall review findings of fact, draw conclusions, and formulate a recommendation consistent with the facts and this administrative regulation;

(e) Within fourteen (14) days, the report of the appeals officer shall be forwarded to the Chairman of the Council on Higher Education;

(f) The Council on Higher Education shall act on the appeal at its next regular or special meeting; and

(g) The council shall take one (1) of the following actions:

1. Issue a license;

2. Renew the license;

3. Impose one (1) of the sanctions authorized in this section;

4. Refer the case to other officials for appropriate action.

Section 10. 13 KAR 1:015, Licensing of private colleges, is hereby repealed.

GARY S. COX, Executive Director

APPROVED BY AGENCY: January 14, 1991

FILED WITH LRC: January 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 27, 1991 at 1 p.m. at the Council on Higher Education Conference Room, 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 22, 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. 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 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: Debbie McGuffey, Associate Director for Governmental Affairs,

Council on Higher Education, 1050 U.S. 127 South, Suite 101, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Debbie McGuffey

(1) Type and number of entities affected: Private colleges in Kentucky offering any college-level degree program (34 colleges), out-of-state colleges offering college-level instruction in Kentucky (5), and proprietary colleges offering programs at the bachelor's degree level or higher (1) will be affected. In addition, other in-state private colleges which may be opened in the future or other out-of-state colleges which desire to offer degree programs in Kentucky would be affected. This regulation sets the standards for operation for all nonpublic colleges operating in Kentucky.

(a) Direct and indirect costs or savings to those affected: Increases in the direct costs of affected colleges will be limited to costs arising from the requirement for a surety bond.

1. First year: Surety bonds will need to be increased to cover the cost of prepaid tuition held by the college with a minimum bond of $10,000 required. Bond premiums paid by each college will vary with the insurance carrier used and the amount of prepaid tuition.

2. Continuing costs or savings: Surety bonds will need to be renewed annually. Increased costs after the first year would be limited to increases in prepaid tuition and/or bond premium rates.

3. Additional factors increasing or decreasing costs (note any effects upon competition): This regulation will not have any effect on competition because all nonpublic colleges are affected.

(b) Reporting and paperwork requirements: Since this regulation replaces an existing regulation, reporting and paperwork requirements are already being met by nonpublic colleges in Kentucky which are licensed.

(2) Effects on the promulgating administrative body: Since this regulation replaces an existing regulation, staff are in place to administer the regulation.

(a) Direct and indirect costs or savings:

1. First year: Indirect costs will include the staff time to revise application materials and to process any new license applications.

2. Continuing costs or savings: No increase in staff time is necessary to administer this regulation.

3. Additional factors increasing or decreasing costs: There are no additional factors which will increase or decrease costs.

(b) Reporting and paperwork requirements: This regulation does not impose any new reporting or paperwork requirements.

(3) Assessment of anticipated effect on state and local revenues: Since this regulation sets standards for the operation of nonpublic colleges which are already in existence, it will have no effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation establishes standards for the operation of nonpublic colleges and specifies the due process procedures to be followed when colleges are not in compliance with the regulation. An alternative method was rejected because the statutes require the promulgation of an administrative regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: A miscellaneous letter (June 20, 1990) was requested by the executive directors of the Council on Higher Education and the State Board for Proprietary Education from the Office of the Attorney General regarding the interpretation of KRS 165A.320 which relates to the licensing of proprietary institutions which offer baccalaureate and higher degrees. A response to this request has not yet been received.

(a) Necessity of proposed regulation if in conflict: This regulation is necessary because, at the present time, only one of the 40 colleges, a proprietary institution, is affected by the request for interpretation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: An effort has been made to harmonize the proposed regulation with the conflict. The request involves the determination of joint licensure responsibility by the Council on Higher Education and the State Board for Proprietary Education. The resolution of this issue will only affect the level of degree programs at proprietary institutions which will be licensed by the Council on Higher Education.

(6) Any additional information or comments: There are no additional comments.

TIERING: Was tiering applied? No. Tiering was not applied because the standards will be uniformly applied to all nonpublic institutions.

COUNCIL ON HIGHER EDUCATION

13 KAR 2:045. Classification of residency for admission and tuition assessment purposes.

RELATES TO: KRS 164.020

STATUTORY AUTHORITY: KRS 164.020, 164.030

NECESSITY AND FUNCTION: Public institutions of higher education were established and are maintained by the Commonwealth of Kentucky primarily for the benefit of qualified residents of Kentucky. The substantial commitment of public resources to higher education is predicated on the proposition that the state benefits significantly from the existence of an educated citizenry. As a matter of policy, access to higher education is provided so far as feasible at reasonable cost to residents of the state. It is the long-standing practice of the Council on Higher Education to require students who are not Kentucky residents to meet higher admission standards and to pay a higher level of tuition than resident students. The Commonwealth of Kentucky uses residency requirements to determine items such as voting rights, income tax liability, and employment in certain occupations. The requirements vary in form and substance for each of these uses. The purpose of this regulation is to establish a process and corresponding criteria for the residency classification of students seeking admission to, or enrolled in, public institutions of higher education. Furthermore, it is the intent of the Council on Higher Education that this regulation be interpreted and applied in a uniform manner, as described herein, in determining whether students shall be classified as residents or nonresidents for admission and tuition assessment purposes.

Section 1. Definitions. The language of this regulation on residency classification contains some legal terms as well as everyday terms which have specialized meaning in the determination of residency for admission and tuition assessment purposes. The following definitions apply in the interpretation and application of this regulation:

(1) The term "nonresident" means a person who currently maintains legal residence outside Kentucky or has not met the criteria for establishing residency as defined in this regulation.

(2) The term "resident" means a person who is a legal resident of Kentucky based upon fulfilling the criteria for establishing residency as defined in this regulation.

(3) The terms "institution", "institution of higher education", or "college" refer to all institutions, public or private, offering instruction and conferring degrees beyond the secondary school level, such as four (4) year colleges or universities, seminaries, two (2) year institutions (community colleges and junior colleges), and postsecondary vocational-technical schools.

(4) The term "domicile" means a person's true, fixed, and permanent home. It is the place where the person intends to remain, and to which the person expects to return without intending to establish a new domicile elsewhere. "Legal residence" and domicile convey the same notion of permanence and are used interchangeably.

(5) The term "independent person" means a person who meets all of the following criteria. An independent person is one:

(a) Whose parent has not claimed such person as a dependent on federal or state income tax returns for the tax year preceding the date of application for reclassification of residency status;

(b) Who demonstrates no financial dependence upon parent(s); and

(c) Whose parents' income is not taken into account by any private or governmental agency furnishing educational financial assistance to the person, including scholarships, loans, and other assistance.

(6) The term "dependent person" means a person who is unable to meet all of the criteria listed in subsection (5) of this section.

(7) The term "parent" means one (1) of the following:

(a) A person's father or mother; or

(b) A court-appointed legal guardian.

The term "parent" shall not apply if the guardianship has been established primarily for the purpose of conferring the status of resident on a person.

(8) "Degree level" means one (1) of the following:

(a) Undergraduate (enrollment in courses or programs which result in the baccalaureate degree or lower);

(b) Graduate (enrollment in courses or programs which result in a postbaccalaureate degree other than the first-professional degrees in law, medicine, and dentistry); or

(c) Professional (enrollment in courses or programs which result in a professional degree in law, medicine, or dentistry.)

(9) Enrollment at a college or colleges shall be deemed "continuous" if the person claiming "continuous" enrollment continues to be enrolled at the same degree level for consecutive terms (excluding summer) since the beginning of the period for which continuous enrollment is claimed. The sequence of continuous enrollment is broken if the student fails to enroll, except under extenuating circumstances beyond the student's control, e.g., serious personal illness or injury, or illness or death of parent.

(10) "Full-time employment" means employment for at least forty-eight (48) work weeks at an average of at least thirty (30) hours per week.

(11) "Half-time enrollment" means any enrollment during an academic term which is equal to one-half (1/2) of full time as determined by the governing board of the institution.

(12) "Documentation" refers to the submission of source documents, e.g., official letters, papers, or sworn statements. As a general rule, evidence cited as the basis for domicile shall be documented, and the required documentation ~~should~~ accompany the application for residency classification.

(13) "Academic term" means a division of the school year during which a course of studies is given, e.g., semester, quarter, or intersession.

Section 2. Guidelines for Determination of Residency. (1) Initial classification of residency shall be determined based upon the facts existing when the conditions governing admission for a specific academic term have been met. Initial residency determinations generally are made on the basis of information derived from admissions materials. An undergraduate student whose admissions records show the student to be a graduate of an out-of-state high school is presumed to be a nonresident and shall be initially so classified. A student whose admissions records indicate the student's domicile to be outside of Kentucky at time of application is presumed to be a nonresident and shall be initially so classified.

(2) The domicile of a dependent person is that of either parent. The domicile of the parent shall be determined in the same manner as the domicile of an independent person.

(3) The domicile of a dependent person whose parents are divorced, separated, or otherwise living apart shall be presumed to be Kentucky if either parent is a resident of the Commonwealth regardless of which parent has legal custody or is entitled to claim that person as a dependent pursuant to Kentucky income tax provisions.

(4) Evidence submitted on behalf of a dependent person shall pertain to the domicile of the parent(s). A person claiming independent status shall document that proclaimed status and demonstrate that domicile in Kentucky has been established.

(5) Any dependent person whose parent(s), having domicile in this state, moves from this state shall be entitled to classification as a resident while in continuous enrollment at the degree level in which currently enrolled. When continuous enrollment is broken or the current degree level is completed, the person's residency classification shall be reassessed in accordance with the appropriate sections of this regulation.

(6) An independent person who moves to Kentucky and within twelve (12) months enrolls in an institution of higher education more than half time shall be presumed to have come to Kentucky primarily for educational purposes rather than to establish domicile in Kentucky.

Such person shall be classified as a nonresident unless establishment of a Kentucky domicile can be demonstrated in accordance with Section 3 of this regulation.

(7) Upon moving to this state, an independent person who provides clear and convincing evidence of domicile shall be eligible for resident classification of self, spouse, or dependent children, provided that any of these persons is not in this state primarily as a student. A person who moves to Kentucky primarily for the purposes of enrollment of either self, spouse, or dependent in an institution of higher education shall not be granted resident classification unless such person can demonstrate establishment of a Kentucky domicile in accordance with Section 3 of this regulation.

(8) If an independent person or the parent of a dependent person moves out-of-state, domicile, having been established in Kentucky, is retained until steps are taken to establish domicile elsewhere. The same facts and conditions which are presumed in establishing a Kentucky domicile are similarly presumed in determining when a former Kentucky domicile has been abandoned. In the absence of clear and convincing evidence as to the domicile of an independent person who at one time had domicile in Kentucky, that person is presumed to have lost Kentucky domicile upon a one (1) year absence from the state.

(9) An individual shall not be deemed to have established domicile in this state solely by reason of marriage to a Kentucky resident. However, the fact of marriage to a Kentucky resident shall be deemed relevant evidence to be considered in ascertaining domiciliary intent. A student initially classified as a nonresident who marries a Kentucky resident shall be eligible for resident classification if the requisite criteria listed in Section 3 of this regulation are met.

(10) Given transfer to, or matriculation in, another Kentucky public institution of higher education, the student's residency classification shall be reassessed by the receiving institution.

(11) An individual whose domicile was Kentucky at the time of induction into the military, and who maintains Kentucky as home of record and permanent address, shall be entitled to resident status if the individual returns to this state within six (6) months of the date of discharge from active duty.

(12) A member or the spouse of a member of the Armed Forces of the United States stationed in Kentucky on active military orders is considered domiciled in the state and shall be entitled to classification as a resident while the member is on active duty in this state pursuant to such orders. The spouse of the member, while in continuous attendance at the degree level in which currently enrolled, shall not lose resident status when the member is thereafter transferred on military orders. Individuals classified under this section shall be reassessed in accordance with the appropriate sections of this regulation when the qualifying condition is terminated. This regulation is invalid if the individual is stationed in Kentucky for the purpose of enrollment at an institution of higher education or on temporary assignment of less than one (1) year.

(13) A dependent person whose parent is a member of the Armed Forces and stationed in this state on active duty pursuant to military orders shall be classified as a resident. The student, while in continuous attendance at the degree level in which currently enrolled, shall not lose resident status when the parent is thereafter transferred on military orders. When continuous attendance is broken or the current degree level is completed, the person's residency classification shall be reassessed in accordance with the appropriate sections of this regulation. This subsection does not apply if the parent is stationed in Kentucky for the purpose of enrollment at an institution of higher education or on a temporary assignment of less than one (1) year.

(14) Any person holding a permanent residency visa or classified as a political refugee has the capacity to remain in Kentucky indefinitely and shall establish domicile in the same manner as any other person. Time spent in Kentucky and progress made in fulfilling conditions of domicile as stated in Section 3(1) prior to obtaining permanent status may be considered in establishing Kentucky domicile.

(15) Any person holding a nonimmigrant visa with designation A, E, G, H, I, or L may remain in Kentucky as long as the authorized purpose or established need continues and may establish domicile the same as any other person. In assessing the residency status of such a person, other sections of this regulation shall apply and the person's purpose and length of stay as well as other conditions governing presence in Kentucky shall be determined and considered. If this review justifies a resident classification, the person shall be classified as a resident for admission and tuition assessment purposes.

(16) Any person holding a nonimmigrant visa with designations B, C, D, F, J, K or M does not have the capacity to remain in Kentucky indefinitely and may not attain Kentucky resident status for admission and tuition assessment purposes.

(17) Pursuant to KRS 164A.330 and 200 KAR 16:040, beneficiaries of a Kentucky Educational Savings Plan Trust shall be granted resident classification for tuition purposes if:

(a) The beneficiary is covered under a vested participation agreement;

(b) The beneficiary has been a continuous resident of the Commonwealth of Kentucky during the eight (8) year vestment period; and

(c) The beneficiary enrolls in an institution of higher education in Kentucky prior to enrollment in any other educational institution.

(18) No independent person shall be presumed to have gained resident status while being enrolled in any institution of higher education more than half time in the absence of clear and convincing evidence that the person has established domicile in Kentucky.

(19) Domicile shall not ordinarily be conferred by the performance of acts which are auxiliary to fulfilling educational objectives or are performed as a matter of convenience. Mere physical presence in Kentucky (including living with relatives or friends) is not sufficient evidence of domicile.

~~(14) Any person incarcerated in a penal facility located in Kentucky shall be granted resident status during confinement, but residency classification shall be reassessed in accordance with the appropriate sections of this regulation upon release from confinement. Time served during incarceration shall not be used to~~

establish domicile unless the individual resided in the Commonwealth prior to confinement or the conditions of parole restrict the location of the individual to the Commonwealth.

Section 3. Types of Evidence to be Considered for Establishment of Domicile. (1) Evidence submitted on behalf of a dependent person shall pertain to the domicile of either parent. Initial classifications generally are made on the basis of information derived from admissions materials, and individuals who enroll in college immediately following graduation from high school and remain enrolled are treated as dependent persons unless the contrary is evident from the information submitted. In such cases, domicile shall be inferred from the student's permanent address, parent's mailing address, or location of high school of graduation.

(2) A person claiming independent status shall document independent status under Section 1(5) of this regulation and shall demonstrate by clear and convincing evidence that domicile in Kentucky has been established by that person's acts. If an independent person asserts that domicile in Kentucky has been established, the person has the burden of proving that assertion by clear and convincing evidence.

(3) The determination of domicile shall be based upon verifiable circumstances or actions. No single fact is paramount, and each situation shall be evaluated to identify those facts which are essential to the determination of domicile.

(4) The following facts, although not conclusive, shall have probative value in support of a claim by an independent person for resident classification:

(a) Acceptance of an offer of full-time employment or transfer to an employer in Kentucky or contiguous area while maintaining domicile in Kentucky;

(b) Continuous physical presence in a nonstudent status for the twelve (12) months immediately preceding the last date for enrollment in the institution;

(c) Filing of Kentucky resident income tax return for the calendar year preceding the date of application for reclassification of residency status;

(d) Full-time employment of at least one (1) year while living in Kentucky;

(e) Attendance as a full-time, nonresident student at an out-of-state institution of higher education while determined to be a resident of Kentucky;

(f) Abandonment of a former domicile and establishing domicile in Kentucky with attendance at an institution of higher education following and only incidental to such change in domicile;

(g) Payment of occupational taxes in Kentucky;

(h) Payment of real property taxes in Kentucky;

(i) Payment of intangible personal property taxes in Kentucky;

(j) Ownership of real property in Kentucky, if the property was used by the student as a residence for at least six (6) months preceding the date of application for reclassification of residency status;

(k) Long-term lease (at least twelve (12) consecutive months) of noncollegiate housing;

(l) Kentucky automobile registration;

(m) Kentucky driver's license;

(n) Continued presence in Kentucky during vacation periods;

(o) Marriage to a Kentucky resident; and

(p) Registration as a Kentucky voter.

(5) Documentation. The determination of domicile shall be based upon verifiable circumstances or actions, and a student may be required to submit original or notarized copies of any relevant evidence pertaining to domicile. When reviewing the documentation submitted, institutions may request additional documentation to clarify the person's circumstances and to formulate a classification decision which considers all relevant facts.

(6) Submission of false documents. A student who gives incorrect or misleading information to institution officials may be subject to criminal prosecution and to such disciplinary sanctions as may be imposed by the institution, which shall include but not necessarily be limited to the payment of nonresident tuition for each academic term attended.

Section 4. Responsibilities. (1) Institution responsibilities. Each institution shall designate an administrative office or person with delegated day-to-day responsibility for administration of this classification regulation and for evaluating and deciding student requests for reclassification. Each institution shall also establish a residency review committee (hereafter the committee) to assist and recommend action on student requests for reclassification referred to the committee by said administrative office or person having day-to-day responsibility for this regulation. To evaluate student requests for reclassification, each institution shall establish an operational policy including procedures and designated responsibilities. The Council on Higher Education residency classification policy shall be published in its entirety in the official bulletin(s) of each institution.

(2) Student responsibilities. The responsibility for registering under the proper residency classification is that of the student. It is the student's obligation to raise questions concerning residency classification and make application for change of residency classification with the administrative officials of the institution. A student classified as a resident who becomes a nonresident shall be required to notify the proper institutional officials. However, if the student fails to notify institution officials of the change in status, institutional officials may investigate and evaluate the current status of the student regardless of the source of the information. A student classified as a nonresident is considered to retain that status until the student makes written application for reclassification in the form prescribed by subsection (3) of this section and is officially reclassified by the proper administrative officials.

(3) Request for reclassification. Application for change of residency classification shall be made to the administrative office or person designated by the institution for this purpose. Such application with supporting documentation shall be made by the student not more than forty-five (45) calendar days after the first day of classes of the academic term for which reclassification is sought. A student may apply for reclassification only once during the academic term for which reclassification is

requested.

(a) To support full consideration of a request for a change in residency classification, each application shall consist of a complete affidavit which includes the necessary documentation to substantiate facts cited for reclassification. Each applicant is encouraged to submit a formal statement indicating the basis for the claim of resident status. The students shall be responsible for ensuring that all necessary documentation is submitted with the affidavit. Incomplete applications may be returned to the student for completion at the discretion of appropriate institutional officials.

(b) Applications for reclassification shall be reviewed according to institutional policy. When the applications for reclassification are referred to the commission, the student shall be notified in writing as to the committee's decision on the application. The committee's written decision on residency shall include findings of fact, and determination of whether the applicant is deemed to be a "dependent person" or "independent person," whether the applicant is a "resident" or "nonresident," and the reason(s) based upon this regulation for said determinations. If an application results in a change of classification from nonresident to resident, such change shall not be made retroactive beyond the academic term in which application for resident classification is made. A student denied resident classification by the committee shall have the right to appeal such decision to the Council on Higher Education.

Section 5. Procedure for Appeal to the Council on Higher Education. (1) The Executive Director of the Council on Higher Education shall appoint a person to serve as an appeals officer. The appeals officer shall review all residency appeals from the public institutions of higher education to determine if the committee's written decision is supported by substantive evidence and in conformity with this regulation.

(2) After the student receives the decision of the committee, the student has fourteen (14) calendar days in which to appeal that decision to the Council on Higher Education. The student initiates this process by giving written notice to the chair of the committee or the person or office designated by the institution to handle such appeals. Appeals filed more than fourteen (14) calendar days after receipt of the decision of the committee shall be dismissed and the decision of the committee shall be final.

(3) The committee or its designated representative shall be responsible for forwarding to the Council on Higher Education a complete copy of the student's file within fourteen (14) calendar days of the receipt of a notice of appeal. The student may review the content of the file before it is forwarded to the Council on Higher Education.

(4) The appeal shall be considered on the written record alone and new or additional evidence shall not be considered.

(5) The appeals officer shall review the written record and the committee's written decision and shall make a recommendation to affirm, modify, or reverse the committee's decision. The appeals officer may order the appeal remanded to the committee for further proceedings before the appeals officer renders a recommendation. Within twenty-one (21) calendar days after receipt of the student's file, the recommendation of the appeals officer shall be forwarded to the Executive Director of the Council on Higher Education or designated representative. The Executive Director of the Council on Higher Education or designated representative shall promptly forward the recommendation of the appeals officer to the institutional representative designated to handle appeals for final disposition by the institution in accordance with established institutional procedures.

(6) The institutional representative shall promptly forward the recommendation of the appeals officer to the student. Each party (the institution and the student) shall have ten (10) calendar days after receipt of the appeals officer's recommendation to file written exceptions to the report with the institutional representative designated to handle final disposition of appeals. The institution shall make final disposition of the appeal and notify the student within thirty (30) calendar days after expiration of the ten (10) day period for filing exceptions.

Section 6. This regulation supersedes all previous policies and regulations of the council relating to residency classification of students for tuition assessment purposes.

Section 7. 13 KAR 2:040, Residency classification policy, is hereby repealed.

GARY S. COX, Executive Director
APPROVED BY AGENCY: January 14, 1991
FILED WITH LRC: January 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 27, 1991 at 9 a.m. at the Council on Higher Education Conference Room, 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 22, 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. 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 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: Debbie McGuffey, Associate Director for Governmental Affairs, Council on Higher Education, 1050 U.S. 127 South, Suite 101, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Debbie McGuffey

(1) Type and number of entities affected: Eight state-supported universities and 14 state-supported colleges as follows: Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Northern Kentucky University, University of Kentucky, University of Louisville, Western Kentucky University, Ashland Community College, Elizabethtown Community

College, Hazard Community College, Henderson Community College, Hopkinsville Community College, Jefferson Community College, Lexington Community College, Madisonville Community College, Maysville Community College, Owensboro Community College, Paducah Community College, Prestonsburg Community College, Somerset Community College, Southeast Community College.

(a) Direct and indirect costs or savings to those affected: There will be no additional direct or indirect costs or savings since this regulation replaces a regulation that has existed since 1987.

1. First year: There will be no additional direct or indirect costs or savings since this regulation replaces a regulation that has existed since 1987.

2. Continuing costs or savings: There will be no additional direct or indirect costs or savings since this regulation replaces a regulation that has existed since 1987.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors.

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements since this regulation replaces a regulation that has existed since 1987.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There will be no additional direct or indirect costs or savings since this regulation replaces a regulation that has existed since 1987.

1. First year: There will be no additional direct or indirect costs or savings since this regulation replaces a regulation that has existed since 1987.

2. Continuing costs or savings: There will be no additional direct or indirect costs or savings since this regulation replaces a regulation that has existed since 1987.

3. Additional factors increasing or decreasing costs: There are no additional factors.

(b) Reporting and paperwork requirements: There will be no additional reporting or paperwork requirements since this regulation replaces a regulation that has existed since 1987.

(3) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state or local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: This regulation replaces an existing regulation which establishes guidelines for the determination of residency for tuition and admission purposes. Since a regulation has existed since 1987, it was decided to continue the guidelines in regulation form.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no such statute or 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: None

TIERING: Was tiering applied? No. Tiering was not applied because the guidelines will be uniformly applied to all students at all public institutions of higher education.

TEACHER'S RETIREMENT SYSTEM
(Proposed Amendment)

102 KAR 1:154. Repeal of 102 KAR 1:153 and 102 KAR 1:190.

RELATES TO: KRS 161.430, 161.620
STATUTORY AUTHORITY: KRS 13A.310, 161.310
NECESSITY AND FUNCTION: 102 KAR 1:153 is no longer required because the benefit adjustments provided in House Bill 374 and House Bill 732 enacted by the 1976 General Assembly were fully implemented during the 1976-78 biennium. 102 KAR 1:190 is no longer necessary since KRS 161.430 was amended by the 1990 General Assembly in KRS Chapter 442, Section 18, which eliminated subsection (5) relating to this regulation.

Section 1. 102 KAR 1:153, Benefit adjustment, is hereby repealed.

Section 2. 102 KAR 1:190, Types of investments, is hereby repealed.

ARLENE M. ROMINE, Vice Chairperson
APPROVED BY AGENCY: December 17, 1990
FILED WITH LRC: January 3, 1991 at 1 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled on February 21, 1991, at 9 a.m., EST, at the Teachers' Retirement System of Kentucky office, 479 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing. Unless written notification of intent to attend the public hearing is received by the agency at least five days before the hearing, the hearing may be cancelled. The hearing is open to the public. Any individual who attends the hearing 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. Individuals who do not wish to attend the public hearing 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: Pat N. Miller, Executive Secretary, Teachers' Retirement System of Kentucky, 479 Versailles Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Billy Hunt

(1) Type and number of entities affected: 67,500 active and retired members and 229 employers.

(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:

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: Quadrennial review.

TIERING: Was tiering applied? Yes

GENERAL GOVERNMENT CABINET
Board of Optometric Examiners

201 KAR 5:060. Licenses in inactive status.

RELATES TO: KRS 320.255

STATUTORY AUTHORITY: KRS 320.240

NECESSITY AND FUNCTION: KRS 320.255 allows an optometrist to request the board for leave to place his license in inactive status if he does not intend to engage in the practice of optometry. This regulation prescribes the procedure for requesting leave to place licenses in inactive status and for reactivating licenses.

Section 1. A licensed optometrist may request the board for leave to place his or her license in inactive status. Such request shall be in writing and shall include the following:

(1) The reason for the licensee's desire to place the license in inactive status.

(2) Whether the status is expected to be permanent or temporary; if temporary, a statement as to what period of time the licensee expects to leave the license in inactive status.

Section 2. An optometrist whose license has been placed in inactive status may request that his license be returned to active status. Such request shall be in writing and shall include the following:

(1) The reason the optometrist wishes to reactivate the license.

(2) That the applicant has completed the necessary hours of educational courses as required by statute and certifications of the same as required by regulation.

(3) That the applicant has not engaged in any of the conduct set forth in KRS 320.310(1).

(4) Paying a reinstatement fee of $250.

AVERY HILL, President

APPROVED BY AGENCY: January 14, 1991

FILED WITH LRC: January 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1991 at 10 a.m. at Room 105, Capitol Annex Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 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: Ada Towles, Secretary, Board of Optometric Examiners, 1000 West Main Street, Georgetown, Kentucky 40324.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ada Towles

(1) Type and number of entities affected: Licensed optometrists who wish to terminate or suspend their active practice of optometry.

(a) Direct and indirect costs or savings to those affected: Persons granted inactive status will experience savings from not having to comply with continuing education requirements of active practitioners, and will have to pay the annual license fee.

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 only savings effect noted in (1)(a) above is the only known effect. There is no known effect on competition.

(b) Reporting and paperwork requirements: There will be increased requirements to the licensee in applying for inactive status.

(2) Effects on the promulgating administrative body: The board will experience additional costs in administrative time required to process and consider applications for inactive status, however, the addition of staff personnel will not be required.

(a) Direct and indirect costs or savings: The same effect noted in (2) above.

1. First year: The same effect noted in (2) above.

2. Continuing costs or savings: The same effect noted in (2) above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This will be increased since the board will be considering applications which were not previously allowed by law.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered.

(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 is prepared to comply with KRS 320.255 which was enacted by the 1990 General Assembly.

TIERING: Was tiering applied? No. This

regulation applies to all licensed optometrists. Tiering is not applicable to this regulation.

GENERAL GOVERNMENT CABINET
Board of Optometric Examiners

201 KAR 5:070. Board members compensation.

RELATES TO: KRS 320.230
STATUTORY AUTHORITY: KRS 320.230, 320.240
NECESSITY AND FUNCTION: KRS 320.230 allows the board members to receive per diem compensation to be determined by regulation of the board not to exceed $125. This regulation prescribes the board member's per diem compensation.

Section 1. A board member's per diem compensation shall be $100.

AVERY HILL, President
APPROVED BY AGENCY: January 14, 1991
FILED WITH LRC: January 15, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1991 at 10 a.m. at Room 105, Capitol Annex Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 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: Ada Towles, Secretary, Board of Optometric Examiners, 1000 West Main Street, Georgetown, Kentucky 40324.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ada Towles
(1) Type and number of entities affected: Members of the Board of Optometric Examiners of which there are 5.
(a) Direct and indirect costs or savings to those affected: Board members per diem compensation will be increased from $50 to $100.
1. First year: Based upon five board members meeting a total of 22 days per year, the total cost will be $5,500.
2. Continuing costs or savings: The same cost effect noted in (1)(a) above should be continuing in nature.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.
(2) Effects on the promulgating administrative body: Increased costs as stated below.
(a) Direct and indirect costs or savings: $5,500 in additional fees per year.
1. First year: See item (2)(a) above.
2. Continuing costs or savings: See item (2)(a) above.
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: There were no alternatives 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 new regulation is in compliance with the 1990 legislative amendments to KRS 320.230(1). The increase in per diem fees is to bring board members' compensation in line with those fees being paid members of other professional boards.
TIERING: Was tiering applied? No. Tiering is not applicable to this regulation.

GENERAL GOVERNMENT CABINET
Board of Optometric Examiners

201 KAR 5:080. Trade names.

RELATES TO: KRS 320.300(4)
STATUTORY AUTHORITY: KRS 320.240, 320.300(4)
NECESSITY AND FUNCTION: KRS 320.300(4) prohibits a person from practicing optometry under any name other than his own except as permitted by the board in its regulations. This regulation prescribes the instances where an optometrist may practice under a trade name.

Section 1. An optometrist may practice under a trade name, which is a name other than his own, only as long as the name of each optometrist practicing in that office is prominently displayed on the exterior of the main entrance to the office and on all stationery prescription pads, telephone directory listings and other items bearing or displaying the trade name.

AVERY HILL, President
APPROVED BY AGENCY: January 14, 1991
FILED WITH LRC: January 15, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1991 at 10 a.m. at Room 105, Capitol Annex Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 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: Ada Towles, Secretary, Board of Optometric Examiners, 1000 West Main Street, Georgetown, Kentucky 40324.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ada Towles
(1) Type and number of entities affected: Licensed optometrists in Kentucky of which there are currently 555.
(a) Direct and indirect costs or savings to those affected: There are no costs or savings to those affected.
1. First year: The same effect noted in (1)(a) above should be continuing in nature.
2. Continuing costs or savings: The same 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 effect noted in (1)(a) above is the only known effect. The use of trade names may have an effect on competition but its effect is impossible to ascertain.
(b) Reporting and paperwork requirements: There are none.
(2) Effects on the promulgating administrative body: None since the board has no additional responsibility under this statute.
(a) Direct and indirect costs or savings: None
1. First year: The same effect noted in (1)(a) above should be continuing in nature.
2. Continuing costs or savings: The same effect noted in (1)(a) above should be continuing in nature.
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 alternatives 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 is in compliance with the 1990 legislative amendments to KRS 320.300(4), formerly Section 5.
TIERING: Was tiering applied? No. This regulation applies to all licensed optometrists. Tiering is not applicable to this regulation.

GENERAL GOVERNMENT CABINET
Board of Optometric Examiners

201 KAR 5:090. Annual renewal fees.

RELATES TO: KRS 320.280
STATUTORY AUTHORITY: KRS 320.240
NECESSITY AND FUNCTION: KRS 320.280(1) requires that optometrists annually secure a renewal certificate upon payment of a fee of not more than $200. This regulation prescribes the renewal fee.

Section 1. The annual renewal fee for an optometrist shall be $100.

AVERY HILL, President
APPROVED BY AGENCY: January 14, 1991
FILED WITH LRC: January 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1991 at 10 a.m. at Room 105, Capitol Annex Building, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 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: Ada Towles, Secretary, Board of Optometric Examiners, 1000 West Main Street, Georgetown, Kentucky 40324.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ada Towles
(1) Type and number of entities affected: Licensed optometrists in Kentucky of which there are currently 555.
(a) Direct and indirect costs or savings to those affected: The annual license renewal fee will be increased from $75 to $100.
1. First year:
2. Continuing costs or savings: The same effect noted in (1)(a) above should be continuing in nature.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: There are no additional reporting and paperwork requirements.
(2) Effects on the promulgating administrative body: Increased fee income of $13,875 based upon the $25 increase for 555 currently licensed optometrists.
(a) Direct and indirect costs or savings: The same effect noted in item (2) above.
1. First year: The same effect noted in (2) above.
2. Continuing costs or savings: The same effect noted in (2) above.
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 alternatives 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 new regulation is consistent with the 1990 legislative change to KRS 320.280(1).
TIERING: Was tiering applied? No. This regulation applies to all licensed optometrists. Tiering is not applicable to this regulation.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing

601 KAR 11:010. Fees relating to commercial driver's licenses.

RELATES TO: KRS Chapter 281A
STATUTORY AUTHORITY: KRS 281A.150
NECESSITY AND FUNCTION: KRS 281A.150, as effective January 1, 1991, sets the maximum fee allowed to be charged for various commercial driver's licenses. It further allows the Transportation Cabinet to set the exact fees by administrative regulation. This administrative regulation is promulgated to set the fees that are to be divided between the Transportation Cabinet, Department of State Police and the circuit court clerk (through the Administrative Office of the Courts).

Section 1. Instruction Permit. An applicant for a commercial driver's license instruction permit shall pay a fee of thirty-five (35) dollars to the circuit court clerk.

Section 2. Commercial Driver's License (Nongrandfathered). (1) An applicant for a commercial driver's license who does not meet the requirements of KRS 281A.200, and who has already been issued an instruction permit, shall pay a fee to the circuit court clerk based upon the number of months the commercial driver's license is valid. The license shall expire in the birth month and year of the applicant's regular operator's license issued pursuant to KRS 186.412. The fee shall be as follows:

License Validity (Months)	37-48	25-36	13-24	1-12
Total Cost	$40.00	$31.25	$22.50	$13.75

(2) An applicant for a commercial driver's license who does not meet the requirements of KRS 281A.200, and who has not already been issued an instruction permit, shall pay a fee to the circuit court clerk based upon the number of months the commercial driver's license is valid. The license shall expire in the birth month and year of the applicant's regular operator's license issued pursuant to KRS 186.412. The fee shall be as follows:

License Validity (Months)	37-48	25-36	13-24	1-12
Total Cost	$75.00	$66.25	$57.50	$48.75

Section 3. Commercial Driver's License (Grandfathered). An applicant for a commercial driver's license who meets the requirements of KRS 281A.200, shall pay a prorated fee to the circuit court clerk as required by KRS 281A.200(3). The fees shall be as follows:

License Validity (Months)	37-48	25-36	13-24	1-12
Total Cost	$62.00	$53.25	$44.50	$35.75

Section 4. Renewals. An applicant for renewal of a commercial driver's license shall pay a fee of thirty-five (35) dollars to the circuit court clerk. This fee shall include the eight (8) dollar operator's license fee required by KRS Chapter 186 for a four (4) year license.

Section 5. Transfer from Another Jurisdiction. An applicant for a commercial driver's license who possesses a valid commercial driver's license issued by another licensing jurisdiction shall pay a fee of fifty-nine (59) dollars to the circuit court clerk. This fee shall include the eight (8) dollar operator's license fee required by KRS Chapter 186 for a four (4) year license.

Section 6. Duplicate Commercial Driver's License. An applicant for a duplicate commercial driver's license shall pay a fee of ten (10) dollars to the circuit court clerk.

Section 7. Endorsements or Class Upgrade. An applicant for an additional commercial driver's license endorsement or upgrade of commercial driver's license class shall pay a fee of fifteen (15) dollars to the circuit court clerk. If the applicant is required to submit to more than one (1) test there is an additional fee of five (5) dollars for each additional test.

Section 8. School, Church, Mass Transit and Nonprofit Bus Driver's License. An applicant for a commercial driver's license who applies for a Class B or C commercial license in order to only drive a school bus, church bus, mass transit bus or nonprofit bus shall pay his fee to the circuit court clerk based upon the number of months the commercial driver's license is valid. The license shall expire in the birth month and year of the applicant's regular operator's license issued pursuant to KRS 186.412. The fee shall be as follows:

License Validity (Months)	37-48	25-36	13-24	1-12
Total Cost	$20.00	$19.00	$18.00	$17.00

JEROME L. LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: January 11, 1991
FILED WITH LRC: January 15, 1991 at 11 a.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on February 27, 1991 at 9 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by February 22, 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 February 22, 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: Estimated 125,000 commercial drivers in Kentucky.
(a) Direct and indirect costs or savings to those affected: The fees set by this administrative regulation are authorized by KRS 281A.150.
1. First year: $6.2 million.
2. Continuing costs or savings: $1.7 million.
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: The fees have been established at a level which will allow the Kentucky Transportation Cabinet, the Kentucky State Police and the circuit court clerks to generate sufficient funds to pay for the testing and commercial driver's license issuance program.
(a) Direct and indirect costs or savings:
1. First year: $5.5 million generated and cost.
2. Continuing costs or savings: $1.7 million generated and continuing costs.
3. Additional factors increasing or decreasing costs: In the first year the state government agencies have very high computer hardware and software 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: Rejected all lower fees because the state's costs would not be covered. Rejected all higher fees because they exceeded state law or generated more funds than necessary to operate the program.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(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 applied because there is a fee differential for grandfathered and nongrandfathered applicants.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title XII of PL 99-570 mandated the issuance of Commercial Driver's Licenses by all states. The Federal Highway Administration promulgated 49 CFR Part 383 to implement this requirement. However, there are no federal requirements on fees for the issuance of a commercial driver's license, therefore this form is not applicable.
2. State compliance standards. Not applicable.
3. Minimum or uniform standards contained in the federal mandate. Not applicable.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing

601 KAR 11:020. Commercial driving history record.

RELATES TO: KRS 281A.100
STATUTORY AUTHORITY: KRS 281A.100
NECESSITY AND FUNCTION: KRS 281A.100 allows the dissemination of commercial driving history records. It further allows the Transportation Cabinet to charge a fee and establish what shall be included in the driving history record. This administrative regulation establishes the content of a commercial driving record, the fee for purchasing a record and the procedures to be followed for purchasing a record.

Section 1. Employer or Prospective Employer. In order for the Transportation Cabinet to provide a copy of a ten (10) year commercial driving history record to a commercial driver's employer or prospective employer, the commercial driver shall sign a statement that the firm or person applying for the commercial driving history record is his employer or prospective employer.

Section 2. Authorized Persons. Any person authorized in writing by a commercial driver may apply for a copy of the commercial driver's complete driving history.

Section 3. Unauthorized Persons. Any person or company not authorized in writing by a commercial driver to receive a copy of his commercial driving history record may apply for a copy of the commercial driver's three (3) year driving history record authorized by KRS 187.310. The driving history record shall include entries of the last three (3) years relating to commercial as well as noncommercial vehicles.

Section 4. Other Licensing Jurisdictions, Courts and Police Agencies. (1) The driving history record of a commercial driver shall be provided to another licensing jurisdiction on a reciprocal basis.
(2) The driving history record of a commercial driver shall be provided to a court or police agency without charge.

Section 5. Fee. (1) Except as provided in Sections 4 of this regulation and subsection (2) of this section, the fee for obtaining a driving history record of a commercial driver shall be five (5) dollars. The fee shall be paid prior to the issuance of the commercial driving history record.
(2) Any person submitting a request for driving history records of commercial drivers by any method of data processing recording media adaptable to the Transportation Cabinet's system shall be given a ten (10) cent reduction in cost per record. These persons may be billed periodically by the Transportation Cabinet for all driving history records purchased.

JEROME L. LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: January 11, 1991
FILED WITH LRC: January 15, 1991 at 11 a.m.
PUBLIC HEARING: A public comment hearing will

be held on this administrative regulation on February 27, 1991 at 9 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by February 22, 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 February 22, 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: Estimated 125,000 commercial drivers living in Kentucky.

(a) Direct and indirect costs or savings to those affected: No cost established by this administrative regulation. The only cost is established in KRS 281A.100.

1. First year: Not applicable.

2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Not applicable.

(b) Reporting and paperwork requirements: Employers of commercial drivers are entitled to purchase copies of their drivers' commercial driving history records. In order for the Transportation Cabinet to know that the person applying for the driving history record is eligible to receive the information, the commercial driver must sign that the person applying for the driving history record is his employer or prospective employer.

(2) Effects on the promulgating administrative body: The paperwork noted as required in (1)(b) above allows the Transportation Cabinet to only sell the commercial driving history records to eligible persons.

(a) Direct and indirect costs or savings: None as a result of the administrative regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet rejected the do-nothing alternative because of the possibility of liability being incurred if a commercial driving history record were sold to an ineligible person.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. A fee reduction is allowed if the person applying for a copy of a commercial driving history record submits the request electronically.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title XII of PL 99-570 mandates that each state establish a commercial driver's license program. To ensure uniformity across the nation, the Federal Highway Administration implemented 49 CFR Part 383. CFR Part 383 requires each state to maintain commercial driving history records. It further requires employers and prospective employers to know what information is on the commercial driving history record for the prior 10 years. Therefore, the Transportation Cabinet will keep comprehensive commercial driving history records. However, this administrative regulation just deals with dissemination of commercial driving history - an issue not covered by 49 CFR Part 383. Therefore, no federal mandate exists and this form need not be completed.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. Not applicable.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing

601 KAR 11:030. Restrictions and endorsements on commercial driver's licenses.

RELATES TO: KRS Chapter 281A

STATUTORY AUTHORITY: KRS 281A.040

NECESSITY AND FUNCTION: KRS 281A.170 sets forth some of the restrictions which may be placed on a commercial driver's license. It further allows the Transportation Cabinet to impose other restrictions as necessary. The standard additional restrictions which may be imposed are set forth in this administrative regulation. While KRS 281A.170(2)(c)4 indicates that the restrictions not listed in statute shall be identified as 1 - 13, the numeric restriction identifiers will relate only to physical restrictions as is currently done on an operator's license. Alpha identifiers were used in KRS 281A.170 for restrictions relating to commercial vehicle equipment. The National Driver Register has requested that additional commercial vehicle restrictions be identified. For consistency, alpha restrictions will be used. Therefore, both alpha and numeric restrictions in addition to the "K" = no airbrakes; "I" = intrastate driving only and "S"

= school buses only restrictions listed in KRS 281A.170 are identified in this administrative regulation. KRS 281A.150(8) refers to a "P" restriction which is not established by KRS 281A.170. To ensure that a person is able to use a twenty (20) dollar commercial driver license authorized by KRS 281A.150(8) only to operate the buses identified there, the "S" restriction is expanded in this administrative regulation to include all three (3) types of buses identified in KRS 281A.150(8).

Section 1. Numeric Restrictions. The numeric restrictions regularly used on a commercial driver's license shall relate to the physical restrictions of the commercial driver. The numeric restrictions shall be the following:

"1" - corrective lenses required to be worn.

"2" - restricts the driver to a vehicle equipped with power brakes.

"3" - restricts the driver to a vehicle equipped with an automatic transmission.

"4" - restricts the driver to daylight driving only.

"5" - restricts the driver to a vehicle equipped with power steering.

"6" - restricts the driver to a vehicle equipped with a hand accelerator.

"7" - restricts the driver to a vehicle equipped with a hand brake.

"8" - other restrictions imposed.

Section 2. Alpha Restrictions. The alpha restrictions regularly used on a commercial driver's license shall relate to the restrictions on the types of commercial vehicle the driver is allowed to operate with the exception of the "K", "I", and "S" restrictions set forth in KRS 281A.170(2)(c)4, the alpha restrictions shall be the following:

"L" - does not include a class "A" bus.

"J" - does not include a class "A" or "B" bus.

"O" - does not include tractor semitrailer style vehicles.

Section 3. "S" Restriction. The "S" restriction shall be used to designate a commercial driver who is restricted to operating a school bus, a church bus, a bus operated by a mass transit authority created under the provisions of KRS Chapter 96A or bus operated under a nonprofit bus certificate established pursuant to KRS 281.619.

JEROME L. LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary

APPROVED BY AGENCY: January 11, 1991

FILED WITH LRC: January 15, 1991 at 11 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on February 27, 1991 at 9 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by February 22, 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 February 22, 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: Estimated 125,000 commercial drivers in Kentucky.

(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: The Transportation Cabinet will be able to clearly demonstrate all restrictions and endorsements on a commercial driver's license. This administrative regulation gives public notice of the definition of those endorsements and restrictions not listed in state law. This will enable all law enforcement officers to better understand the new commercial driver's licenses.

(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 National Driver Register has requested that all commercial vehicle restrictions be identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 281A.170(2)(c)4.

(a) Necessity of proposed regulation if in conflict: The statute requires that the restrictions not listed in statute shall be identified numerically. However, in Kentucky numeric restrictions have always applied to physical restrictions. KRS 281A.170 uses alpha identifiers for restrictions relating to commercial vehicle equipment. For consistency, additional needed commercial vehicle restrictions are listed with alpha designators in spite of the minor conflict with state law.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes, but it was confusing to persons used to dealing with restrictions.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Every person with a commercial restriction or endorsement should be identified the same as any other person with the same restriction or endorsement.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title XII of PL 99-570 mandated the issuance of Commercial Driver's Licenses by all states. The Federal Highway Administration promulgated 49 CFR Part 383 to implement this requirement. While 49 CFR Part 383 mandates that the commercial driver's licenses contain endorsements and restrictions, there are no federal requirements on the alpha or numeric indicators for these endorsements and restrictions. This form is not applicable.
2. State compliance standards. Not applicable.
3. Minimum or uniform standards contained in the federal mandate. Not applicable.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
Division of Motor Carriers
Division of Motor Vehicle Enforcement

601 KAR 11:040. Medical waivers for intrastate operators of commercial motor vehicles.

RELATES TO: KRS Chapter 281A, 281.600, 49 CFR Part 383, 49 CFR Part 391
STATUTORY AUTHORITY: KRS 281A.040, 281.600, 49 CFR 383 Subpart E, 49 CFR 391 Subpart E
NECESSITY AND FUNCTION: The federal requirements for the issuance of a commercial driver's license to a driver operating in interstate commerce include a certification that the driver meets the qualification requirements contained in 49 CFR Part 391.The Federal Highway Administration does not require a person who operates entirely in intrastate commerce to be subject to 49 CFR Part 391. He is subject however, to Kentucky driver qualification requirements. In 601 KAR 1:005 the Transportation Cabinet adopted the majority of the driver qualification requirements of 49 CFR Part 391 on both an interstate and intrastate commerce basis. However, medical waivers in addition to those allowed in 49 CFR 391.49 are allowed until March 31, 1992 for drivers operating exclusively in intrastate commerce. This administrative regulation sets forth the procedure and standards for obtaining an intrastate medical waiver.

Section 1. Application for Intrastate Medical Waiver. (1) A commercial driver who operates exclusively in intrastate commerce and who has failed to meet the physical requirements of 49 CFR 391 Subpart E, adopted in 601 KAR 1:005 may apply to the Transportation Cabinet until January 31, 1992 for a medical waiver.
(2) The application for medical waiver shall be on Kentucky Transportation Cabinet from TC 94-38, "Request for Medical Waiver" adopted January, 1991. This form is incorporated by reference as a part of this administrative regulation.
(3) A copy of the completed medical examination form required by 49 CFR 391.43 and 601 KAR 1:005 shall be attached to the application for medical waiver. The form shall be completed by a licensed doctor of medicine or osteopathy. The medical examination form shall indicate the reason the applicant failed to meet the requirements of 49 CFR 391 Subpart E.
(4) A copy of the applicable supplemental medical report form completed by a licensed doctor of medicine or osteopathy shall be attached to the application for medical waiver. The supplemental medical report forms relate to "cardiovascular conditions"; "neurological conditions"; "musculoskeletal conditions"; "metabolic conditions"; "alcohol or other drug dependence"; "mental and emotional conditions"; and "vision conditions". The licensed doctor of medicine or osteopathy shall determine which ones of these forms are applicable to the medical waiver applicant. Each of these forms was adopted by the Transportation Cabinet in December, 1990 and is incorporated by reference as part of this administrative regulation.
(5) The application for medical waiver, medical examination form and supplemental medical report form shall be submitted to the Transportation Cabinet, Division of Driver Licensing, State Office Building, Frankfort, Kentucky 40622.
(6) A copy of the forms incorporated by reference may be obtained from the Division of Driver Licensing, State Office Building, Frankfort, Kentucky 40622 by writing or appearing in person. The office hours on regular Kentucky state government working days are 8 a.m. through 4:30 p.m. eastern time. Copies of the forms may also be obtained from the driver license issuance office of the circuit court clerk in each county.

Section 2. (1) The Division of Driver Licensing shall base its decision on granting the requested medical waiver on the information obtained from the driving history record of the applicant, the original medical examination form, the supplemental medical report form, in some cases a skills test and any other information the Division of Driver Licensing deems pertinent.
(2) The following medical guidelines shall be considered by the Division of Driver Licensing in evaluating the information related to the commercial driver:
(a) Loss or impairment of foot, leg, arm, hand or fingers. Neither paraplegics nor quadriplegics shall be issued a medical waiver.
(b) Vision. To be considered for a medical waiver, the commercial driver's distance visual acuity shall be 20/60 (Snellen) or better with corrective lenses in one (1) or both eyes. The commercial driver's visual fields shall not be narrowed to less than 110 degrees of total visual field. The commercial driver shall readily distinguish which light of traffic signals and devices showing standard red, green and amber is illuminated. The commercial driver shall neither wear bioptic lenses nor have uncorrectable double vision.
(c) Hearing. No waiver of 49 CFR 391.41(11) shall be issued.
(d) Epilepsy or other condition likely to cause loss of consciousness. The commercial driver with epilepsy or other condition likely to cause loss of consciousness shall have been seizure free for one (1) year prior to

requesting the waiver. The commercial driver shall not have experienced loss of consciousness, blackout, fainting or disorientation in the year immediately prior to requesting the waiver. The commercial driver shall be reliable in taking his prescribed medication to be considered for a medical waiver as proven by the blood content levels of his medication.

(e) Cardiovascular. The commercial driver shall not have experienced a fainting or blackout spell in the year immediately prior to requesting the waiver. The commercial driver shall have no heart disease symptoms while operating a motor vehicle or sitting at rest to be considered for a medical waiver. The commercial driver shall not have any difficulty in breathing or painful breathing. The commercial driver shall have had no uncontrollable attacks of choking, suffocation or shortness of breath during the year immediately past. The commercial driver's blood pressure shall not be irregular. The commercial driver's diastolic blood pressure shall not consistently be above 110 millimeters of mercury. The commercial driver shall not have an aortic or ventricular aneurysm. The commercial driver shall not have had any uncontrollable instances of syncope or vertigo during the year immediately prior to the application for waiver.

(f) Diabetes. The commercial driver shall neither have an uncontrolled condition of diabetes nor shall he have had any instances of diabetes shock or coma in the year immediately prior to the application for waiver.

(g) Alcohol or drugs. The commercial driver shall have been free of addiction to or abuse of alcohol or other drugs for at least one (1) year.

(h) Emotional or mental. The commercial driver shall exhibit no homicidal, suicidal or destructive behavior. The commercial driver shall have had no bouts of extreme anxiety, depression, paranoia, confusion, delusions or hallucinations within the year immediately prior to the application for waiver. The commercial driver shall not have been hospitalized for any mental or emotional condition in the three (3) years immediately prior to the application for waiver.

(3) The guidelines the Division of Driver Licensing shall follow in evaluating the information on the commercial driver's complete driving history record shall be the following:

(a) If there are three (3) or more accidents on the commercial driver's driving history record during the immediately preceding two (2) year period and the commercial driver has indicated or a court has determined them to be the fault or partial fault of the commercial driver, the waiver request may be denied.

(b) If there is an accident involving a fatality or victim incapacitation on the commercial driver's driving history record and the commercial driver has indicated or a court has determined the accident to be the fault or partial fault of the applicant, the waiver request may be denied.

(c) If during the immediately prior two (2) years the commercial driver's driving privilege was withdrawn in accordance with the requirements of KRS 186.560, the application for waiver shall be denied.

(d) If during the immediately prior two (2) years the commercial driver's driving privilege was withdrawn in accordance with the provisions of 601 KAR 13:025, the application for waiver shall be denied.

(e) If during the immediately prior two (2) years the commercial driver was convicted of more than one (1) serious violation as defined in KRS 281A.010, the application for waiver may be denied.

(4) The commercial driver shall have been a commercial driver for the immediately preceding two (2) years to be considered for a medical waiver.

Section 3. (1) If a commercial driver is granted a medical waiver prior to March 31, 1992, he shall submit to at least annual medical reexaminations.

(2) For the waiver to continue in effect after 1992 the physician performing the medical reexamination shall be able to state that the condition of the commercial driver which caused the waiver to be issued has not worsened and that no additional nonqualifying condition has manifested.

(3) The driving history record of a commercial driver approved for a medical waiver may be evaluated at any time but shall be evaluated by the Division of Driver Licensing at least once a year. If any of the events listed in Section 2(3) of this regulation occur, the medical waiver may be withdrawn.

(4) After completion of a test of the commercial driver's driving skills requested by the Division of Driver Licensing, the Kentucky State Police shall submit the test results and recommendations for waiver refusal or restrictions on a medical waiver to the Division of Driver Licensing. If a medical waiver with restrictions is issued, the restriction shall be noted on the commercial driver's motor vehicle operator's license or commercial driver's license.

(5) If an intrastate medical waiver is issued to a commercial driver, he shall notify the Division of Driver Licensing immediately of any change in or worsening of his physical or mental condition.

(6) If an intrastate medical waiver is issued to a commercial driver with a progressive disease, the Division of Driver Licensing may require the commercial driver to submit to a periodic skills test with the Kentucky State Police.

(7) If an intrastate medical waiver is issued to a person with a pacemaker, he shall submit an annual report on the functioning of the device to the Division of Driver Licensing.

(8) The commercial driver shall submit all periodic reports requested by the Division of Driver Licensing or report for a skills test in a timely manner. If he fails to do so, his medical waiver shall be cancelled.

(9) The employer of a commercial driver who has obtained a medical waiver shall notify the Division of Driver Licensing of any change in the physical or mental condition of the commercial driver. In addition, the employer shall notify the Division of Driver Licensing of any changes in employment or employment conditions of the commercial driver.

Section 4. (1) If a commercial driver is denied a medical waiver by the Division of Driver Licensing, he may appeal to the Commissioner of the Department of Vehicle Regulation. In considering the appeal, the

Commissioner of the Department of Vehicle Regulation shall request from the Medical Review Board established in accordance with 601 KAR 13:010 a review of the case and recommendation on the appeal.

(2) The appeal shall be filed with the Commissioner of the Department of Vehicle Regulation in writing within thirty (30) days of the decision of the Division of Driver Licensing.

(3) A member of the Medical Review Board with specific qualifications in the medical area relating to the appeal shall review the appeal when requested by the commissioner.

(4) The commissioner's review shall be based on the information provided to the Division of Driver Licensing, the recommendation of the Medical Review Board and any additional information requested by the commissioner.

(5) The findings of the Commissioner of the Department of Vehicle Regulation shall be administratively final.

(6) The Commissioner of the Department of Vehicle Regulation shall provide a copy of his findings to both the commercial driver and the Division of Driver Licensing.

(7) A commercial driver aggrieved by the findings of the Commissioner of the Department of Vehicle Regulation may appeal to Franklin Circuit Court.

JEROME L. LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: January 11, 1991
FILED WITH LRC: January 15, 1991 at 11 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on February 27, 1991 at 9 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by February 22, 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 February 22, 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: The 4,000+ motor carriers based in Kentucky.

(a) Direct and indirect costs or savings to those affected: The vast majority of these motor carriers operate on an interstate basis and are subject to the federal motor carrier safety regulations. The promulgation of this administrative regulation allows a commercial driver who operates exclusively on an intrastate basis to apply for a medical waiver. We anticipate no more than 1000 persons will apply for the medical waiver, but these are persons who are not legally able to operate a commercial motor vehicle under the current federal and state administrative regulations, but who have been driving anyway. (Most are unaware of the requirement for a biennial medical examination.)

1. First year: The cost of the additional medical examinations will be approximately $75 per person. However, of the 1000 anticipated waiver applications, we anticipate 80% will be eligible for the medical waivers and therefore, able to retain or obtain jobs as commercial drivers. Assuming a salary of $20,000 per person the overall savings to the applicants will be almost $10 million.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The applicant for the medical waiver and his physician will be required to complete an application form and a medical report form.

(2) Effects on the promulgating administrative body: The Transportation Cabinet will be required to review the 1000 applications for medical waiver. Physicians may have to be retained on contract to evaluate the applications and supplemental medical report forms of those persons who apply for the medical waiver.

(a) Direct and indirect costs or savings: The cost to the Transportation Cabinet will be the cost of reviewing the applications.

1. First year: The cost the first year which is the only year new applications will be accepted will be $60,000.

2. Continuing costs or savings: Since no new applications will be accepted after the first year, the review of the updated medical report forms each year will be accomplished at a cost of $20,000.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The Transportation Cabinet will have to carefully monitor each of the persons granted a medical waiver to ensure that the person continues to safely operate a commercial motor vehicle.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: The concept of a medical waiver for commercial drivers who operate exclusively within one state was very recently brought forth by the U.S. Department of Transportation. At first it was assumed that anyone who operated a commercial vehicle and was required to obtain a commercial driver's license would be required to meet the federal medical standards. However, U.S. DOT has determined that anyone who has a state medical waiver issued prior to April 1, 1992, will be able to obtain a commercial driver's license that is valid only within the state of issuance. Because there are many people who have been safely operating a commercial vehicle for years who cannot meet the federal medical standards, the Transportation Cabinet decided to issue medical waivers, but only after careful evaluation of all applicants.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in

conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes. Tiering was applied in this administrative regulation by allowing persons to apply for a medical waiver and setting standards for the issuance of the waivers.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title XII of PL 99-570 mandated that each state establish a commercial driver's license program. The Federal Highway Administration adopted 49 CFR Part 383 to implement this program uniformly nationwide. Only limited medical waivers are allowed by Part 383 through 49 CFR Part 391 for interstate commercial drivers. However, until April 1, 1992, the states are allowed to issue waivers for additional medical conditions for those commercial drivers operating exclusively in intrastate commerce. This administrative regulation is being promulgated to take advantage of this permissive waiver provision of the federal regulations. Since it is permissive and not mandatory, this form need not be completed.
2. State compliance standards. Not applicable.
3. Minimum or uniform standards contained in the federal mandate. Not applicable.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing

601 KAR 11:050. Adoption of 49 CFR Part 383.

RELATES TO: KRS Chapter 281A, 49 CFR Part 383
STATUTORY AUTHORITY: KRS 281A.010, 281A.040, 281A.130, 281A.140, 281A.160, 281A.270, 49 CFR Part 383
NECESSITY AND FUNCTION: At many places in KRS Chapter 281, 49 CFR Part 383 is referred to as adopted by the Transportation Cabinet. However, many of the provisions of 49 CFR Part 383 are spelled out in KRS Chapter 281A. To avoid any possibility of conflict, the Transportation Cabinet in this administrative regulation is specifically setting forth those sections of 49 CFR Part 383 which in addition to KRS Chapter 281A, shall govern commercial driver's licenses in Kentucky.

Section 1. Notification of Convictions for Driver Violations. 49 CFR 383.31, effective July 21, 1988 shall govern a commercial driver's notice of conviction to the Kentucky Transportation Cabinet and his employer.

Section 2. Disqualification. (1) 49 CFR Part 383.51(b)(3)(v) effective October 4, 1988 shall govern second convictions of any of the offenses listed in KRS 281A.190(1).
(2) The disqualification period shall be for ten (10) years.
(3) Prior to being eligible to have his driving privilege restored after serving the ten (10) year disqualification the person shall submit proof to the Transportation Cabinet's Division of Driver Licensing of having attended and successfully completed an alcohol or substance abuse treatment program which was approved by the Cabinet for Human Resources.

Section 3. Requirements for Issuance of License. An applicant for a commercial driver's license shall meet the requirements of 49 CFR 383.71 effective July 21, 1988. An applicant who operates exclusively in intrastate commerce shall meet all of the same requirements as an applicant operating in interstate commerce except that the exemptions to 49 CFR Part 391 provided to intrastate drivers in 601 KAR 1:005 shall be applicable for commercial drivers also.

Section 4. Required Knowledge and Skills. The knowledge and skills test administered by the Kentucky State Police in accordance with KRS 281A.160 shall meet the standards set forth in 49 CFR 383 Subpart G effective July 21, 1988.

JEROME L. LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: January 11, 1991
FILED WITH LRC: January 15, 1991 at 11 a.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on February 27, 1991 at 9 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by February 22, 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 February 22, 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: 125,000 commercial drivers in Kentucky.
(a) Direct and indirect costs or savings to those affected: None as a result of this administrative regulation.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:

Requires the commercial driver to notify both his employer and the Transportation Cabinet of convictions of traffic offenses.

(2) Effects on the promulgating administrative body: The Federal Highway Administration requires that all states operate their commercial driver's license programs under the purview of 49 CFR Part 383. Most of Part 383 was spelled out in KRS Chapter 281A by House Bill 751 passed during the 1990 General Assembly. In order to avoid repetition of the statutes only those portions of 49 CFR Part 383 not set forth in statute are promulgated by this administrative regulation.

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. All states are required to abide by all provisions of 49 CFR Part 383.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title XII of PL 99-570 mandated that each state establish a commercial driver's license program. The Federal Highway Administration adopted 49 CFR Part 383 to implement this program uniformly nationwide.

2. State compliance standards. Most of 49 CFR Part 383 was set forth in KRS Chapter 281A. Those remaining portions are adopted in this administrative regulation.

3. Minimum or uniform standards contained in the federal mandate. The adopted portions of 49 CFR Part 383 are as follows: 383.31 - procedures for notification of an employer and the Transportation Cabinet when a commercial driver is convicted of a traffic offense. 383.51(b)(3)(v) - requires a lifetime disqualification for a second offense DUI or other serious traffic offense in a commercial vehicle. However, it does allow individual states to reduce that disqualification period to 10 years. Kentucky has chosen to impose the minimum 10 year disqualification period. 383.71 - requirements for the issuance of a commercial driver's license which must be met by the commercial driver. Some exceptions are allowed for those commercial drivers operating exclusively in intrastate commerce. 383 Subpart G - minimum standards for the knowledge and skills test to obtain a commercial driver's license.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There are some differences as allowed by the federal regulations. 1) Only limited medical waivers are allowed by Part 383 through 49 CFR Part 391 for interstate commercial drivers. However, until April 1, 1992, the states are allowed to issue waivers for additional medical conditions for those commercial drivers operating exclusively in intrastate commerce. This administrative regulation is being promulgated to take advantage of this permissive waiver provision of the federal regulations. 2) The federal regulations require a lifetime disqualification for the second conviction of a major traffic offense such as DUI. However, the states are allowed to reduce this to a 10 year disqualification. Kentucky has chosen to do so.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The different standards which are imposed are slightly less stringent for those persons who operate a commercial vehicle exclusively in intrastate commerce. The Transportation Cabinet believes that these people will still be able to safely operate a commercial vehicle and there is no reason to put them out of jobs which they may have held for years.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing

601 KAR 11:060. Commercial driver's license mandate date.

RELATES TO: KRS Chapter 281A, 49 CFR Part 383.23

STATUTORY AUTHORITY: KRS 281A.270, 49 CFR Part 383.23

NECESSITY AND FUNCTION: KRS 281A.090 mandates that effective July 1, 1991 all persons driving a commercial motor vehicle on Kentucky highways hold a valid commercial driver's license. 49 CFR Part 383.23 mandates that effective April 1, 1992 all persons operating a commercial motor vehicle shall possess a valid commercial driver's license. It was never the intention to mandate that the operator of a commercial vehicle have a commercial driver's license prior to April 1, 1992. Rather the intention was to allow a person to obtain a commercial driver's license beginning July 1, 1991. In that way there would be sufficient time to allow all persons who need a commercial driver's license to obtain one by the federally mandated date of April 1, 1992. KRS 281A.270 allows the Transportation Cabinet to adopt any part of 49 CFR Part 383 even if in conflict with other sections of the Kentucky Commercial Driver's License Act. Therefore, this administrative regulation is necessary to ensure that no one is required to have a commercial driver's license in Kentucky prior to April 1, 1992, the date mandated by the U.S. Department of Transportation.

Section 1. 49 CFR Part 383.23 adopted by the Federal Highway Administration on July 21, 1988 to be effective April 1, 1992 is adopted effective July 1, 1991 to establish the date by which the operator of a commercial motor vehicle shall possess a valid commercial driver's license. Therefore, any person required by KRS Chapter 281A to obtain a commercial driver's

license shall not be required to possess the commercial driver's license until April 1, 1992.

Section 2. Nothing in this administrative regulation shall be construed as prohibiting a person from applying for a commercial driver's license beginning January 1, 1991. Nor shall the administrative regulation be construed as prohibiting the Transportation Cabinet from issuing commercial driver's licenses beginning July 1, 1991.

JEROME L. LENTZ, Acting Commissioner
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: January 11, 1991
FILED WITH LRC: January 15, 1991 at 11 a.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on February 27, 1991 at 9 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by February 22, 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 February 22, 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: 125,000 commercial drivers in Kentucky.
(a) Direct and indirect costs or savings to those affected: None as a result of this administrative regulation. Kentucky state law inadvertently requires all commercial drivers to obtain a commercial driver's license by July 1, 1991. Since the federal mandate does not go into effect until April 1, 1992 the Transportation Cabinet does not wish to impose a more restrictive deadline. Even though there is no overall cost or paperwork savings due to this administrative regulation, it will provide more time for the applicants to prepare for the examinations.
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: The new commercial driver licensing computer system will not be on line until July, 1991. It would be impossible for everyone to be licensed by that date, since before licenses can actually be issued, the computer must be available.
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 281A.270.
(a) Necessity of proposed regulation if in conflict: KRS 281A.270 requires all commercial drivers to be licensed by July 1, 1991. That is a physical impossibility since the computer system will not be available until then. In addition, the federal mandate is April 1, 1992. We wanted no conflict with the federal mandate and it would be impossible to test everyone and issue the licenses by July 1, 1991.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. All commercial drivers should have the same deadline for obtaining a commercial driver's license.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title XII of PL 99-570 mandated that each state establish a commercial driver's license program. The Federal Highway Administration adopted 49 CFR Part 383 to implement this program uniformly nationwide.
2. State compliance standards. Most of 49 CFR Part 383 was set forth in KRS Chapter 281A. Those remaining portions except 49 CFR Part 383.23 were adopted in 601 KAR 11:050. 49 CFR Part 383 is adopted in this administrative regulation.
3. Minimum or uniform standards contained in the federal mandate. All persons who operate commercial vehicles are required to have this license by April 1, 1992.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

TRANSPORTATION CABINET
Motor Vehicle Commission

605 KAR 1:190. Motor vehicle dealer advertising.

RELATES TO: KRS 190.010 through 190.990
STATUTORY AUTHORITY: KRS 190.015, 190.020, 190.030, 190.040, 190.058, 190.073
NECESSITY AND FUNCTION: KRS 190.040(1)(i) prohibits a motor vehicle dealer from engaging in "false or misleading advertising"; this is the only statutory or regulatory language which attempts to provide any guideline or standard for dealer advertising. The Motor Vehicle Commission has received numerous inquiries and complaints concerning advertising by licensees. It is the objective of this regulation to define

certain conduct which constitutes "false or misleading advertising". KRS 190.073 authorizes the Motor Vehicle Commission to "promulgate appropriate and reasonable regulations for the purpose of carrying out the provisions of this chapter." The purpose of this regulation is to provide for truthful and accurate advertising practices in the sale and lease of motor vehicles by licensed motor vehicle dealers.

Section 1. Definitions. In this section:

(1) "Advertising" means any oral, written or graphic statement which offers vehicles for sale or which indicates the availability of vehicles, including any statements or representation made in newspaper, pamphlet or circular, other publication, or on radio or television, or contained in any notice, handbill, sign, billboard poster, bill catalog, letter or business card.

(2) "Clear and conspicuous" means a statement, representation or term differing from other statements, representations or terms being made so as to be readily noticeable to the person to whom it is being disclosed either by its size, sound, length of time, color, placement in the ad, or the like.

(3) "Rebuilt motor vehicle" means a motor vehicle which has at any point in its history been issued a salvage or like title in any state and has subsequently qualified for a regular title through any process legally available in any state.

(4) "Demonstrator, official or executive vehicles": the word "demonstrator" means a vehicle of the current or preceding model year which has never been the subject of a retail sale, and which has been used by dealership personnel for demonstrating performance ability. "Executive" and "official" vehicles when so advertised shall have been used exclusively by executives of the dealer's franchiser.

(5) "Bait advertising" means an alluring but insincere offer to sell a product, to obtain leads to persons interested in buying merchandise of the type advertised and to switch consumers from the advertised product to another product for a higher price or on a basis more advantageous to the dealer. Advertising a new motor vehicle at a price which does not include all equipment listed as standard equipment by the manufacturer without disclosing such fact, or eliminating any such equipment for the purpose of advertising a low price and "baiting" the customer into charges above the advertised price is prohibited. No practice shall be pursued by the advertiser which will discourage the sale of the advertised product with the intent and purpose of selling other merchandise instead.

Section 2. Licenses shall not use unfair, misleading or bait advertising.

Section 3. Advertisements for the sale of new and used vehicles offered for sale by a licensee shall clearly and conspicuously identify the dealership by including in the text of the advertisement either the word "dealer" or the business name as it appears on the dealer license.

Section 4. Where a specific new motor vehicle is advertised by a dealer as being for sale, that vehicle shall be in the possession of the dealer and shall be willingly shown and sold as advertised, illustrated or described at the advertised price and terms, at the advertised address, except that the advertising of a specific new motor vehicle for sale when the advertised vehicle is not in stock on the date of the advertisement shall state "not in stock" or "order yours now" or other phrases of similar import which clearly indicate that the vehicle is not available for immediate delivery. Such advertisements shall disclose a reasonable estimate of the period of time in which delivery will be made. If an advertisement pertains to one (1) specific vehicle only, this fact shall be disclosed in the advertisement.

Section 5. The following statements shall not be used in any advertising by any dealer, unless such statements are absolutely true with no qualifications:

(1) Statements such as "write your own deal", "name your own price", "name your own monthly payments", "appraise your own car" or statements with similar meaning.

(2) Statements such as "everybody financed", "no credit rejected", "we finance anyone", and other statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit.

(3) Statements representing that no other dealer grants greater allowances for trade-ins, however stated.

(4) Statements implying that because of its large sales volume a dealer is able to purchase vehicles for less than another dealer selling the same make of vehicles.

(5) Retail advertising shall not state or imply that the dealer is selling vehicles in a manner other than through normal retail channels and shall not imply that a dealer has a special relationship or connection to the manufacturer that other dealers do not have. Terms such as "wholesale", "factory sale", "factory discount", "factory outlet", "factory branch" and similar terms used in connection with the manufacturer's name are examples of terms that imply that a dealer has a special relationship or connection to a manufacturer that other dealers do not have.

(6) Claims such as "first", "largest", "biggest", shall be able to be qualified as to validity (using valid source data) and the time period of the claim. At the direction of the licensor, the dealer shall incorporate within the advertisement the terms of such qualification.

Section 6. When the price of a vehicle is advertised in local media by a licensee, the vehicle shall be fully identified as to year, make, model and if new or used. In addition, the stated price shall include all charges which the customer must pay for the vehicle, including, but not limited to, "freight" or "destination charges", "dealer preparation", "dealer handling", "additional dealer profit", "additional dealer margin", and "undercoating or rustproofing" if the vehicle is already so equipped. The advertised price at which the dealer is advertising a particular motor vehicle shall be the price before consideration for a down payment, a trade-in allowance, or other similar allowances. The advertised price need not include state and local taxes, tags, registration, title fees and insurance, however,

the advertisement shall expressly state that such taxes and fees are excluded.

Section 7. Since the amount of trade-in allowance will vary depending on the condition, model and age of a buyer's vehicle, no specific trade-in amount or range of amounts shall be used in advertising.

Section 8. An asterisk (*) may be used to give additional information about a word or term; however, use of one (1) or more footnotes or asterisks which, alone or in combination, contradict, confuse, materially modify or unreasonably limit a principal message of the advertisement shall not be used.

Section 9. Vehicles of the current and any preceding model year which are "used" shall be clearly identified as such.

Section 10. Any disclosure appearing in television advertisements shall clearly and conspicuously feature all necessary information in a manner that can be read and understood or which can be heard and understood. The minimum size for all printed language in television advertising shall be twenty (20) points. The minimum duration of printed language in a television advertisement shall be five (5) seconds for every three (3) lines.

Section 11. The unqualified terms "invoice", "factory invoice", "dealer invoice", or "dealer cost" shall not be used as a reference price (such as, but not limited to, a dollar amount of percent over invoice or dealer cost) unless the advertising bears the following clear and conspicuous legend in a box: "Notice to buyer: Because of manufacturer incentives, awards, dealer holdbacks and other factors, the invoice may be higher than the true, final cost to the dealer."

Section 12. When a motor vehicle advertisement contains an offer of a discount on a new vehicle, the amount of such discount shall be stated by reference to the actual dollar figure of the manufacturer's suggested retail price of the vehicle. The offer of a discount shall not imply the selling price to be below the dealer's cost.

Section 13. The terms "rebate", "cash rebate", or similar terms may be used only when it is clearly and conspicuously stated who is making the payment. If the dealer participates in the rebate, such advertisements shall also contain clearly and conspicuously the following statement: "The dealer's contribution may affect the final negotiated price of the vehicle." Rebates shall not imply the selling price to be below the dealer's cost.

Section 14. The words "free", "gift" or words of similar import may be used in advertising only when the advertiser is offering an unconditional gift. If receipt of the "gift" or "free" merchandise or service is conditional on a purchase:

(1) The normal price of the merchandise or service to be purchased shall not have been increased nor its quantity reduced; and

(2) The advertiser shall disclose this condition clearly and conspicuously together with the "gift" or "free" offer (not by placing an asterisk or symbol next to "gift" or "free" and referring to the condition(s) in a footnote); and

(3) The "gift" or "free" offer shall be temporary; otherwise it would become a continuous combination offer, no part of which is free.

Section 15. An advertisement which expresses a policy of matching or bettering competitors' prices shall fully disclose any conditions which apply and specify what evidence a consumer must present to take advantage of the offer, and these conditions shall not place an unreasonable burden on the consumer (such as producing a signed contract from another dealer or requiring the consumer to find a vehicle with such identical features that the possibility of doing so is highly unlikely).

Section 16. The manufacturer's suggested retail price (MSRP) dollar figure of a new motor vehicle when advertised in local media by a manufacturer, distributor or regional advertisement council or association shall include all costs and charges for the vehicle advertised including destination charges when those charges are uniform regardless of destination throughout the state; destination charges subject to variance within the state and dealer preparation charges, state and local taxes, license, title, registration fees and insurance may be excluded from such price, provided that the advertisement conspicuously states that such costs and charges are excluded. However, with respect to ads placed with local media by a dealer licensee, the price shall include all costs and charges for the vehicle advertised including destination and dealer preparation charges, and may exclude only state and local taxes, license, title, registration fees and insurance provided that the advertisement conspicuously states that such costs and charges are excluded.

Section 17. Where the words "list" or "sticker" or words of similar import are used in a new motor vehicle advertisement, they shall only refer to the actual dollar figure of the manufacturer's suggested retail price (MSRP).

Section 18. Whenever any advertisement relates to a lease, the advertisement shall clearly and conspicuously disclose that the advertisement is for the lease of a vehicle. Statements such as "alternative financing plan", "drive away for $____ per month", or other terms or phrases that do not use the term "lease" do not constitute adequate disclosure of a lease. Lease advertisements shall not contain the phrase "no down payment" or words of similar import if any outlay of money is required to be paid by the customer to lease the vehicle. Lease terms that are not available to the general public shall not be included in ads directed at the general consuming public. All limitations and qualifications applicable to the lease terms advertised shall be clearly and conspicuously disclosed. The number, amount, periods of scheduled payments, residual value, if any, shall be disclosed. A statement of whether or not the lessee has the option or requirement to purchase the leased vehicle and at what price and time shall be included. Where a periodic

payment is to be increased during the term of the loan or financing agreement, the fact and amount of such increase shall be clearly and conspicuously stated.

Section 19. Use of the term "liquidation sale", used to connote or imply a court-ordered or other forced liquidation of assets, unless such is the case, shall not be advertised.

Section 20. All advertising shall comply with Regulation Z of the Federal Truth in Lending Act and Federal Trade Commission Act.

Section 21. A dealer offering to sell a motor vehicle which he knows or the previous title shows is a rebuilt motor vehicle shall clearly and conspicuously disclose that information to a prospective purchaser for use. A dealer offering to sell a demonstrator, program, official or executive vehicle shall clearly and conspicuously identify such former use. Demonstrators shall be offered for sale as such only by a dealer who holds a valid sales agreement or franchise for the sale of the same line make of motor vehicle. Vehicles advertised as official or executive vehicles shall not have been sold or leased to a retail customer prior to the appearance of the advertisement.

Section 22. No reduced interest rate on motor vehicle financing shall be advertised if the cost thereof would be directly or indirectly borne by the buyer unless the advertisement discloses that that rate will affect the negotiated price of the vehicle to the buyer.

Section 23. In any action under this section, truth shall be an absolute defense.

RAYMOND COTTRELL, SR., Chairman
APPROVED BY AGENCY: January 11, 1991
FILED WITH LRC: January 15, 1991 at 10 a.m.
PUBLIC HEARING: A public hearing on this proposed new administrative regulation shall be held at 10 a.m. on Thursday, February 28, 1991, at the office of the Kentucky Motor Vehicle Commission, 114 West Clinton Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by February 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 attends will be given an opportunity to comment on the proposed new 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 new administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed new 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: The agency has licensed 3,018 motor vehicle dealers and 71 motor vehicle manufacturers and distributors thus far for calendar year 1991. All of these, as well as others who obtain a license during the remainder of the year, would be affected by the proposed regulation if they advertise for the sale of motor vehicles in any local media, which is any media in or by which licensees direct advertisements for the sale of motor vehicles specifically toward that segment of the consuming public which is made up of Kentucky residents.
(a) Direct and indirect costs or savings to those affected: It is not possible to determine a specific amount which would be incurred or saved by compliance with the regulation; those licensees who advertise for the sale of motor vehicles must only insure that the text of an advertisement conforms to the requirements of the regulation. If a licensee has to amend a current advertising campaign to comply with the regulation, some cost may be incurred. For instance, if a licensee has hired an outside firm to prepare and produce its advertising, then it may incur some cost to transmit the regulatory requirements to that outside firm and to have the advertising changed to conform to the regulation. Otherwise, the regulation does not set any fee structure, and the range of penalties which may be imposed for a violation of the regulation is currently provided for in KRS Chapter 190.
1. First year: A specific amount is not determinable for the reasons stated above; however, it can be stated that any costs associated with the implementation of the regulation would be incurred upon or soon after its implementation.
2. Continuing costs or savings: A specific estimate of continuing direct and indirect cost or savings to those affected after the first year is not determinable, other than as stated above.
3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors which would increase or decrease costs. As to effects on competition, the proposed administrative regulation was drafted in such a manner that it applies to all licensees who advertise for the sale of motor vehicles to consumer residents of Kentucky; as the standards are uniform, the only effect on competition is to put everyone on a level playing field.
(b) Reporting and paperwork requirements: If the agency finds an offending advertisement, it may require the licensee in question to amend or add to that advertisement and to provide to the agency proof of compliance with the regulatory requirements.
(2) Effects on the promulgating administrative body: Adding such a significant set of requirements to a regulated class necessarily entails a corresponding degree of effort and some expense on the part of the agency. The agency would, through its field staff, routinely review advertisements placed by licensees in print and other media; it can also be expected that an offending advertisement would be referred to agency attention by various other sources, including consumers and other licensees.
(a) Direct and indirect costs or savings: Direct and indirect costs to the agency would be those incurred in reviewing advertisements, and making follow-up contacts with licensees when appropriate.

1. First year: No additional staff will be required during the first year 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. A direct or indirect factor affecting agency revenues would be that in the event that an offending advertisement is identified and not corrected, the agency would impose appropriate sanctions, including the imposition of monetary fines, on offending licensees through a hearing process.

2. Continuing costs or savings: In the event that any large or significant number of licensees fail to comply with the requirements of the proposed regulation on a continuing basis, the agency may have to add additional personnel to monitor advertising throughout the state in order to secure compliance. However, one of the advantages of the proposed regulation is that it will provide objective standards by which licensees may define their advertising activities; it is anticipated that licensees will comply with these standards without any major enforcement role by the agency.

3. Additional factors increasing or decreasing costs: If improper advertisements 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 investigations upon finding an improper advertisement. If an improper advertisement is 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 is not expected that state and local revenues will be affected as licensees now routinely advertise for the sale of motor vehicles; the implementation of this regulation is not expected to increase or decrease the number of licensees who engage in advertising. As outlined in (2)(a)2 above, a continuing large-scale failure to comply with the provisions of the proposed regulation may require additional personnel to secure compliance; however, continuing large-scale noncompliance is most unlikely.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of attempting to base advertising guidelines only upon the language of KRS 190.040(1)(i), "A license may be...revoked on the following grounds...False or misleading advertising" was considered and rejected as failing to provide any meaningful standard by which a licensee or the agency could determine if an advertisement was false or misleading. The agency decided that the most desirable way to provide for uniform mandatory guidelines, which would be in the best interests of both licensees and Kentucky consumers, was through the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Section 19 of the regulation overlaps the provisions of KRS 365.410 et seq. Section 19 states that the term "liquidation sale" may not be used unless the event is in fact a sale pursuant to a court order or other forced liquidation of assets. KRS 365.410 et seq., states that the term "liquidation sale" means the same as "going out of business sale" and that the term may not be used unless a license for such sale is obtained from the county clerk of the county where the sale is to occur. The regulation seeks to prohibit the use of the term "liquidation sale" unless there is a factual basis for its use. Although the use of the term is statutorily regulated, it was specifically included in the proposed regulation to bring it to the attention of the licensees. As stated earlier, KRS 190.040(1)(i) prohibits "false or misleading advertising"; the proposed regulation does not conflict with or duplicate that statute. It may overlap but only in the sense that it adds specific standards by which licensees, consumers and the agency may judge whether or not an advertisement is false or misleading.

(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: There is no additional information or comments.

TIERING: Was tiering applied? No. The subject matter of the proposed regulation affects all licensees who advertise motor vehicles for sale in local media, which could be every licensee. Wholesale motor vehicle dealers, while restricted to sales to other motor vehicle dealers only, could conceivably advertise. While certain sections of the proposed regulation affect the advertisement for sale of new motor vehicles only (which is an activity confined to new motor vehicle dealers) and other sections apply to the sale or lease of all motor vehicles, all licensee classes are affected by the proposed regulation if they advertise the sale or lease of motor vehicles. The proposed regulation is intended to address the complaints and concerns which have arisen from the advertising of all licensees, and not any one class in particular.

PUBLIC PROTECTION & REGULATION CABINET
Department of Insurance

806 KAR 12:131. Requirements for disclosure for life insurance and annuity contracts used to fund preneed funeral contracts or prearrangements.

RELATES TO: KRS 304.12-020, 304.12-240

STATUTORY AUTHORITY: KRS 304.2-110, 304.12-240

NECESSITY AND FUNCTION: KRS 304.2-110 authorizes the Commissioner of Insurance to adopt regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This regulation establishes disclosure requirements for life insurance or annuity contracts which are used to fund preneed funeral contracts or prearrangements.

Section 1. Definitions. As used in this regulation: "Preneed funeral contract or

prearrangement" has the meaning set forth in KRS 304.12-240.

Section 2. Required Disclosure. When a life insurance or annuity contract is to be used to fund a preneed funeral contract or prearrangement, the following information shall be disclosed adequately at the time an application is made for such life insurance or annuity contract prior to acceptance of the applicant's initial premium or deposit:

(1) The fact that a life insurance or annuity contract is involved or is being used to fund a preneed funeral contract or prearrangement;

(2) The nature of the relationship among the soliciting agent or agents, the provider of the funeral or cemetery merchandise or services, the administrator, and any other person;

(3) The relationship of the life insurance or annuity contract to the funding of the preneed funeral contract or prearrangement and the nature and existence of any guarantees relating to the preneed funeral contract or prearrangement;

(4) The impact on the prearrangement:

(a) Of any changes in the life insurance policy, including, but not limited to, changes in the assignment, beneficiary designation, or use of the proceeds;

(b) Of any penalties to be incurred by the contract holder as a result of failure to make premium payments; and

(c) Of any penalties to be incurred or monies to be received as a result of cancellation or surrender of the life insurance or annuity contract;

(5) A list of the merchandise and services which are applied or contracted for in the preneed funeral contract or prearrangement and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need;

(6) An explanation of any entitlements or obligations which arise if there is a difference between the proceeds of the life insurance or annuity contract and the amount actually needed to fund the preneed funeral contract or prearrangement; and

(7) Any penalties or restrictions, regarding either geographic restrictions or constraints or the inability of the provider of funeral goods or services to perform, on the delivery of merchandise, services, or the prearrangement guarantee.

Section 3. Severability; Effective Date. (1) If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of this regulation and the application of such provision to other persons or circumstances shall not be effected thereby.

(2) This regulation shall become effective thirty (30) days after completion of its review under KRS Chapter 13A.

ELIZABETH P. WRIGHT, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: January 8, 1991
FILED WITH LRC: January 15, 1991 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 February 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 February 22, 1991, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance at least five (5) days prior to the hearing that they will be in attendance to comment.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Patrick Watts

Need for the Proposed Regulation: The proposed regulation is needed to provide disclosure to consumers purchasing life insurance or annuity contracts to fund preneed funeral contracts or prearrangements. Over the years, various financial products have been used to fund funeral expenses. At one time, the use of trust arrangements under KRS 367.932 et seq. and its predecessor statutes were popular. Under these statutes, persons establishing a trust to fund preneed funeral contracts or prearrangements must comply with various requirements of these statutes. However, under KRS 367.934(4), the statutes do not apply where contracts for funeral services or merchandise are funded by insurance policies which are regulated by the Department of Insurance.

This exception is well founded in that the regulatory provisions of KRS 367.932 et seq. are unnecessary since money is being paid to an insurer subject to a wide range of financial regulatory provisions under KRS Chapter 304. Since the provisions of KRS Chapter 304 apply mainly to insurers, using insurance products to fund preneed funeral contracts or prearrangements is attractive to funeral directors because it eliminates the need to comply with KRS 367.932 et seq.

However, adequate disclosure of the relationship between life insurance and annuity contracts and the preneed funeral contracts or prearrangements which the life insurance or annuity contracts fund is necessary. The Department of Insurance has been asked by the American Association of Retired Persons to provide for such disclosure. This regulation is based on portions of the National Association of Insurance Commissioners Model Regulations involving the advertising of life insurance, life insurance disclosures, and annuity and deposit fund disclosure. In June, 1988, the National Association of Insurance Commissioners completed work on a series of guidelines specifically geared for life insurance or annuity contracts used to fund preneed funeral contracts or prearrangements. The 1990 General Assembly adopted KRS 304.12-240, requiring adoption of this regulation.

(1) Type and number of entities affected: The proposed regulation potentially affects the approximately 600 insurers authorized to transact life insurance and annuities in Kentucky as well as the approximately 20,000 agents appointed to represent those insurers. Of course, the number of insurers and agents actually engaged in selling life insurance or annuity contracts used to fund preneed funeral

contracts or prearrangements is substantially less than all insurers and agents transacting these kinds of insurance. The proposed regulation will also affect an unknown number of persons who purchase life insurance or annuity contracts to fund preneed funeral contracts or prearrangements.

(a) Direct and indirect costs or savings to those affected: Insurers will face costs in formulating disclosure documents and training employees and agents concerning disclosure requirements. The precise amount of these costs is unknown and will vary from insurer to insurer. Consumers will realize savings in that they will be able to act on an informed basis when deciding whether to purchase life insurance or an annuity to fund a preneed funeral contract or prearrangement.

1. First year: First year costs for insurers will include creation of disclosure documents and training of employees and agents concerning the disclosure requirements.

2. Continuing costs or savings: Costs will decrease in subsequent years in that disclosure documents will have been created and the only expense will be for reproduction of those documents and providing them to consumers.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Insurers will have to create disclosure documents and provide them to consumers.

(2) Effects on the promulgating administrative body: The proposed regulation creates a means for the department to assure that insurers are providing adequate disclosure to consumers who purchase life insurance or annuity contracts to fund preneed funeral contracts or prearrangements.

(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: Alternative methods are to use the general provisions of KRS 304.12-020, which prohibit deceptive or misleading statements about the business of insurance. It is more appropriate that insurers and agents be advised as to precisely what the department expects in the disclosure of the relationship between life insurance or annuity contracts and the preneed funeral contracts or prearrangements the life insurance or annuities are used to fund.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes

CABINET FOR HUMAN RESOURCES
Office of the Inspector General

902 KAR 20:290. Standards for Alzheimer's facilities.

RELATES TO: KRS 216B.010 to 216B.131, 216B.990

STATUTORY AUTHORITY: KRS 216B.042, 216B.071, 216B.105

NECESSITY AND FUNCTION: KRS 216B.042 mandates that the Cabinet for Human Resources regulate health facilities and health services. This regulation provides the requirements for the operation of Alzheimer's facilities constructed pursuant to KRS 216B.071.

Section 1. Definitions. (1) "Activities of daily living" means activities of self-help (e.g., being able to feed, bathe and/or dress oneself), communication (e.g., being able to place phone calls, write letters and understanding instructions) and socialization (e.g., being able to shop, being considerate of others, working with others and participating in activities).

(2) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.

(3) "Facility" means Alzheimer's facility constructed pursuant to KRS 216B.071.

(4) "License" means an authorization issued by the Cabinet for Human Resources for the purpose of operating a nursing home and offering nursing home services.

(5) "PRN medications" means medications administered as needed.

(6) "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.

(7) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(8) "Resident" means any patient admitted to an Alzheimer's facility.

(9) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

Section 2. Scope. (1) Facilities constructed and operated pursuant to KRS 216B.071 and this regulation shall provide care to residents with a primary diagnosis of Alzheimer's disease.

(2) Facilities constructed pursuant to KRS 216B.071 shall be constructed in accordance with 902 KAR 20:046 and this regulation.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and

regulations pertaining to the operation of the facility.

(2) Administrator.

(a) All facilities shall have an administrator who is responsible for the operation of the facility and who shall delegate such responsibility in his absence.

(b) The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of the patient. The contract shall be in writing.

(3) Administrative records.

(a) The facility shall maintain a permanent, chronological patient registry showing date of admission, name of patient, and date of discharge.

(b) The facility shall require and maintain written recommendations or comments from consultants regarding the program and its development on a per visit basis.

(c) Menu and food purchase records shall be maintained.

(d) A written report of any incident or accident involving a patient (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator or nursing services supervisor, and any staff member who witnessed the incident. The report shall be filed in an incident file.

(4) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Patient care and services to include physician, nursing, pharmaceutical (including medication stop orders policy), and residential services.

(b) Adult and child protection. The facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children to the Cabinet for Human Resources pursuant to KRS Chapter 209 and KRS 620.

(c) Use of restraints. The facility shall have a written policy that addresses the use of restraints and a mechanism for monitoring and controlling their use.

(d) Missing patient procedures. The facility shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(5) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(6) Admission.

(a) Patients shall be admitted only upon the referral of a physician. Additionally, the facility shall admit only persons who have a primary diagnosis of Alzheimer's disease. The facility shall not admit persons whose care needs exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. Within forty-eight (48) hours after admission the facility shall obtain a medical evaluation from the patient's physician including current medical findings, medical history and physical examination. The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital or long-term care facility, if done within five (5) days prior to admission.

(c) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the facility including fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(d) The facility shall provide and maintain a system for identifying each patient's personal property and facilities for safekeeping of his declared valuables. Each patient's clothing and other property shall be reserved for his own use.

(7) Discharge planning. The facility shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(8) Transfer procedures and agreements.

(a) The facility shall have written transfer procedures and agreements for the transfer of patients to other health care facilities which can provide a level of inpatient care not provided by the facility. Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arrange for appropriate and safe transportation.

(b) When a 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 facility to meet the patient's needs, or services shall be contracted for from another community resource.

(c) If changes and progress occur which would enable the patient to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility, the facility shall offer assistance in making arrangements for patients to be transferred to a setting which provides appropriate services.

(d) Except in an emergency, the patient, his next of kin, or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

(e) If the patient is transferred, a transfer form shall accompany the patient. The transfer form shall include at least: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(9) Tuberculosis testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long-term care facilities.

(10) Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel, to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume

of each employee's training and experience, evidence of current licensure or registration where required by law, health records, records of in-service training and ongoing education, and the employee's name, address and Social Security Number.

(c) Staffing requirements.

1. The facility shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by this regulation.

2. Required overall minimum staffing ratios for direct patient care are as follows:

SHIFT	STAFF	:	RESIDENTS
7:00 a.m. - 3:00 p.m. (Day)	1	:	6
3:00 p.m. - 11:00 p.m.	1	:	10
11:00 p.m. - 7:00 a.m.	1	:	10

3. When the staff/patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.

4. Responsible staff member shall be on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire or other emergencies.

5. Although emergency scheduling may require substitution of staff, every effort should be made to provide residents with familiar staff members in order to minimize resident confusion.

6. Volunteers shall not be counted to make up minimum staffing requirements.

7. 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 is 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 description for each level of nursing personnel.

b. Recommending to the administrator the number and levels of nursing personnel to be employed, participating in their recruitment and selection and recommending termination of employment when necessary.

c. Assigning and supervising all levels of nursing personnel.

d. Participating in planning and budgeting for nursing care.

e. Participating in the development and implementation of patient care policies.

f. Coordinating nursing services with other patient care services.

g. Planning and conducting orientation programs for new nursing personnel and continuing in-service education for all nursing personnel.

h. Participating in the screening of prospective patients in terms of required nursing services and nursing skills available.

i. Assuring that a written monthly assessment of the patient's general condition is completed.

j. Assuring that a nursing care plan shall be established for each patient and that his plan shall be reviewed and modified as necessary.

k. Assuring that registered nurses, licensed practical nurses, nurses' aides and orderlies are assigned duties consistent with their training and experience.

l. Assuring that a monthly review of each patient's medications is completed and notifying the physician when changes are appropriate.

8. Supervising nurse. Nursing care shall be provided by or under the direction of a full-time registered nurse. The supervising nurse may be the director of nursing or the assistant director of nursing and shall be trained or experienced in the areas of nursing administration and supervision, rehabilitative nursing, psychiatric or geriatric nursing. The supervising nurse shall make daily rounds to all nursing units performing such functions as visiting each patient, and staff assignments, and whenever possible accompanying physicians when visiting patients.

9. Charge nurse. There shall be at least one (1) registered nurse or licensed practical nurse on duty at all times who is responsible for the nursing care of patients during the nurse's tour of duty. When a licensed practical nurse is on duty, a registered nurse shall be on call.

10. Pharmacist. The facility shall retain a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

11. 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 the goals and limits of the therapists' work, and prescribes modalities and frequency of therapy, persons with qualifications other than those described in clause a. of this subparagraph may be assigned duties appropriate to their training and experience.

12. Dietary. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and on duty a minimum of thirty-five (35) hours each week.

13. Each facility shall designate a person for the following areas who will be responsible for:

a. Medical records;
b. Arranging for social services;
c. Developing and implementing the activities program and therapeutic recreation; and
d. Developing and implementing staff training program.

14. Community family support coordinator. A social worker licensed pursuant to KRS 335.090 shall be utilized whose functions shall include:
a. Evaluation of resident's initial social history on admission;
b. Utilization of community resources;
c. Conducting quarterly family support group meetings; and
d. Identification and utilization of existing Alzheimer's network.

15. Supportive personnel, consultants, assistants and volunteers shall be supervised and shall function within the policies and procedures of the facility.

(d) Health requirements. No employee contracting an infectious disease shall appear at work until the infection can no longer be transmitted.

(e) Orientation and in-service training. All staff members and consultants shall have documented training in the care and handling of Alzheimer's patients, including at least:

1. Eight (8) hours of orientation to cover the following:
a. Facility Alzheimer's policies;
b. Etiology and treatment of dementias;
c. Stages of Alzheimer's disease;
d. Behavior management; and
e. Communication.

2. Quarterly continuing education is required, six (6) hours of which shall be in Alzheimer's disease or related disorders.

(11) Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and Social Security Number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation by a physician including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, or long-term care facility if done within five (5) days prior to admission.)

3. The physician's dated and signed orders for medication, diet, and therapeutic services.

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication, dosage, name of prescribing physician and name of person who administered the medication.

7. Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, mode and frequency of PRN medications administered, condition necessitating administration of PRN medication, reaction following PRN medication, visits by physician and phone calls to the physician, medically prescribed diets and preventive maintenance or rehabilitative nursing measures.

8. Written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services (if applicable).

10. Changes in patient's response to the activity and therapeutic recreation program.

11. A discharge summary, signed and dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years.

Section 4. Provision of Services. (1) Physician services.

(a) The health care of every patient shall be under the supervision of a physician who, based on an evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of medical care which covers indicated medications, treatments, rehabilitative services, diet, special procedures recommended for the health and safety of the patient, activities, plans for continuing care and discharge.

(b) Patients shall be evaluated by a physician at least once every thirty (30) days for the first sixty (60) days following admission. Subsequent to the 60th day following admission, the patients shall be evaluated by a physician every sixty (60) days unless justified and documented by the attending physician in the patient's medical record. There shall be evidence in the patient's medical record of the physician visits to the patient at medically 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 and 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 or 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;

4. Shall be treated with kindness and respect;

(b) Rehabilitative nursing care. There shall be an active program of rehabilitative nursing care directed toward assisting each patient to achieve and maintain his highest level of self-care and independence.

1. Rehabilitative nursing care initiated in the hospital shall be continued immediately upon admission to the facility.

2. Nursing personnel shall be taught rehabilitative nursing measures and shall practice them in their daily care of patients. These measures shall include:

a. Maintaining good body alignment and proper positioning of bedfast patients;

b. Encouraging and assisting bedfast patients to change positions at least every two (2) hours, day and night to stimulate circulation and prevent decubiti and deformities or more often if necessary;

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 carry out prescribed physical therapy exercises between visits of the physical therapists.

(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) Comprehensive assessment of resident needs. Nursing personnel 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:

1. The comprehensive assessment must include at least the following information:

a. Medically defines conditions and prior medical history;

b. Medical status measurement;

c. Functional status;

d. Sensory and physical impairment;

e. Nutritional status and requirements;

f. Special treatments or procedures;

g. Psychosocial status;

h. Dental condition;

i. Activities potential;

j. Cognitive status; and

k. Drug therapy.

2. Assessments must be conducted no later than four (4) days after the date of admission and promptly after a significant change in the resident's physical or mental condition.

3. Each assessment must be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment.

(3) Comprehensive assessments and care plans.

(a) Comprehensive assessments.

1. 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.

2. The comprehensive assessment shall include at least the following information:

a. Medically defined conditions and prior medical history;

b. Medical status measurement;

c. Functional status;

d. Sensory and physical impairments;

e. Nutritional status and requirements;

f. Special treatments or procedures;

g. Psychosocial status;

h. Discharge potential;

i. Dental condition;

j. Activities potential;

k. Rehabilitation potential;

l. Cognitive status; and

m. Drug therapy.

3. Frequency. Assessments shall be conducted:

a. No later than fourteen (14) days after the date of admission;

b. Promptly after a significant change in the resident's physical or mental condition; and

c. In no case less often than once every twelve (12) months.

4. 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.

5. Use. The results of the assessment are used to develop, review, and revise the resident's comprehensive plan of care, under paragraph (4) of this section.

6. 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.

(b) Accuracy of assessments.

1. 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.

2. Certification. Each individual who completes a portion of the assessment shall sign and certify the accuracy of that portion of the assessment.

(c) Comprehensive care plans.

1. 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.

2. A comprehensive care plan shall be:

a. Developed within seven (7) days after completion of the comprehensive assessment;

b. 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

c. Periodically reviewed and revised by a team of qualified persons after each assessment.

3. The services provided or arranged by the facility shall:

a. Meet professional standards of quality; and

b. Be provided by qualified persons in accordance with each resident's written plan of care.

(d) Discharge summary. When the facility anticipates discharge, a resident shall have a discharge summary that includes:

1. A recapitulation of the resident's stay;

2. A final summary of the resident's status to include items in paragraph (2)(b) of this subsection, 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

3. A post-discharge 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.

(4) Specialized rehabilitative services.

(a) Rehabilitative services shall be provided upon written order of the physician which indicates anticipated goals and prescribes specific modalities to be used and frequency of physical, speech and occupational therapy services. These services may be contracted for from another community resource.

(b) If therapy services are provided they shall include:

1. Physical therapy which includes:

a. Assisting the physician in his evaluation of patients by applying muscle, nerve, joint, and functional ability tests;

b. Treating patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical means such as exercise, massage, heat, water, light, and electricity.

2. Speech therapy which includes:

a. Service in speech pathology or audiology;

b. Cooperation in the evaluation of patients with speech, hearing, or language disorders;

c. Determination and recommendation of appropriate speech and hearing services;

3. Occupational therapy services which 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, handrails, wheelchairs, walkers, walkerettes, crutches and canes. The therapists shall advise the administrator concerning the purchase, rental, storage and maintenance of equipment and supplies.

(5) 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.

(6) Pharmaceutical services.

(a) The facility shall provide appropriate methods and procedures for obtaining, dispensing, and administering drugs and biologicals, developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacists.

(b) If the facility has a pharmacy department, a licensed pharmacist shall administer the department.

(c) If the facility does not have a pharmacy department, it shall have provision for promptly obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) If the facility does not have a pharmacy department, but does maintain a supply of drugs:

1. The consultant pharmacist shall be responsible for the control of all bulk drugs and maintain records of their receipt and disposition.

2. The consultant pharmacist shall dispense drugs from the drug supply, properly label them and make them available to appropriate licensed nursing personnel.

3. Provisions shall be made for emergency withdrawal of medications from the drug supply.

(e) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(f) Medication services.

1. Conformance with physician's orders. All medications administered to patients shall be ordered in writing by the patient's physician. Telephone orders shall be given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician within forty-eight (48) hours. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders. A registered nurse or pharmacist shall review each patient's medication profile at least monthly. The prescribing physician shall review the patient's medical profile at least every two (2) months. The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications are to be released to patients on discharge only on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed medical or nursing personnel in accordance with the Medical Practice Act (KRS 311.530 to 311.620) and Nurse Practice Act of (KRS Chapter 314) or by personnel who have completed a state approved training program, from a state-approved source. The administration of oral and topical medicines by certified medicine technicians shall be under the supervision of licensed medical or nursing personnel. Intramuscular injections shall be administered by a licensed nurse or a physician. If intravenous injections are necessary they shall be administered by a licensed physician or registered nurse. Each dose administered shall be recorded in the medical record.

a. The nursing station shall have readily available items necessary for the proper administration of medications.

b. In administering medications, medication cards or other state approved systems shall be used and checked against the physician's orders.

c. Medications prescribed for one patient shall not be administered to any other patient.

d. Self-administration of medications by patients shall not be permitted except on

special order of the patient's physician or in a predischarge program under the supervision of a licensed nurse.

e. Medication errors and drug reactions shall be immediately reported to the patient's physician and an entry thereof made in the patient's medical record as well as on an incident report.

f. Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff, (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references).

3. Labeling and storing medications.

a. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

b. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be returned to the issuing pharmacist or pharmacy for relabeling or disposal. Containers having no labels shall be destroyed in accordance with state and federal laws.

c. Cabinets shall be well lighted and sufficient size to permit storage without crowding.

d. Medications no longer in use shall be disposed of or destroyed in accordance with federal and state laws and regulations.

e. Medications having an expiration date shall be removed from usage and properly disposed of after such date.

4. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient, the date, time, kind, dosage, balance remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed Schedule II controlled substances count daily, and Schedule III, IV, and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with KRS 218A.230, or 21 CFR 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources.

5. Use of restraints or protective devices. If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care. No form of restraints or protective devices shall be used except under written orders of the attending physician.

a. Understanding that measures to prevent wandering may infringe on patient rights, care shall be exercised in the use of physical or mechanical devices or chemical restraints.

(i) Restraints shall not be used as punishment, as discipline, as a convenience for the staff, or when not required to treat the resident's medical symptoms.

(ii) Physical or mechanical restraints that require lock and key shall not be used. 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 comfortable and easily removed in case of an emergency.

(iii) The specific purpose and time-limited order for any restraint shall be written and reviewed according to facility policy. The frequency of such renewal shall not exceed sixty (60) days.

b. 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.

6. Infection control and communicable diseases.

a. There shall be written infection control policies, which are consistent with the Center 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.

d. 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, broken, or otherwise manipulated by hand.

(iii) The containers for 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.

e. 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.

f. 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), rebella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus.

g. A facility may admit a (noninfectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

h. Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet.

i. 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.

(7) 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.

(8) 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.

(9) 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.

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. Subject to the requirements of KRS 216B.071, 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.

(10) 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 help with behavior management. Provision shall be made for activities which must be appropriate for the

needs and interests of each resident, taking into consideration his or her specific impairment and state of disease.

(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) Patient's 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.

(11) Transportation.

(a) If transportation of patients is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for patients who use wheelchairs.

2. An escort or assistant to the driver shall be provided in transporting patients to and from the facility if necessary for the the patient's safety.

(b) The facility shall arrange for appropriate transportation in case of medical emergencies.

(12) 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 approriate 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 conferences.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced palatable meals. 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 leftover 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 over-bed 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 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 patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Handwashing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

4. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

5. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

6. Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

7. 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.

8. 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.

Section 5. Alzheimer's Facility Requirements. (1) The care of residents with Alzheimer's disease and other cognitive disorders require increased security and visual access. Measures to protect the residents from harm and to prevent them from leaving designated areas without supervision shall include frequent in-person observation of each resident and may also include the use of wide angle mirrors and closed-circuit television monitors.

(2) In addition to the required facility specifications in 902 KAR 20:046, the following shall be provided:

(a) Control doors, if used for security of the residents, shall be forty-four (44) inches in width each leaf, and swing in opposite directions. A latch or other fastening device on a door shall be provided with a knob, handle, panic bar, or other simple type of releasing device, the method of operation of which is obvious, even in darkness.

(b) Locking devices may be used on the control doors if the following criteria are met.

1. The locking device shall be electronic and shall be released when the following occurs:

a. Upon activation of the fire alarm or sprinkler systems;

b. Power failure to the facility; and

c. By pressing a button located at the main staff station and at the monitoring station.

2. Key pad or buttons may be located at the control doors for routine use by staff or service.

(3) Access to outdoor areas shall be provided and such areas shall be enclosed by walls or fencing that do not present a hazard.

(4) Any security measures taken to provide for the safety of wandering patients shall be as unobtrusive as possible.

CLAY CESSNA, Inspector General
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: January 4, 1991
FILED WITH LRC: January 15, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for February 21, 1991 at 9 a.m. in the Department for Employment Services, Second Floor West, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by February 16, 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: Eric Friedlander, Ralph Von Derau

(1) Type and number of entities affected: Indeterminable, but due to the conditions of the enabling statute, very few are anticipated.

(a) Direct and indirect costs or savings to those affected:

1. First year: Construction costs in the range of $35,000 to $40,000 per bed. Staffing and other overhead expenses.

2. Continuing costs or savings: Staffing and other overhead expenses.

3. Additional factors increasing or decreasing costs (note any effects upon competition): Enabling statute requires construction to be completed by July 15, 1991.

(b) Reporting and paperwork requirements: There will be such requirements since these Alzheimer's facilities will need to document compliance with these standards.

(2) Effects on the promulgating administrative body: The costs should be minimal. Since there will be so few facilities, additional surveys will be incorporated into the agency's workload.

(a) Direct and indirect costs or savings:

1. First year: $500 for printing costs.

2. Continuing costs or savings: None since reprinting of regulation is part of this agency's continuing budget.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: No effects.

(4) Assessment of alternative methods; reasons why alternatives were rejected: These are minimum licensing standards applicable to all facilities.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: No conflict exists.

(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. These are minimum licensing standards that apply to all regulated entities.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the January 3 & 4, 1991 Meeting

The January meeting of the Administrative Regulation Review Subcommittee was held on Thursday, January 3, 1991 at 2 p.m. in Room 327 of the Capitol and on Friday, January 4, 1991 at 10 a.m. in Room 327 of the Capitol. Representative Tom Kerr, Acting Chairman, called the meeting to order, and the secretary called the roll. The minutes of the December 4 and 5, 1990 meeting were approved.

Present January 3, 1991 were:

Members: Representative Tom Kerr, Acting Chairman; Senators Gene Huff, Pat McCuiston and Bill Quinlan; Representative Jim Bruce.

Present January 4, 1991 were:

Members: Representative Tom Kerr, Acting Chairman; Senators Gene Huff, Pat McCuiston and Bill Quinlan; Representative Jim Bruce.

Guests: Jim Claycomb, Governor's Office; Richard F. Casey, Marilyn Lynn, KHEAA; Jim Coffman, Scott Akers, Revenue Cabinet; Deborah Cameron, Board of Dentistry; Nathan Goldman, Board of Nursing; Roger Nesbitt, Don L. Notter, Department of Agriculture; James R. Kennedy, Henry Curtis, Rapier Smith, Department of Parks; Kenneth Hines, Hisham Saaid, Millie Ellis, Gregory Copeley, Martha Hall, Division of Air Quality; Chris Johnson, Byron W. Wesley, Terry Mosser, Justice Cabinet: Connie Malone, Robert Powell, Corrections Cabinet; Gene Peter, John E. Thorpe, State Police; Sandra G. Pullen, Transportation Cabinet; Gary Bale, Don Hart, Paul McElwain, Ross Payton, William A. Shouse, Laura Graham, Allen Day, Ken Ison, Kay Vincent, Tish Wilson, Bob Cokeley, Melissa Briscoe, Department of Education; Richard Belding, Jim Nelson, Department of Libraries and Archives; Judy Walden, Department of Housing, Buildings and Construction; David Crane, Cookie Whitehouse, Janice Kline, Ron Holland, Gail Lanham, Thelma Whiteside, Judy Trigg, Eric Friedlander, Robert Nelson, Cabinet for Human Resources; Robert W. Powell, Fayette County Clerk's Office; William J. Waddell, University of Louisville; Robert Ford, Nancy Galvagni, John Botkin, Edward R. McClure, KHA; Bill Doll, John Cooper, Brian Brezosky, Robert E. Klinglesmith, Kentucky Medical Association; Tom Fitzgerald, Kentucky Resource Council; Jim Judy, KAHCF.

LRC Staff: Susan Wunderlich, Joe Hood, Gregory Karambellas, Peggy Jones, Donna Pierce, and Susan Eastman.

Press: Monica Dias, Kentucky Post.

The Subcommittee determined that the following administrative regulation did not comply with KRS Chapter 13A:

Corrections Cabinet: Juvenile Holding Facilities

501 KAR 9:025 (Administration; management.) At its September 7, 1988 meeting, the Subcommittee approved a motion to attach a statement of objection to 501 KAR 9:020. The Subcommittee objected to the requirement of Section 2(2) that fiscal court provide funds for the legal representation of a jailer because it exceeded the specific authority granted by statute.

This administrative regulation (501 KAR 9:025) is similar to 501 KAR 9:020. It does not contain the provision for funds for the legal representation of jailers, which was the basis for the finding of deficiency of the previous regulation. Section 2 of this regulation provides that the County Attorney shall represent and advise the jailer as provided in KRS 69.210.

Representative Bruce asked whether the agency could file this regulation since it was similar to the regulation that had been found deficient. It was explained that KRS Chapter 13A was amended during the 1990 Regular Session to provide for the correction of deficiencies by the deletion of language found deficient, and that this regulation does not contain language previously found objectionable by the Subcommittee.

Chairman Kerr questioned the statutory authority for county attorney representation of a jailer. Agency personnel explained that OAG 83-35 states that the county attorney has the responsibility to advise or represent a jailer if a county interest is involved. The Opinion further states that a county interest is involved when the jailer is sued in his official capacity, and the county attorney and fiscal court has reason to believe he acted in good faith in connection with his statutory duties. The Opinion states that the county would have a direct interest in the performance of the jailer's duties involving a county institution and the effect on the public.

Chairman Kerr stated that it was questionable that KRS 69.210(3) authorized county attorney representation, and that the statute may need to be amended to authorize such representation.

Chairman Kerr also stated that Section 2, providing for county attorney representation, may need to be placed in a separate administrative regulation. This section deals with legal advise and representation by the county attorney of jailers, in general. The rest of the regulation deals with juvenile and juvenile facilities. Agency personnel agreed to meet with Subcommittee staff to develop a new regulation.

Representative Bruce moved that this regulation be found deficient because the promulgation of a regulation almost identical to one found deficient was questionable, and it appeared that the authority granted in KRS Chapter 69 for county attorney representation did not require or permit such county attorney representation. The motion passed.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

General Government Cabinet: Board of Dentistry

201 KAR 8:140 (Continuing education compliance.) This administrative regulation was amended to comply with the drafting requirements of KRS 13A.222(4)(j), providing that the use of the masculine includes the feminine, and prohibiting alternatives such as "he or she". It was also amended to delete the separation of alternatives by a slash and to insert the word "or" in lieu of the slash as provided by KRS 13A.222(4)(c).

Board of Nursing

201 KAR 20:390 (Nursing incentive scholarship fund.) Chairman Kerr asked agency personnel to explain the authority for limiting membership of the scholarship fund committee to one year.

Agency personnel stated that although the statute did not provide for specific terms, since the terms could not last indefinitely a time period had to be chosen. The time period is consistent with terms for members of the board. Chairman Kerr asked agency personnel to explain the formula that appears in Section 5(2). He also asked agency personnel why recipients were not eligible for continued awards under Section 7(4). Agency personnel explained that continued awards were unnecessary since the program would be completed within the time period of the original grant.

This administrative regulation was amended as follows:

(1) In Section 2(1) and (2), "must" was deleted and "shall" was inserted in lieu thereof, as required by KRS 13A.222(4)(b).

(2) Because Section 3(1) repeated or summarized KRS 314.026(3), contrary to KRS 13A.120(2)(e),(f), this subsection was deleted in its entirety.

(3) Because Section 4(1) repeated or summarized KRS 314.025(2), contrary to KRS 13A.120(2)(e),(f), this subsection was deleted in its entirety.

(4) In Section 5(4), after "based", the following language was inserted: "on KRS 314.025(2), 314.026(3), 314.027(2) and". Because the second sentence repeated or summarized KRS 314.027(2), contrary to KRS 13A.120(2)(e),(f), this sentence was deleted in its entirety. In the third sentence, the word "however" was deleted, the words "unexpended-earmarked" were deleted, and "earmarked pursuant to KRS 314.027(2) and unexpended" was inserted after the word "funds". The addition of statutory references, and other language, were made in order to cross-reference statutes which had been improperly repeated or summarized in this subsection.

(5) In Section 6(2) and (3), "will" was deleted and "shall" was inserted in lieu thereof, in accordance with KRS 13A.222(4)(b).

(6) Section 9(2) was amended by inserting the following after the word "thereon": ". Repayment may be deferred in the case of disability, major illness, or accident which prevents a recipient from completing an approved program of nursing, or being employed by the sponsor." and by deleting ", unless the board, in its sole discretion, grants a deferment for cause." This amendment was made at the suggestion of Chairman Kerr and Representative Bruce. They stated that KRS Chapter 314 did not appear to permit deferment or release from liability for payment for amounts received as scholarships. They added that if the program was not completed, a deferment might be possible. However, specific standards would have to be set out in the regulation. This amendment restricts the relief granted to those who do not complete the program, through no fault, to deferment of liability.

(7) Because Section 9(3) repeated or summarized KRS 314.027(4), contrary to KRS 13A.120(2)(e),(f), this subsection was deleted in its entirety and remaining subsections were renumbered accordingly.

(8) A new subsection (5) was added to Section 9 as follows: "(5) The forms required by this regulation are included by reference as if fully incorporated herein and shall be on file in the Office of the Board of Nursing, 4010 Dupont Circle, Suite 430, Louisville, Kentucky 40207, and shall be available for public inspection between 8 a.m. and 4:30 p.m. Monday through Friday." This amendment was necessary because the forms had not been incorporated by reference in accordance with KRS 13A.110. The required forms were filed with the Subcommittee.

Commerce Cabinet: Department of Agriculture: Referendums

302 KAR 1:080 (Small grain producers referendum.) This administrative regulation was amended as follows: in Sections 9 and 15, correction of citations of statutes; in Sections 9 and 12, grammatical changes.

Livestock Sanitation

302 KAR 20:220 (Pseudorabies: eradication and control.) This administrative regulation was amended as follows: NECESSITY AND FUNCTION - grammatical correction; Section 1(19) - insert "to slaughter" after the words "from the herd"; Section 3(2) - grammatical, by adding the word "to" in front of the words "the testing".

Tourism Cabinet: Department of Parks: Parks and Campgrounds

304 KAR 1:050 (Metal detectors.) Pursuant to Subcommittee staff recommendations, the agency proposed to amend this regulation by adding a new Section 2 that would permit utilities to use metal detectors. Representatives Bruce and Kerr, and Senators McCuiston and Huff stated that the inclusion of law enforcement personnel appeared to be necessary. Representative Bruce added that park personnel, themselves, may need to use a metal detector. All members pointed out that the prohibition, even if amended as suggested by the agency, was so broad that the changes suggested by the Subcommittee members should be made. Agency personnel agreed to amend the regulation as follows: In Section 1, add the following before the word "The": "Except as provided in Section 2,". Add a new Section 2 to read as follows: Park personnel, law enforcement personnel, and utilities may use metal detectors."

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division for Air Quality: New Source Standards

The following two administrative regulations had been scheduled for Subcommittee consideration at its October, 1990 meeting. In order to give interested parties and the Cabinet sufficient time to work out a compromise, these regulations had been deferred until January 3, 1991. Objections had been raised to these regulations over the new requirements governing hospital incinerators. It was felt that the new requirements relating to such incinerators did not sufficiently address medical waste, the current capabilities of existing incinerators, alternative methods of reducing pollution, the fiscal impact on existing incinerators, the feasibility of compliance, the possibility that imposition of these standards would result in the shutdown of hospital incinerators and increased hauling of hazardous wastes, the scarcity of business concerns that would handle waste that had been incinerated by hospitals, and alternative procedures required and employed in other states. In addition, it was felt that the cabinet had not tiered its regulations in compliance with KRS 13A.210. Tiering would have required the consideration of the factors listed

above.

Subcommittee members were informed that affected hospitals agreed to amendments prepared by the Cabinet. These amendments were given to Subcommittee members on January 3, and the Cabinet agreed to defer the regulations to the January 4, 1991 meeting. On January 4, Representative Bruce proposed these amendments to the Subcommittee. Chairman Kerr stated that these regulations had been considered for several months; that Subcommittee staff had worked with all interested parties; all parties were aware of the requirements of KRS 13A.320(2)(b) that requires the submission of amendments by an administrative body at least 5 working days prior to a Subcommittee meeting. He added that the proposed amendments could be considered only because Subcommittee members had read and offered these amendments. He informed Cabinet and hospital personnel that a third party, the public, had to be considered. He instructed Cabinet and hospital personnel to submit future amendments within the time period required by KRS 13A.320(2)(b).

401 KAR 59:023 (New medical waste or hazardous waste incinerators.) At its November, 1990 meeting, the Subcommittee was presented with certain technical amendments. The Subcommittee deferred consideration of these amendments until other issues, as stated above, were resolved. At its January 4, 1991 meeting, these technical amendments were approved. In addition, a set of amendments constituting the agreement between the Cabinet and affected hospitals, proposed by Representative Bruce, were approved.

Existing Source Standards

401 KAR 61:013 (Existing medical waste and hazardous waste incinerators.) A set of amendments constituting the agreement between the Cabinet and affected hospitals (see discussion above), proposed by Representative Bruce, were approved.

Justice Cabinet: Breath Analysis Operators

500 KAR 8:010 (Certification of operators.) Section 1(1) was amended to delete the word "must" and to insert "shall" to conform to KRS 13A.222(4)(b). Section 6 was amended to reword it in order to make it clearer: The word "No" was deleted and replaced with the word "A"; the phrase "need comply with" was deleted and replaced with the words "shall be exempt from the requirements of"; and the word "must" in the second sentence was deleted and replaced with the word "shall" to comply with KRS 13A.222(4)(b).

Justice Cabinet: Candidate Selection

502 KAR 45:050 (Physical examination.) As originally filed, Section 3 required successful completion of a physical ability test according to standards established by the Commissioner. The standards were not specified in the regulation. It was explained to agency personnel that KRS 13A.100 required that the specific standards that had to be met had to be spelled out in a regulation. Agency personnel agreed to amend Section 3 to establish the specific standards required for the successful completion of the physical ability test.

Transportation Cabinet: Department of Highways: Traffic

603 KAR 5:071 (Bus dimension limits.) This regulation was amended to delete language in Section 1, and Section 2 in its entirety, because it repeated or summarized KRS 189.265(1) and (3), contrary to KRS 13A.120(2)(e) and (f). Remaining sections were renumbered accordingly. An objection had been raised to language in Section 1 specifying the maximum seating capacity because it appeared to be different that what was provided in the statute. Agency personnel explained that the language was necessary to clarify confusing language in the statute.

Education and Humanities Cabinet: Department of Education: Office of School Administration and Finance: Buildings and Grounds

702 KAR 4:050 (Building sites; inspection, approval.) The NECESSITY AND FUNCTION section of this regulation was amended by adding the words "chief state school officer" before the word "[Superintendent". Other technical amendments included deleting "(s)" where appropriate and inserting the word "the" in lieu of the word "such".

702 KAR 4:080 (Temporary or supplemental units.) This regulation was amended by inserting the word "shall" in lieu of the word "must", and inserting the word "the" in lieu of the word "such" where appropriate.

Office of Instruction: Instructional Services

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.) This regulation was amended by adding the correct citation of the federal statute.

704 KAR 3:365 (Chapter I complaint procedures.) This regulation was amended by adding the correct citation of the federal statute.

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.) Section 5 of this regulation was amended by changing the reference to "Section 1" to "Sections 2 and 3".

Instructional Programs

705 KAR 4:040 (Cooperative program standards.) This regulation was amended as follows: (1) Adding an "s" to the word "standard" in the NECESSITY AND FUNCTION section; (2) In Section 1(2), inserting the words "Dictionary of Occupational Titles" in front of "DOT" and placing parentheses around "DOT"; (3) In Section 1(4), replace the word "may" with the word "shall"; and (4) In Section 2(2) change the word "such" to the word "the".

705 KAR 4:230 (General programs standards for secondary vocational education programs.) Section 14 of this regulation was amended by adding the correct citation of the federal statute.

Office of Education for Exceptional Children: Exceptional and Handicapped Program

707 KAR 1:090 (Kentucky School for the Deaf; code of conduct.) This regulation was amended by adding a date of "November, 1990" following the title of the material incorporated by reference.

Public Protection and Regulation Cabinet: Department of Housing Buildings and Construction: Hazardous Materials

815 KAR 30:060 (Certification of underground petroleum storage tank installers.) On January 3, 1991, Representative Bruce and Senator

McCuiston questioned agency personnel with regard to exemption of underground farm storage tanks under 1,000. They pointed out that another administrative body with jurisdiction over this matter had exempted such storage tanks. Agency personnel agreed to defer this regulation to January 4, 1991. On January 4, 1991, agency personnel notified Subcommittee members that such tanks were exempt. Sections 5(1) and 8(2)(a) of this regulation were amended to cross-reference a new Section 10. This new section contained material relating to the certification of underground...tank contractors that had been contained in an appendix. This amendment was necessary because KRS Chapter 13A requires all material relating to an administrative regulation to be set out in the regulation or incorporated by reference. Appendices, or other material, may not simply be attached to an administrative regulation.

Cabinet for Human Resources: Department for Health Services: Local Health Departments

902 KAR 8:030 (Merit system for local health departments.) This regulation was amended by deleting the words "rules and" to comply with KRS 13A.120(5) which prohibits the issuance of "rules" by any administrative body except the courts.

Office of Inspector General

906 KAR 1:070 (Networks.) The Subcommittee instructed the Regulations Compiler to correct the lettering of the paragraphs in Section 2(1).

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

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.)

Transportation Cabinet: Department of Highways: Traffic

603 KAR 5:070 (Motor vehicle dimension limits.)

603 KAR 5:112 (Annual permits for moving utility poles or pipes.)

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 1:115 (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.)

Buildings and Grounds

702 KAR 4:005 (Recreational facilities; school and community.)

702 KAR 4:060 (Construction criteria.)

702 KAR 4:070 (Mechanical, electrical, sanitary, heating and ventilation design.)

702 KAR 4:090 (Property disposal.) Senator McCuiston asked agency personnel to explain the disposition of surplus property. Agency personnel stated that it could be disposed of at public auction, by sealed bid, or by sale after appraisal. Senator McCuiston stated that certain property, such as buildings that were no longer used by schools, had been used by the community as community centers, etc. Members of the community had contributed a great deal to the maintenance and upgrading of such property. However, they were told that such property could not be deeded to them, even if the community had expended money on the property. Agency personnel explained that it would violate the Constitution to transfer such property for less than fair market value. Chairman Kerr suggested that this matter be transmitted to LRC for referral to an appropriate legislative subcommittee, in order to determine whether such a transfer could be effected by an amendment to applicable statutes. Senator McCuiston moved that the matter be so referred to LRC; motion passed.

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.)

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.)

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 7:070 (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: Facilities and Equipment

705 KAR 3:140 (Area center or public high school, standards for department of.)

Instructional Programs
705 KAR 4:050 (Work experience program standards.)
705 KAR 4:080 (FFA leadership training center.)
Office of Education for Exceptional Children: Exceptional and Handicapped Program
707 KAR 1:060 (Identification, evaluation and placement policy and procedures.)
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.)

Cabinet for Human Resources: 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.)

The following regulations were deferred at the promulgating agency's request:

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.)

Education and Humanities Cabinet: Department of Education: Office of School Administration and Finance: School District Finance
702 KAR 3:240 (School council funding formula.)
Office of Instruction: Student Services
704 KAR 7:050 (Student discipline guidelines.)
Office of Education for Exceptional Children: Exceptional and Handicapped Program
707 KAR 1:110 (Kentucky School for the Blind; admission policies.)
Department of Libraries and Archives: Archives
725 KAR 1:060 (Standards for documents presented for recording.) At the request of the Chairman, Jim Nelson agreed to defer this regulation in order for the agency and Subcommittee staff to discuss various problems with the regulation.

The following regulation was withdrawn at the promulgating agency's request:

Education and Humanities Cabinet: Department of Education: Office of School Administration and Finance: General Administration
702 KAR 1:070 (Authority to meet report requirements.)

The Subcommittee had no objections to emergency regulations which had been filed.

OTHER BUSINESS

PUBLIC PROTECTION AND REGULATION CABINET
Alcoholic Beverage Control Board
804 KAR 5:040. Minors; definitions.
Representative Bruce moved that this regulation be reconsidered at the February, 1991 meeting of the Subcommittee with regard to the question of whether minors under 18 years of age are permitted to enter and remain in licensed premises where alcoholic beverages are served or sold. The Subcommittee approved the motion.

The Subcommittee adjourned at 11 a.m. until (tentative) February 7, 1991 at 2 p.m.

CUMULATIVE SUPPLEMENT

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LOCATOR INDEX -- EFFECTIVE DATES

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

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

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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
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 2:220E	2145	11-21-90
Replaced	1800	12-19-90
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
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Replaced	1428	11-15-90

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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
Resubmitted	2377	12-18-90
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
Replaced	1811	1-6-91
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
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501 KAR 6:130E	2379	12-18-90
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
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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
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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
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806 KAR 12:092E	998	7-17-90
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806 KAR 12:094E	1000	7-17-90
Replaced	1505	11-15-90
806 KAR 17:066E	1004	7-17-90
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806 KAR 18:040E	2380	12-14-90
901 KAR 5:050E	28	6-12-90
Replaced	121	9-13-90
902 KAR 10:021E	28	5-16-90
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902 KAR 10:030E	29	5-16-90
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902 KAR 10:040E	1016	7-19-90
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902 KAR 10:060E	30	5-16-90
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902 KAR 10:121E	30	5-16-90
Replaced		7-18-90
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902 KAR 11:010E	204	6-21-90
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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
Resubmitted	2382	12-18-90
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
Resubmitted	2383	12-18-90
902 KAR 20:310E	1681	10-5-90
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Resubmitted	2394	12-18-90
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
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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
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903 KAR 1:010E	223	6-21-90
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903 KAR 5:270E	224	6-21-90
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904 KAR 2:006E	1325	9-14-90
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Resubmitted	2401	1-2-91
904 KAR 2:015E	1035	8-2-90
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Resubmitted	2408	1-4-91
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
Replaced	1864	12-19-90
904 KAR 2:116E	2167	12-6-90
904 KAR 3:035E	1690	10-9-90
Replaced	1867	12-18-90
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
Replaced	1871	12-18-90
907 KAR 1:020E	1695	10-9-90
Expired*		12-6-90
Resubmitted		12-17-90
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Resubmitted	2412	12-28-90
907 KAR 1:022E	1697	10-5-90
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Resubmitted	2414	12-17-90
907 KAR 1:025E	1701	10-5-90
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Resubmitted	2418	12-17-90
907 KAR 1:027E	239	7-11-90
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907 KAR 1:036E	241	7-11-90
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Resubmitted	1342	9-10-90
Replaced	1414	9-19-90
907 KAR 1:039E	248	7-11-90
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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
Replaced	1880	12-18-90
907 KAR 1:102E	1710	10-9-90
Expired*		12-6-90
Resubmitted	2425	12-17-90
907 KAR 1:104E	1711	10-9-90
Expired*		12-6-90
Resubmitted	2426	12-17-90
907 KAR 1:150E	2427	1-11-91
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
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*Emergency expired; ordinary regulation died because Statement of Consideration was not filed 15 days following public hearing. (KRS 13A.190(10)(b))

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13 KAR 2:020		
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13 KAR 2:045	2557	
30 KAR 2:010	155	9-13-90
31 KAR 4:010	1229	12-7-90
31 KAR 4:020	1229	12-7-90
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31 KAR 4:030	1230	12-7-90
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101 KAR 2:045	1236	12-6-90
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101 KAR 2:050		
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101 KAR 2:055	1241	
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101 KAR 2:065	1243	12-6-90
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101 KAR 2:075	1245	12-6-90
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103 KAR 1:010		
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103 KAR 5:070		
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103 KAR 5:090		
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103 KAR 17:080		
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103 KAR 17:081	2293	
103 KAR 18:100		
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103 KAR 18:110		
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103 KAR 25:010		
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103 KAR 25:030		
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103 KAR 25:080		
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103 KAR 25:081	1251	11-21-90
103 KAR 25:090		
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103 KAR 25:091	1252	11-21-90
103 KAR 25:100		
Expired		7-13-90
103 KAR 26:040		
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103 KAR 26:070		
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103 KAR 30:020		
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103 KAR 30:090		
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103 KAR 30:095	581	9-27-90
103 KAR 30:130		
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103 KAR 30:225		
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103 KAR 31:011	1256	11-21-90
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103 KAR 31:100		
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103 KAR 31:150		
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103 KAR 35:030		
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103 KAR 43:070		
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103 KAR 43:210		
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103 KAR 43:230		
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103 KAR 43:240		
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103 KAR 43:250		
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103 KAR 43:270		
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103 KAR 43:300		
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103 KAR 44:010		
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105 KAR 1:010		
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