Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION
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MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is **tentatively** scheduled on April 1-2, 1991. See **tentative** agenda on pages 2929-2930 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 - April 1, 1991
Room 327, Capitol, at 2 p.m.

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TENTATIVE AGENDA - April 2, 1991
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School Facilities Construction Commission

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

815 KAR 20:072. Installation standards for cast iron soil pipe and fittings.

815 KAR 20:073. Installation standards for water and waste piping of types K, L, M and DWV copper; types R-K, R-DWV brass tubing, G or H.

815 KAR 20:074. Installation standards for steel and wrought iron pipe.

815 KAR 20:075. Installation recommendations for polybutylene tubing for hot and cold water distribution systems.

815 KAR 20:077. Storage and installation of aluminum soil, waste vent and storm water piping and fittings.

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Office of Inspector General

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907 KAR 1:102 & E. Advanced registered nurse practitioner services. (Not Amended After Hearing) (Deferred from March Meeting)

907 KAR 1:104 & E. Payments for advanced registered nurse practitioner services. (Not Amended After Hearing) (Deferred from March Meeting)

907 KAR 1:150 & E. Payments for alternative home and community based services for the mentally retarded. (Deferred from March Meeting)

ADMINISTRATIVE REGULATION REVIEW PROCEDURE

Filing and Publication

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

Public Hearing

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

Any person interested in attending the scheduled hearing must submit written notification of such to the administrative body at least five (5) days before the scheduled hearing. If no written notice is received at least five (5) days before the hearing, the administrative body may cancel the hearing.

If the hearing is cancelled, the administrative body shall notify the Compiler of the cancellation. If the hearing is held, the administrative body shall submit within fifteen (15) days following the hearing a statement of consideration summarizing the comments received at the hearing and the administrative body's responses to the comments.

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

Review Procedure

If a proposed administrative regulation is amended as a result of the public hearing, the amended version shall be published in the next Administrative Register; and the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting following publication. If a proposed administrative regulation is not amended as a result of the hearing or if the hearing is cancelled, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or thirty (30) days after being referred by LRC, whichever occurs first.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
31 KAR 5:010E

This emergency administrative regulation is necessary because the 1991 Special Session of the General Assembly, Senate Bill 8 authorized the State Board of Elections with the concurrence of the Attorney General to promulgate regulations to preserve the absentee voting rights of military personnel serving on active duty outside the United States and other residents of Kentucky residing outside the United States. Because of disruptions and delays in mail service to and from the combat zone as a result of Operation Desert Storm, it is necessary to transmit absentee ballots and applications at the earliest possible date before the May 28, 1991 Primary Election. In order to preserve the absentee voting rights of the military and related personnel serving outside the United States it is necessary to implement this emergency administrative regulation immediately. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on March 14, 1991.

WALLACE G. WILKINSON, Governor
BREMER EHRLER, Chairman

BOARD OF ELECTIONS

31 KAR 5:010E. Absentee voting.

RELATES TO: KRS Chapter 117
STATUTORY AUTHORITY: SB 8, 1991 Special Session of the General Assembly
EFFECTIVE: March 14, 1991
NECESSITY AND FUNCTION: This regulation is necessitated by KRS 117.085 which requires the State Board of Elections to issue administrative regulations to preserve absentee voting rights of residents of Kentucky who are military and related personnel serving on active duty outside the United States.

Section 1. Electronic transmission of absentee ballots for military and related personnel serving on active duty outside the United States shall be permitted in the May 28, 1991 Primary Election.

Section 2. (1) Electronic transmission of an absentee ballot and application to persons authorized by Section 1 of this regulation shall include transmission of the:
(a) Federal post card application to the county clerk from the voter; and
(b) Absentee ballot from the county clerk to the voter.

(2) The voter shall return the absentee ballot by mailing it to the county clerk in an official federal write-in absentee ballot security envelope, which contains an inner envelope.

(3) If security envelopes are not available, the absentee ballot may be returned in two (2) plain envelopes which contain all of the information on the official federal write-in absentee security envelope.

Section 3. The transmission of the absentee ballots by the county clerk shall be accomplished by using the facsimile number provided to the State Board of Elections by the presidential designee pursuant to the Uniform and Overseas Absentee Voting Act 42 USC 1973ff.

This is to certify that I have reviewed this administrative regulation and concur in its promulgation.

FREDERIC J. COWAN, Attorney General

BREMER EHRLER, Chairman
APPROVED BY AGENCY: March 14, 1991
FILED WITH LRC: March 14, 1991 at noon

STATEMENT OF EMERGENCY
200 KAR 18:010E

This emergency administrative regulation provides for the application of financial assistance by qualified applicants for the purpose of financing agricultural loans from the Kentucky Agricultural Finance Corporation FmHA Loan Program. In order to permit the applicants to qualify and in order to comply with the budget bill which authorizes the $500,000 in the first year of the biennium only, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on February 22, 1991.

WALLACE G. WILKINSON, Governor
CHARLES BENNETT, Chairman

KENTUCKY AGRICULTURAL FINANCE CORPORATION

200 KAR 18:010E. Guidelines for FmHA loan program.

RELATES TO: KRS 247.940 through 247.994
STATUTORY AUTHORITY: KRS Chapter 13A, 247.946
EFFECTIVE: February 22, 1991
NECESSITY AND FUNCTION: KRS 247.946 authorizes the Kentucky Agricultural Finance Corporation to promulgate regulations in accordance with KRS Chapter 13A, to govern the application for and provision of financial assistance to qualified applicants for the purpose of financing agricultural loans from the Kentucky Agricultural Finance Corporation FmHA Loan Program.

Section 1. Definitions. For the purposes of this regulation the words and terms used shall have the same meaning as in KRS 247.942, with the following additions:

(1) "Act" means the Kentucky Agricultural Finance Corporation KRS Chapter 247.940 to 247.994, as amended.

(2) "Applicant" for purposes of this program shall have the same meaning given pursuant to KRS 247.942(2)(b) of the Act.

(3) "Application certification" means the certification attached to the FmHA guaranteed loan stating the applicant meets all Kentucky Agricultural Finance Corporation (hereinafter "KAFC") qualifications.

(4) "Assignment of guarantee" means FmHA's document outlining the terms, conditions, and obligations of the lender, purchaser and FmHA.

(5) "Commitment letter" means letter issued by the corporation to the lending institution stating the corporation's intent to purchase a portion of the FmHA guaranteed loan by a qualified applicant. The commitment letter is subject to FmHA final approval.

(6) "Conditional commitment letter" means FmHA's analysis of the application giving preliminary approval of the guarantee.

(7) "Corporation staff" means the staff of the Office of Financial Management and Economic Analysis.

(8) "FmHA" means the Farmers Home Administration and any successors or assigns. FmHA guarantee means the unconditional obligation of the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture as guarantor of the payment of principal of and interest on the guaranteed portion of the qualified loan purchased through the program as evidenced by the loan note guarantee.

(9) "Guaranteed portion" means as to any qualified loan, the portion of principal and interest payments which are guaranteed by the FmHA.

(10) "Interest rates" mean the corporation shall establish interest rates based on the prevailing market conditions. The rate of interest shall be set forth in the commitment letter.

(11) "Lender's agreement" means FmHA's agreement between the lending institution and the borrower.

(12) "Lender certification" means certification attached to the FmHA guaranteed loan stating the applicant and lending institution meet the KAFC qualifications.

(13) "Loan note guarantee" means FmHA's ninety (90) percent guarantee on the qualified loan.

(14) "Participation" means an undivided ownership interest in the guaranteed portion of a qualified loan as evidenced by a loan note guarantee.

(15) "Program" means the corporation's FmHA loan program for applicants defined above.

(16) "Qualified loan" means a loan made on or after February 1, 1991, by a lending institution to an applicant, which loan is the subject of a FmHA guarantee and has a term not in excess of three (3) years, providing for interest on the unpaid principal amount thereof at the fixed rate stipulated in the commitment letter issued with respect to such loan.

(17) "Servicing fee" means a fee payable to the originating lending institution, equal to a maximum of one and one-half (1 1/2) percent per annum of the outstanding principal of the amount of the guaranteed portion of each qualified loan.

(18) "Unguaranteed portion" means the portion of a qualified loan which is not evidenced by participation and which is not the subject of an FmHA guarantee.

Section 2. Eligible Lender. In order to participate as a lending institution in the program, a lending institution must be an eligible lender under applicable FmHA requirements and the definition of lending institution pursuant to KRS 247.942(13). The lender shall comply with the following criteria:

(1) The lender shall sign and return the lender's certification when requested.

(2) The lender must certify that the loan is a new agricultural loan and is not tied to any existing loan.

Section 3. Eligible Applicant. In order to be eligible for a loan under the program, any applicant as defined in KRS 247.942(2)(b) is eligible to apply to receive financial assistance for an FmHA loan under the program. The applicant shall comply with the following criteria:

(1) An applicant must meet the FmHA loan eligibility criteria; and

(2) An applicant must have his principal farming operation in the Commonwealth of Kentucky; and

(3) The applicant shall not have defaulted on any corporation loan or loans under other state or federal loan programs; and

(4) The applicant must sign and return the application certification.

Section 4. Program Participation. (1) Lending institutions will be notified of funds available to purchase participations from time to time as funds become available. A lending institution should submit an application for a FmHA guarantee based on a loan interest rate negotiated between the lending institution and the applicant and permitted by FmHA. If a qualified loan is approved by the corporation, the loan documents must be amended to provide for the program interest rate as provided for the loan.

(2) When a lending institution has received a conditional amendment for guarantee from FmHA and has determined that the proposed applicant and the loan meet the program eligibility standards, then the lending institution shall forward copies of the following documents to the corporation:

(a) An attested copy of a conditional commitment letter for guarantee from FmHA.

(b) A copy of the application from FmHA for a guaranteed loan.

(c) The KAFC FmHA loan program application certification and lender's certification.

(d) The lender's agreement.

(3) Submission of these documents serves as the lending institution's notice to the corporation that the lending institution intends to sell the guarantee portion of the qualified loan to the corporation to comply with their requirements. Any revisions or additions to documents required for FmHA should be forwarded to the corporation. After receipt of the lending institution's submission of these documents, the corporation will inform the lending institution whether the loan is eligible for inclusion in the program.

Section 5. Loan Closing. The qualified loan must be closed in accordance with the FmHA regulations. The lending institution must completely disburse the qualified loan and the lending institution should notify the corporation immediately if delay is anticipated.

(1) The lending institution should contact the corporation after:

(a) Receipt of loan note guarantee, from FmHA; and

(b) When the loan has been fully funded.

(2) The corporation will issue a written commitment letter. The commitment letter shall be in force for thirty (30) days, during which the interest rate on the loan must be modified to reflect the interest rate set forth in the commitment letter. Upon receipt of the written commitment, the lending institution should notify FmHA in writing if:

(a) The interest rate changed;

(b) There is a conversion to a fixed rate interest; or

(c) There is a conversion to a change in the applicant's payments.

(3) No concurrence by FmHA is necessary when the interest rate set forth in the commitment letter is the same as or lower than the interest rate originally provided by FmHA and the loan has already been approved by FmHA as a fixed rate loan. The applicant and lending institution's execution of a note modification must be in effect within the fifteen (15) day period that the commitment letter is effective.

(4) If the commitment letter expires prior to the execution of the note modification, the lending institution should contact the corporation immediately.

(5) The exception to the above procedure is when the lending institution and FmHA are able to agree on a common interest rate to the applicant within the ten (10) day period. In that case the lending institution should close the loan with the interest rate set forth in the commitment letter, and the lending institution should fund the loan. Modification of the note will not be necessary in this instance.

Section 6. Participation Purchase Procedure. (1) The procedure for purchasing the participations as regulated by FmHA shall be governed by the terms and conditions in the lender's agreement, the loan note guarantee and the assignment of guarantee agreement, which all documents set forth the rights and obligations of the purchaser, the lender and FmHA.

(2) Participants will be purchased at par plus any interest accrued to the date of purchase.

(3) After the loan note guarantee has been modified to reflect the program interest rate, the lending institution will submit to the corporation the following documents:

(a) A copy of the lender's agreement;

(b) A copy of an attested loan note guarantee;

(c) A certified copy of the note and modification to the note, if applicable;

(d) Any other FmHA required documentation.

(4) The corporation will sign and forward to FmHA the original, certified assignment guarantee agreement. Upon FmHA's determination that the assignment guarantee agreement, has been properly completed, FmHA will inform the corporation that the participation is ready for sale. The corporation will then contact the lending institution to arrange a settlement date. Funds will be deposited as agreed between the corporation and the lending institution.

Section 7. Servicing. (1) The lending institution shall hold the qualified loan instruments and shall collect all payments of

principal and interest from the applicant. In the capacity of server, the lending institution shall apply its standards of loan servicing as employed by prudent lenders and shall do strictly in accordance with FmHA's requirements.

(2) The lending institution shall forward to the corporation annually photocopies of guarantee loan status reports.

(3) The following procedures apply to qualified loan payments received in the month due:

(a) Each qualified loan payment remittance by the lender of the pro rata share due to the corporation on the participation shall be sent to the corporation within ten (10) days of receipt in the manner required by the assignment guarantee agreement.

(b) The statement of account shall:

1. The total amount received from the applicant under the note;
2. The interest rate paid to date;
3. The date on which such payment was received;
4. The pro rata share of interest due to the corporation with respect to the guaranteed portion (less the lending institution's servicing fee);
5. The pro rata share of principal due to the corporation with respect to the guaranteed portion;
6. The total amount to be remitted to the corporation; and
7. The remaining outstanding principal balance of the guaranteed portion. The lending institution's servicing fee shall be a maximum of one and one-half (1 1/2) percent per annum computed on the unpaid principal balance of the guaranteed portion of the qualified loan for the period of actual services performed by the lending institutions.

(4) All payments received in a month other than the month due and payable prepayments or late payments shall be remitted within ten (10) days of receipt by the lending institution including prepayments which include payment during the month of prepayment. The lender shall provide to the corporation information listed above.

Section 8. Delinquencies. (1) Lending institutions are expected to collect or cause to be collected delinquent loan payments under the program with the same diligence as with respect to other loans in their portfolio in accordance with the lender's agreement.

(2) In the event the qualified loan is past due more than thirty (30) days the lending institution must set up a meeting to include the applicant, FmHA, and the lending institution to determine:

(a) The reason for the default;

(b) Whether the reason is a temporary or permanent condition;

(c) The applicant's attitude relative to the debt; and

(d) The lending institution and FmHA's actions to be taken. The lending institution must promptly advise the corporation in writing of its and FmHA's recommendations for curing the default.

(3) The lending institution shall provide copies or otherwise inform the corporation in writing of all agreements, written or oral, with the applicant as to repayment agreements or other actions to be taken in connection with a delinquency. The lending institution shall notify the corporation and FmHA in writing upon ascertaining that any agreement cannot be met by the applicant.

Section 9. Repurchase of Defaulted, Qualified Loans. Upon failure of the applicant to prepay principal or interest due for sixty (60) calendar days or more or the lending institution's failure to remit to the corporation its pro rata share of any payment made by the applicant within thirty (30) days receipt thereof, the corporation shall act to protect its investment interest in a matter permitted by the assignment guarantee agreement, as follows:

(1) The corporation will demand in writing the lending institution's repurchase of the participation. The lending institution shall repurchase within thirty (30) days of the corporation's request as set forth in the assignment of guarantee agreement. FmHA demands the lending institution repurchase the participation to facilitate the accounting for funds, resolve the problem, and permit the applicant to cure the default where reasonable. The lending institution will notify the corporation and FmHA of its decision.

(2) If the lending institution does not repurchase the participation, then the corporation will demand repurchase by FmHA.

(3) After participation has been repurchased by either the lender or FmHA, the corporation shall have no further interest in the qualified loan relating thereto.

CHARLES BENNETT, Chairman
APPROVED BY AGENCY: February 14, 1991
FILED WITH LRC: February 22, 1991 at 3 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 on March 4-6, 1991. 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 February 15, 1991 in accordance with KRS Chapter 13A.

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

CORRECTIONS CABINET

501 KAR 6:130E. Western Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
EFFECTIVE: February 20, 1991
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 February 15, 1991 [December 14, 1990] and hereinafter should be referred to as Western Kentucky Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 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
WKCC 02-01-02	Inmate Canteen [(Added 12/14/90)]
WKCC 02-00-03	Invoice and [/] Voucher Processing (Amended 2/15/91)
WKCC 02-00-04	Monetary Receipts During Nonbusiness Hours
WKCC 02-00-06	Purchasing Procedures
WKCC 02-01-01	Inmate Funds (Amended 2/15/91)
WKCC 02-02-01	Agency Funds and Accounting Procedures (Amended 2/15/91)
WKCC 02-08-01	Property Receipt and Inventory Procedures (Amended 2/15/91)
WKCC 04-01-01	Travel Reimbursement for Official Business in Attendance at Professional Meetings
WKCC 04-02-01	Employee Training and Development
WKCC 04-04-01	Educational Assistance Program
WKCC 05-01-01	Research, Consultants, and Student Interns (Amended 2/15/91)
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 and Alcohol Testing (Amended 2/15/91)
WKCC 10-02-01	Special Management Inmates
WKCC 11-00-02	Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements (Amended 2/15/91)
WKCC 11-00-03	Food Service Inspections, Sanitation, Purchasing, and Storage of Food [, and Corrections Cabinet Farm Products]
WKCC 11-00-04	Food Service Security [(Amended 12/14/90)]
WKCC 11-00-05	Food Service General Guidelines (Added 2/15/91)
[WKCC 11-02-01	Food Service General Guidelines Deleted 2/15/91)]
WKCC 11-03-01	Food Service Meals, Menus, Nutrition and Special Diets
WKCC 12-01-01	Inmate Clothing (Amended 2/15/91)
WKCC 13-00-01	Special Health Programs (Amended 2/15/91)
WKCC 13-01-01	Use of Pharmaceutical Products (Amended 2/15/91)
WKCC 13-02-01	Health Care Services (Amended 2/15/91)
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 (Amended 2/15/91)
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 (Amended 2/15/91)
WKCC 16-03-01	Inmate Access to Telephones
WKCC 16-04-01	Inmate Packages
WKCC 17-01-01	Inmate Personal Property
WKCC 17-02-01	Inmate Reception and Orientation (Amended 2/15/91)
WKCC 18-01-01	Structure, Guidelines, and Functions of the Classification Committee (Amended 2/15/91)
WKCC 19-03-01	Inmate Wage Program
WKCC 19-04-01	Work/Program Assignments
WKCC 20-03-01	Vocational Education Program[(s)] (Amended 2/15/91)
WKCC 20-04-01	Academic Education Program[(s)] (Amended 2/15/91)
WKCC 22-00-01	Inmate Recreation and Leisure Time Activities (Amended 2/15/91)
WKCC 22-00-02	Inmate Clubs and [&] Organizations (Amended 2/15/91)
WKCC 23-00-01	Religious Services (Amended 2/15/91) [(Amended 12/14/90)]
WKCC 25-01-01	Gratuities
WKCC 25-02-01	Inmate Release Process (Amended 2/15/91)
WKCC 25-03-01	Prerelease Programs
WKCC 26-01-01	Volunteer Services Program

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: February 15, 1991
FILED WITH LRC: February 20, 1991 at 9 a.m.

STATEMENT OF EMERGENCY
750 KAR 1:010E

Pursuant to KRS 13A.190, the undersigned do hereby declare that the attached amendment to 750 KAR 1:010E should be enacted on an emergency basis. This amendment provides for the restructuring of the Commission's fee schedule for financial advisors providing services to the Commission and must be effective and implemented immediately, in order to allow for the continued efficient administration of the Commission's and local school board bond issues. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary regulation was filed with the Administrative Regulations Compiler on February 13, 1991.

WALLACE G. WILKINSON, Governor
JOE WALTERS, Chairman

SCHOOL FACILITIES CONSTRUCTION COMMISSION

750 KAR 1:010E. Commission procedures.

RELATES TO: KRS Chapter 157
STATUTORY AUTHORITY: KRS 157.617, 157.622
EFFECTIVE: February 15, 1991
NECESSITY AND FUNCTION: The School Facilities [Facility] Construction Commission for the purpose of assisting local school districts to meet the school construction needs of the state. The General Assembly has appropriated funds for administrative support and debt service to allow the commission to implement its program. This regulation describes the procedures the School Facilities [Facility] Construction Commission will utilize in determining eligibility, determining the level of participation of each local school district, making the offer of assistance to the local school districts, determining allowable expenditure of funds, and cumulating credit for those districts that maintain their eligibility, but do not have sufficient funds to complete their first priority project. This amendment redistributes the maximum amount of fees authorized by the commission to be paid to financial advisors for services performed for commission and local school board bond issues, and corrects the name of the commission referenced in the regulation to comply with statutory language contained in KRS 157.617.

Section 1. Eligibility. (1) The School Facilities [Facility] Construction Commission shall use the statement of need, and available local revenue as certified by the State Board of Education in determining the rate of participation of each school district in any given biennium. Eligibility for participation as established in KRS 157.620(1) shall be certified by the State Board of Education.
(2) A school district retaining capital outlay funds in its current expense general fund under the provisions of KRS 157.420 in the year preceding the biennium in which funds are available or during the biennium shall be ineligible to participate in the SFCC Program during such funding period.

Section 2. Rate of Participation. The rate of participation of each eligible district shall be determined by dividing the unmet needs of such respective district by the total unmet needs of all eligible districts and multiplying that fraction times the total new debt service budgeted for the biennium. In the event there are insufficient funds budgeted in the first year of the biennium to fund all the requests, bond sales will be scheduled in the order in which the School Facilities [Facility] Construction Commission receives requests for approval of bond sales. All bond sales may proceed after January 1 of the first year of the biennium.

Section 3. Offer of Assistance. Upon certification of the rate of participation by the School Facilities [Facility] Construction Commission, the Executive Director of the School Facilities [Facility] Construction Commission shall notify each eligible district of its entitled rate of participation and the requirements that must be met if it wishes to accept the offer of assistance. These requirements shall include the amount of local revenue to be expended as certified by the State Board of Education, the priority order of facilities to be built as certified by the State Board of Education, and the sequence of events and deadlines to be met if the local school district accepts the offer of assistance.

Section 4. Acceptance of Offer of Assistance. (1) Within thirty (30) days of receipt of the offer of assistance the local board of education shall notify the School Facilities [Facility] Construction Commission of acceptance or rejection of the offer of assistance. The local district response shall indicate the amount of the offer it plans to commit to construction or renovation immediately and/or the amount it wishes to hold in its escrow account. A district not responding within thirty (30) days shall be declared ineligible and the offer of assistance withdrawn and redistributed to the eligible recipients. In extenuating circumstances and upon written request within the original thirty (30) day period, a single thirty (30) day extension may be granted by the Executive Director of the School Facilities [Facility] Construction Commission.
(2) Within ninety (90) days of the offer of assistance the local district shall provide the School Facilities [Facility] Construction Commission with a copy of the project BG-1 form approved by the Department of Education, an Architects Contract; Construction Managers Contract, if applicable; and a letter of approval from the Department of Education approving the financial plan for the projects to be completed. These contracts shall be negotiated by the local board of education; however, any fees in which the School Facilities [Facility] Construction Commission participates shall not exceed the fee schedules listed in Section 6(2) of this regulation.
(3) Within 120 days of the offer of assistance the local district shall provide the School Facilities [Facility] Construction Commission with an executed deed, Title Opinion, and Certificate of Title Insurance for the project site. If the site acquisition process is in litigation, an extension may be granted by the School Facilities [Facility] Construction Commission upon written request of the local board of education. Under no circumstances will the extension go beyond the biennium in which the offer was made.

Section 5. Review of Building Plans. The review and approval of building plans shall be the responsibility of the Kentucky Department of Education.

Section 6. Allowable Expenditures of Funds. (1) All funds available from "available local revenue" as defined by KRS 157.615 shall be expended before funds generated by bond sales authorized by the SFCC are expended. All funds available for a project shall be expended for the purpose of major renovation and/or construction of the identified project except that the balance of funds remaining after the completion of the project may be expended on the next project on the approved facilities [facility] plan of the respective districts.

Such cost may include site acquisition, providing architectural and engineering services, financial and legal services, and equipment. The site acquisition cost shall be limited to the lesser of the actual cost of acquiring a site or the fair market value of the site as determined by qualified appraisal obtained by the School Facilities [Facility] Construction Commission and charged to the project account. In no case shall School Facilities [Facility] Construction Commission funds or funds from the restricted account be used to purchase a site greater than that required by state board regulations for construction of the approved project. In no case shall School Facilities [Facility] Construction Commission funds or funds from the restricted account be used to reimburse the local board of education for a site acquired before enactment of KRS 157.611. Construction cost may include the cost of fixed equipment and movable equipment, but may not include the cost of supplies as defined by "Kentucky School Financial Accounting System" Instruction Manual.

(2) The fees of architects and engineers shall be limited to the following fee schedule if the School Facilities [Facility] Construction Commission participates in the payment of such fees:

Cost of Construction	Basic Fee
Up to $25,000	12.0%
$25,000 to $50,000	10.4%
$50,000 to $75,000	9.4%
&75,000 to $100,000	8.7%
$100,000 and under $200,000	8.0%
$200,000 and under $300,000	7.4%
$300,000 and under $400,000	7.1%
$400,000 and under $500,000	6.8%
$500,000 and under $600,000	6.5%
$600,000 and under $700,000	6.3%
$700,000 and under $800,000	6.2%
$800,000 and under $900,000	6.1%
$900,000 and under $1,000,000	5.9%
$1,000,000 and under $1,250,000	5.8%
$1,250,000 and under $1,500,000	5.7%
$1,500,000 and under $1,750,000	5.6%
$1,750,000 and under $2,000,000	5.5%
$2,000,000 and under $2,250,000	5.4%
$2,250,000 and under $2,500,000	5.3%
$2,500,000 and under $2,750,000	5.2%
$2,750,000 and under $3,000,000	5.1%
$3,000,000 and over	5.0%
Repetitive Design Project	75% of Basic Fee
Renovation Project	125% of Basic Fee

Section 7. Bond Issuance Procedures. (1) Upon acceptance of an offer of assistance by a local school district, the School Facilities [Facility] Construction Commission shall determine whether the local school district will issue the bonds or the SFCC will issue the bonds. Local school districts may request authority from the SFCC to issue the bonds through the local fiscal court or municipal government. Such a request shall be submitted to the commission at the time the local school district accepts the offer of assistance.

(2) If the commission grants permission to issue bonds at the local level, the procedures for issuing the bonds shall be as follows:

(a) The local board of education shall obtain the services of a financial advisor;

(b) The contract with the financial advisor shall be submitted to the School Facilities [Facility] Construction Commission for final approval after signature by the local school district and the financial advisor;

(c) The local board of education shall obtain the services of a trustee, paying agent, and registrar. Such institution shall meet eligibility criteria provided by the School Facilities [Facility] Construction Commission.

(3) In situations where the size of the bond issues is small (less than $500,000) or there is no local participation in the repayment, the School Facilities [Facility] Construction Commission may determine that it is in the best interests of the School Facilities [Facility] Construction Commission and the local school board for the School Facilities [Facility] Construction Commission to manage the bond sale procedures. In cases where this determination is made, the following shall apply:

(a) The bonds will be sold in the name of the School Facilities [Facility] Construction Commission;

(b) The School Facilities [Facility] Construction Commission shall obtain the services of a financial advisor;

(c) At the discretion of the School Facilities [Facility] Construction Commission, multiple projects may be combined into single bond issues. These will generally be limited to small projects and projects where the respective construction bid dates are contemporaneous;

(d) The School Facilities [Facility] Construction Commission shall obtain the services of a trustee, paying agent, and registrar. Such institution shall meet the eligibility criteria provided by the School Facilities [Facility] Construction Commission.

(4) The following procedures shall be followed by all participating districts:

(a) The School Facilities [Facility] Construction Commission's portion of the bond sale shall be limited to a twenty (20) year issue, with level repayment schedule. The maximum annual repayment amounts shall not exceed the offer of assistance from the School Facilities [Facility] Construction Commission;

(b) The local school district's portion of the bond sale shall be structured to meet the unique financial needs of the district. Debt service on the bonds issued shall include the minimum amount required for eligibility to participate in the program as certified by the State Board of Education. The minimum term of the local bond issue to meet eligibility criteria shall be twenty (20) years. At the discretion of the local board of education, the bond issue may include a local contribution to debt service in excess of the minimum required, and the length of the local portion of the repayment schedule may exceed twenty (20) years;

(c) Interest collected and accrued on funds derived from the bond sale will be credited to the debt service schedules of the school district and the School Facilities [Facility] Construction Commission in the same proportions as its respective participation in the bond issue;

(d) The proceeds of the bond sale shall be continually invested until expended on the project or until the project is completed. Any remaining proceeds or investment income received after completion of the project shall be applied to the debt service. Credit against the district's and the commission's debt service

schedule shall be applied in the same percentage as the participation in the bond issue or, if permitted by the bond resolution or indenture, excess funds may be applied to an approved project next in order priority;

(e) A certificate of project completion shall be filed with the School Facilities [Facility] Construction Commission by the local school district. The certification shall summarize the application of the bond proceeds, investment earnings, and any remaining funds from either source. The certificate shall also verify the use of cash contribution as may be required for eligibility by the local school district;

(f) Fees paid to a financial advisor shall be in accordance with the following fee schedule. Fees exceeding this schedule shall be paid by the local board of education.

Maximum Fee Schedule
Services and Expenses of Fiscal Agent

= $11 per $1,000 on the first $1 million
= $10 per $1,000 on the second million
= $4 per $1,000 all over $2 million
[- 1% or $3,000 whichever is greater for up to $1,000,000
- The next $1,000,000 at $6.50 per thousand
- The next $1,000,000 at $6.00 per thousand
- The next $1,000,000 at $5.50 per thousand
- All over $4,000,000 at $5.00 per thousand]

Fee is based upon the amount of bonds actually issued.

Fee to include attorney fees, printing of bonds and official statements, advertising the bond issue, travel of the fiscal agent, and other normal expenses related to the bond closing.

Fee not to include title search or rating service.

Section 8. Cumulative Credit. Any eligible district which fails in any budget period to receive an allocation of state funds that is sufficient to fund the first priority project on the approved facilities [facility] plan of the district may request the approval of the School Facilities [Facility] Construction Commission to accumulate credit subject to the availability of funds, for its unused state allocation for a period not to exceed four (4) years. Districts which receive funds in excess of those required to complete the first project may apply those funds to the next priority project on their approved facilities [facility] plan. In the event there are insufficient funds to complete the next project, those funds may accumulate as previously outlined. All fund credit accumulated in this manner shall be forfeited at any time that the local district fails to meet the eligibility criteria.

JOE WALTERS, Chairman
APPROVED BY AGENCY: February 6, 1991
FILED WITH LRC: February 15, 1991 at 3 p.m.

REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

TEACHER'S RETIREMENT SYSTEM
(As Amended)

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]. **The 1983 annuity tables are hereby incorporated by reference. The tables were approved by the Board of Trustees for use effective September 1, 1983. These tables are available for inspection at the Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601.**

[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.

TEACHER'S RETIREMENT SYSTEM
(As Amended)

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 **Sur-1 (Student's Statement Regarding School Attendance, Revised 5-88)** provided by the Kentucky Teachers' Retirement System. The information supplied by the student must be corroborated by a written statement from the school involved. **This form is hereby incorporated by reference and shall be available for inspection at the Teacher's Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601.**

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.

TEACHER'S RETIREMENT SYSTEM
(As Amended)

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 Teachers' [state] [several] Retirement System shall be in the same proportion to the total amount loaned as the assets of the Teachers' Retirement [individual] System are to the total assets of all the retirement systems.

ARLENE M. ROMINE, Vice Chairperson
APPROVED BY AGENCY: December 17, 1990
FILED WITH LRC: January 3, 1991 at 1 p.m.

GENERAL GOVERNMENT CABINET
Board of Optometric Examiners
(As Amended)

201 KAR 5:010. Application for examination; reciprocity.

RELATES TO: KRS 320.220, 320.250, 320.270
STATUTORY AUTHORITY: KRS 320.240(7)
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. Definitions. "Resident" means a person legally qualified to vote in this state at the time his application is received.

Section 2. [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 3. [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,] An applicant [All applicants] shall[, however] be required to take the oral and clinical or practical examination.

Section 4. (1) Except as provided in subsection (2) of this section, an application fee for examination shall not be returned to an applicant after his application has been approved by the board if he:

(a) Decides not to stand for examination; or

(b) Fails, for any reason, to take the examination.

(2) If the board determines that mitigating circumstances exist, it may apply an application fee to a subsequent examination.

(3) Upon successful completion of examination, an applicant shall pay a fee of thirty (30) dollars for a license certificate and printing.

(4) For the license year in which an applicant successfully passes an examination, the license fee shall be $100.

[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 5. [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 6. [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.

GENERAL GOVERNMENT CABINET
Board of Optometric Examiners
(As Amended)

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. (1) Beginning with calendar year 1991, the annual courses of study shall be completed each calendar year.

(2)(a) A licensee shall attend eight (8) continuing education credit hours.

(b) The provisions of paragraph (a) of this subsection shall not apply to a licensee whose license has been placed in inactive status. Course of study requirements for an inactive status licensee are prescribed by 201 KAR 5:060.

(c) In addition to the requirements of paragraph (a) of this subsection, an optometrist, who is authorized to prescribe therapeutic agents, shall attend a minimum of seven (7) credit hours in ocular therapy and pharmacology. [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. (1) In order to be credited for an educational course, a licensee shall submit a certificate of attendance to the board.

(2) The certification shall be submitted on or before December 31 of each calendar year.

Section 4. A sponsor of approved educational courses shall meet the following requirements:

(1) He shall furnish a certificate of attendance to a licensee;

(2) The certificate shall contain the following information;

(a) Name of the sponsoring organization;

(b) Name and address of the licensee;

(c) Educational topics addressed at the course;

(d) Identity of the speakers;

(e) Number of hours attended by the licensee;

(f) Date of the program;

(g) Statement by the licensee that he has attended the course; and

(h) Signature of an official of the sponsoring organization.

[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 5. [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 6. A license may be suspended by the board if he fails to earn the required number of course hours.

Section 7. (1) The secretary of the board shall notify a licensee that the board intends to suspend his license for failure to comply with Section 3 or 6 of this regulation.

(2) The notification shall be mailed to the licensee at his last known address by February 15 of each calendar year.

Section 8. (1)(a) Upon submission of proof to the board that a licensee has completed the educational course requirements, the board may reinstate his license.

(b) Reinstatement shall not preclude other disciplinary action.

(2)(a) For good cause shown, the board shall not suspend a license for failure to comply with Section 3, 6 or 7 of this regulation.

(b) Good cause consists of:

1. Inability to attend the required educational courses because of illness, incapacity, undue hardship, or other mitigating circumstance; and

2. Initial licensure by examination or reciprocity within the twelve (12) month period

preceding the annual license renewal date.

(3) After termination of the hardship or other mitigating circumstance, a licensee who has shown good cause shall complete the educational course requirements which had not been completed.

[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.

GENERAL GOVERNMENT CABINET
Board of Optometric Examiners
(As Amended)

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. (1) Advertising which shall be [is] informational and not deceptive, fraudulent, misleading, unfair or self-laudatory is permitted to [, but is limited as follows]:

(a) Inform [(1) To informing] the public of the availability of eye care [visual aid] services and aids [materials].

(b) Advertise [(2) Such advertisement may be] by radio, television, print medium or any other medium which is not in violation of KRS Chapter 320.

(2) [(3)] If additional charges may be incurred in an eye examination for related services in individual cases, [then] the advertisement shall so state;

(3) An advertisement [(4) All advertisements] of price for visual aid glasses (including contact lenses) alone shall clearly state: "does not include eye examination."

(4) [(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].

(2) 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 shall include [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.
(3) [(2)] In addition to the requirements of subsection (2) of this section [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 shall [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. (1) Except as provided in subsection (2) of this section, a person, individually or while employed or connected with a corporation or association, shall not advertise the fitting of contact lenses unless he is an optometrist, physician or osteopath.
(2) An ophthalmic dispenser may advertise that he fits contact lenses if all fittings occur in the presence, and under the supervision, of an optometrist, physician or osteopath. [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 shall be prohibited if it:
(1) Is false, fraudulent, deceptive, misleading or unfair;
(2) Represents an optometrist as a specialist in an optometric specialty if he has not:
(a) Been certified by an approved certifying board; and
(b) Furnished proof of his certification to the board;
(3) Claims, or makes reference to, a secret or special method or treatment that has not been divulged to the board; and
(4) Uses a coded or special name for a visual material or service that has an established trade name, if the coded or special name would deceive consumers. [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. (1) A [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
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GENERAL GOVERNMENT CABINET
Board of Optometric Examiners
(As Amended)

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. (1) An optometrist shall not give or receive a fee, salary, commission, or other renumeration or thing of value, in any manner, or under any pretext, to or from any person, firm or corporation:

(a) In return for the referral of optometric patients; or

(b) In order to secure optometric patients.

(2) An optometrist shall not enter into a contract, agreement, or arrangement, for the hire or leasing of his professional services.

(3) An optometrist shall not be employed by an unlicensed optometrist, firm or corporation as an optometrist.

(4) The provisions of subsections (1), (2) and (3) of this section shall not prohibit employment of an optometrist by a:

(a) Licensed hospital;

(b) Licensed multidisciplinary health clinic;

(c) Professional service corporation; or

(d) Governmental entity. [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. (1) An optometrist shall not practice in premises where others engage in any unlawful, grossly unprofessional, or incompetent practice, if such practice is known to him, or would have been known to a person of reasonable intelligence.

(2) An optometrist shall not be associated with or share an office or fees with a person who is engaged in the unauthorized practice of optometry. [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. An [Every] optometrist shall not [refrain from] publicly criticize [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. An [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. An [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.] (1) Instruments and equipment necessary to perform the minimum examination specified in Section 8 of this regulation shall be maintained in an office where optometry is practiced.

(2) It shall be grossly unprofessional conduct for an optometrist to fail to maintain in good working order, or to be unable to operate, such instruments and equipment. [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 shall [should] be left to the professional judgement of the optometrist and determined by the standard of care in optometry. If [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. An [Any] act constituting a violation of KRS Chapter 320 shall be unprofessional conduct.

Section 10. If a prescription is to be filled and fabricated by another licensed person, it shall be grossly unprofessional for an optometrist to fail to notify a patient to return the completed prescription for verification for accuracy. [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
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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 request [desire] to place the license in inactive status.
(2) Whether inactive [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. The [Such] request shall be in writing and shall include [the following]:
(1) The reason the optometrist wishes to reactivate the license;
(2) A statement that the applicant has completed required educational courses;
(3) Required certifications of completion of education courses, or a statement that the certifications have been submitted to the board;
(4) A statement that the applicant has not engaged in conduct prohibited by KRS 320.310(1); and
(5) Payment of a reinstatement fee of $250.
[(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
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GENERAL GOVERNMENT CABINET
Board of Optometric Examiners
(As Amended)

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 if:
(1) It is not the same as his name; and
(2) The name of each optometrist practicing in his office is prominently displayed on:
(a) The exterior of the main entrance to the office; and
(b) Stationery, prescription pads, telephone directory listings, and other items bearing or displaying the trade name. [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
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TOURISM CABINET
Department of Fish and Wildlife Resources
(As Amended)

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 is permitted in the following counties: Adair, Bath, Bell, Boyd, Bracken, Breathitt, Campbell, Carter, Clark, Clay, Clinton, Cumberland, Elliott, Estill, Fleming, Floyd, Garrard, Greenup, Harlan, Harrison, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Wayne, Whitley, and Wolfe.** [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.

JUSTICE CABINET
Office of the Secretary
(As Amended)

500 KAR 9:040. Grants.

RELATES TO: KRS 218A.435
STATUTORY AUTHORITY: KRS 218A.435(8)
NECESSITY AND FUNCTION: KRS 218A.435(7)(d) provides that a portion of the asset forfeiture trust fund shall be allocated to the cabinet for the purpose of disbursement to law enforcement agencies as grants. This regulation establishes the application mechanism.

Section 1. Law enforcement agencies may apply for receipt of a grant from the trust fund on forms provided by the Division of Grants Management of the Justice Cabinet.

Section 2. When applying a law enforcement agency shall certify that one (1) or more currently employed officers has received the approved training required in KRS 218A.435(10). In addition, the applying agency must have on file with the program coordinator an approved policy as required in KRS 218A.435(9) and 500 KAR 9:020.

Section 3. Grant monies are to be used by the agency for programs relative to crime prevention, drug abuse prevention, general law enforcement purposes or other similar purposes relating to drug enforcement. Preference shall be given to those applications seeking funding for programs in the following areas: [consistent with the annual "Statewide Drug and Violent Crime Strategy" as developed and published by the Division of grants Management of the Justice Cabinet.]

(1) Demand reduction education programs in which law enforcement officers participate;

(2) Multijurisdictional task force programs that integrate federal, state and local drug law enforcement agencies and prosecutors for the purpose of enhancing interagency coordination and intelligence and facilitating multijurisdictional investigations;

(3) Programs designed to target the domestic sources of controlled and illegal substances, such as precursor chemicals, diverted pharmaceuticals, clandestine laboratories and cannabis cultivations;

(4) Providing community and neighborhood programs that assist citizens in preventing and controlling crime, including special programs that address the problems of crimes committed against the elderly and special programs for rural jurisdictions;

(5) Disrupting illicit commerce in stolen goods and property;

(6)(a) Improving the operational effectiveness of law enforcement through the use of crime analysis techniques, street sales enforcement, schoolyard violator programs, gang-related and low-income housing drug control programs;

(b) Developing and implementing antiterrorism plans for international airports and other important facilities;

[(7) Career criminal prosecution programs, including the development of model drug control legislation;]

(7) [(8)] Financial investigative programs that target the identification of money laundering operations and assets obtained through illegal drug trafficking including the development of proposed model legislation, financial investigative training and financial information sharing systems;

(8) [(9)] Improving the operational effectiveness of the court process, such as court delay reduction programs and enhancement programs;

(9) [(10)] Programs designed to provide additional public correctional resources and improve the corrections systems, including treatment in prisons and jails, intensive supervision programs and long-range corrections and sentencing strategies;

(10) [(11)] Providing prison industry projects designed to place inmates in a realistic working and training environment which will enable them to acquire marketable skills and to make financial payments for restitution to their victims, for support of their own families and for support of themselves in the institution;

(11) [(12)] Providing programs which identify and meet the treatment needs of adult and juvenile drug-dependent and alcohol-dependent offenders;

(12) [(13)] Developing and implementing programs which provide assistance to jurors and witnesses and assistance (other than compensation) to victims of crime;

(13) [(14)](a) Developing programs to improve drug control technology, such as pretrial drug testing programs, programs which provide for the identification, assessment, referral to treatment, case management and monitoring of drug-dependent offenders and enhancement of state and local forensic laboratories;

(b) Criminal justice information systems to assist law enforcement, prosecution, courts and corrections organizations (including automated

fingerprint identification systems);
(14) [(15)] Innovative programs which demonstrate new and different approaches to enforcement, prosecution and adjudication of drug offenses and other serious crimes;
(15) [(16)] Addressing the problems of drug trafficking and the illegal manufacture of controlled substances in public housing;
(16) [(17)] Improving the criminal and juvenile justice system's response to domestic and family violence, including spouse abuse, child abuse and abuse of the elderly;
(17) [(18)] Drug control evaluation programs which state and local units of government may utilize to evaluate programs and projects directed at state drug control activities;
(18) [(19)] Providing alternatives to prevent detention, jail and prison for persons who pose no danger to the community; and
(19) [(20)] Programs of which the primary goal of is to strengthen urban enforcement and prosecution efforts targeted at street drug sales.

Section 4. The standard application for grant funds from the Asset Forfeiture Trust Fund as published by the Justice Cabinet, Office of the Secretary, Division of Grants Management, effective November 1, 1990, is hereby incorporated by reference. The incorporated material can be inspected and copied at the Office of the Secretary of Justice, Bush Building, Second Floor, 403 Wapping Street, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., local time prevailing, Monday through Friday, holidays excepted.

W. MICHAEL TROOP, Secretary
APPROVED BY AGENCY: December 3, 1990
FILED WITH LRC: December 5, 1990 at 4 p.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(As Amended)

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 **may apply** [from applying] for a commercial driver's license beginning January 1, 1991. [Nor shall the administrative regulation be construed as prohibiting] The Transportation Cabinet **may issue** [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 PROTECTION & REGULATION CABINET
Department of Insurance
(As Amended)

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" **shall have** [has] the meaning set forth in KRS 304.12-240.

Section 2. Required Disclosure. **If** [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 **when** [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 **of**:
(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 PROTECTION & REGULATION CABINET
Department of Insurance
(As Amended)

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

RELATES TO: KRS 304.18-115
STATUTORY AUTHORITY: KRS 304.2-110, 304.18-115
NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.18-115 requires the Department of Insurance, with the advice and consent of the Council on Higher Education, to issue regulations to define qualifying student health insurance programs for institutions of higher education, to establish procedures to monitor compliance, and to implement the provisions of KRS 304.18-115.

Section 1. Definitions. As used in this regulation:
(1) "Accident" means accidental bodily injury sustained by the insured person which is the direct result of the accident, independent of disease or bodily infirmity or any other cause, and occurs while the insurance is in force.
(2) "Hospital" means an institution operated pursuant to law which is primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic, and major surgical facilities for the medical care and treatment of sick or injured persons on an inpatient basis for which a charge is made, and provides twenty-four (24) hour nursing service by or under the supervision of registered graduate professional nurses (RNs). However, "hospital" does not include convalescent homes, convalescent, rest, or nursing facilities, facilities primarily affording custodial, educational, or rehabilitory care, facilities for the aged, drug addicts, or alcoholics, or any military or veterans hospital or soldiers home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed services, except for services rendered on an emergency basis where a legal liability exists for charges made to the individual for such services.
(3) "Mental or nervous disorders" mean neurosis, psychosis, or mental or emotional disease or disorder of any kind.
(4) "Nurse" means a registered graduate professional nurse (RN), a licensed practical nurse (LPN), or a licensed vocational nurse (LVN).
(5) "Physician" means a duly qualified and licensed physician, that is, a doctor of medicine (MD), a doctor of osteopathy (DO), a doctor of dentistry (DMD or DDS), a doctor of chiropractic, or a doctor of optometry (OD), licensed to practice as such by the governmental authority having jurisdiction over licensing of the classification of doctor in the state where the service is rendered.
(6) "Preexisting condition" means a health condition for which medical advice was given or treatment was recommended by or received from a physician within twelve (12) months before the effective date of coverage.
(7) "Sickness" means sickness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force, but excludes sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employers' liability, or similar law.

Section 2. Scope and Purpose of this Regulation. (1) This regulation establishes minimum standards for health insurance which institutions of higher education require of their students pursuant to KRS 304.18-115.
(2) Every health insurance policy used for the health insurance requirement of KRS 304.18-115 shall meet the minimum standards established by

this regulation.

(3) Every institution of higher education shall offer a health insurance policy pursuant to KRS 304.18-115 which meets but does not exceed the minimum standards established in this regulation. However, this regulation does not prohibit institutions of higher education from offering optional 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;

(m) Mental or emotional disorders, alcoholism, and drug addiction.

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 (such as [including, but not limited to,] Medicaid) 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. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

[Section 6. Severability. If any provision of this regulation or the application of this regulation to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of the provision to other persons or circumstances shall not be affected thereby.]

[Section 7. Effective Date. This regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.]

ELIZABETH P. WRIGHT, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: January 31, 1991
FILED WITH LRC: February 6, 1990 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(As Amended)

902 KAR 13:120. Emergency medical technician automatic and semiautomatic defibrillation training program.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)
STATUTORY AUTHORITY: KRS 211.964
NECESSITY AND FUNCTION: KRS 211.964 directs the Cabinet for Human Resources to adopt rules and regulations relating to emergency medical technicians. The function of this regulation is to establish a new emergency medical technician (EMT) procedure, automatic and semiautomatic cardiac defibrillation, and to establish requirements for training, examinations and authorization. This will be a restrictive procedure while the EMT is employed with an approved ambulance service provider; or with an authorized fire, police or rescue (i.e., public safety) organization having a written affiliation agreement with an approved ambulance service within the same geographic service area.

Section 1. Training Course Requirements. The automatic and semiautomatic defibrillation training course, utilizing automatic external or semiautomatic external defibrillation (AED/SAED) equipment, shall:

(1) Be coordinated by a licensed ambulance service that has filed an appropriate application to and has been approved by the cabinet for coordinating the training, and the ambulance service shall assume all responsibilities required for conducting the AED/SAED training course;

(2) Include the curriculum developed by the Kentucky Emergency Medical Services Advisory Committee and approved by the Emergency Medical Services Branch of the cabinet. A copy of this publication, included by reference as if fully incorporated herein, shall be on file in the office of the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, and shall be available for public inspection between 8 a.m. and 4:30 p.m., Monday through Friday. An equivalent curriculum developed by an outside source, but meeting the course criteria established by the cabinet, may be submitted to and be considered for approval by the cabinet;

(3) Be a minimum of seven (7) hours in duration, presented in two (2) sessions over at least two (2) days;

(4) Utilize equipment, tests, and other materials approved by the cabinet;

(5) Not be started until all equipment and other materials specified are available, in proper quantities, in proper working condition, and placed in secure storage;

(6) Not share equipment between courses unless such equipment is available equally to all defibrillation classes;

(7) Be taught by an instructor, at a ratio of one (1) instructor per six (6) students, approved by the cabinet pursuant to Section 2 of this regulation;

(8) Have a medical director under written contract with the ambulance service provider, who shall review and approve all instruction curriculum and instructors, and who shall be present and participate as appropriate during the training program course;

(9) Have an appropriate number of assistant instructors available for practice sessions so that there are no more than six (6) additional students per assistant. A person meeting the specifications described in Section 2 of this regulation, or an EMT who has completed the AED/SAED training program and is currently authorized and active in performing AED/SAED procedures, may be used as an assistant for practice sessions;

(10) Have a class certification number assigned by the cabinet;

(11) Not permit any absenteeism, or the student shall repeat the entire course;

(12) Not permit any student to be on call during training sessions; and

(13) Require the instructor at the end of each course to submit the following to the ambulance

service provider and to the EMS Branch of the cabinet:

(a) A list of names, including EMT certification numbers, of those students who have successfully completed the course requirements for authorization to perform automatic and semiautomatic cardiac defibrillation; and

(b) The name of the ambulance service with which these EMTs will be working, or affiliated.

(c) The ambulance service shall notify any affiliated public safety organization in writing of each affiliated EMT who has successfully completed the course and who is authorized to perform AED/SAED procedures according to the ambulance service medical director protocols.

Section 2. Automatic and Semiautomatic Cardiac Defibrillation Instructors. No person shall hold himself out as an instructor for EMTs in automatic and semiautomatic cardiac defibrillation unless he has been approved by the cabinet to teach the course. One (1) of the following shall be eligible for such approval upon submission of appropriate documentation to the cabinet:

(1) An EMT who is a certified EMT-instructor and who is authorized and is currently active in performing AED/SAED procedures;

(2) A paramedic, registered nurse or physician, each of whom is a currently certified advanced cardiac life support (ACLS) instructor.

Section 3. Requirements for Each Eligible Trainee Applicant. Each EMT who is employed (full time, part time, paid or volunteer) with an ambulance service or affiliated fire department, police department, or rescue squad, and who responds on an ambulance, fire apparatus, police vehicle, rescue squad or designated first response unit, shall provide to the AED/SAED lead class instructor:

(1) Proof of current EMT certification. If EMT certification expires, the eligibility as an applicant for AED/SAED training also lapses until the EMT is recertified;

(2) Proof of current cardiac life support skills, (e.g., a current American Heart Association or American Red Cross CPR certification card). Included shall be the provision of an acceptable cardiopulmonary resuscitation (CPR) strip, that is signed by an EMT-instructor to verify that the strip was produced by the student applicant within thirty (30) days prior to the commencement date of the class; and

(3) Approval to enroll from the student's emergency medical (ambulance) service provider director and the emergency medical (ambulance) service medical director (EMS-MD).

Section 4. EMT Automatic and Semiautomatic Cardiac Defibrillation Training Program Examination. The cabinet shall prescribe the format and content of the authorization examination, which shall consist of two (2) parts:

(1) Written test. At the end of this course, the student shall demonstrate competency with a written test scoring eighty (80) percent or better that includes the following four (4) enabling objectives:

(a) The student shall identify the function, operation, and proper maintenance of the automatic external devices/shock advisory (semiautomatic) devices, hereafter referred to as AED/SAED.

(b) The student shall define patient assessment, and care and treatment of the sudden death victim.

(c) The student shall list safety measures when using an AED/SAED.

(d) The student shall repeat standing orders and state automatic and semiautomatic cardiac defibrillation training program requirements.

(2) Practical test. At the end of this course, the student shall pass a practical examination managing a simulated cardiac arrest patient using defibrillation that includes the following five (5) enabling objectives:

(a) The student shall demonstrate control of the simulated emergency scene and shall direct the resuscitation efforts.

(b) The student shall demonstrate correct use of standing orders in a simulated cardiac arrest by correctly defibrillating a manikin within ninety (90) seconds of arrival at the manikin's side.

(c) The student shall demonstrate safe use of the AED/SAED and answer questions about the controls, disposable supplies, maintenance, and device "trouble shooting" techniques.

(d) The student shall give an appropriate voice documentation of events at the scene.

(e) The student shall demonstrate appropriate assessment and care of the patient before, during and after defibrillation.

(3) Examiners. AED/SAED instructors approved by the cabinet pursuant to Section 2 of this regulation shall be used as examiners for AED/SAED course practical examinations. An instructor who is employed by the ambulance service for whom the AED/SAED course is conducted shall not be used as an examiner in the practical examination of the course.

(4) Failure of examination and eligibility for retesting.

(a) A student who fails one (1) component of the final examination, written or practical, may be allowed one (1) retest upon recommendation by the instructor and with the approval of the ambulance service medical director.

(b) Failure to successfully pass one (1) retest shall require that the student retake the entire training program course before becoming authorized to perform AED/SAED procedures.

Section 5. Authorization and Continuation of Authorization. (1) The ambulance service or affiliated EMT is authorized to perform AED/SAED procedures by the medical director of the approved ambulance service.

(2) Besides having the approval of the ambulance service medical director, in order to continue the authorization for performance of AED/SAED procedures, the EMT shall during his period of authorization, provide proof to include:

(a) Current certification as an emergency medical technical;

(b) Continued employment and response as an ambulance attendant with an approved AED/SAED ambulance service provider, or a public safety organization service which has a written affiliation agreement with an approved AED/SAED ambulance service within the same geographic service area;

(c) A practical skills review every ninety (90) days to be documented by the EMS-medical director or the EMS-MD designee. This practical

skills review shall address defibrillation as well as basic life support skills.

(3) The continuing medical education classes shall include, but are not limited to:

(a) Equipment drills with their specific auto or semiautomatic defibrillater; and

(b) Knowledge of current standing orders.

(4) The following are not eligible for credit as in-service training or continuing education:

(a) Ambulance runs, rescues, firefighting, emergency responses, or similar actual emergency activities;

(b) Instruction in material, techniques or procedures not approved to be performed by an EMT authorized to perform automatic and semiautomatic cardiac defibrillation.

(5) Evidence of AED/SAED continuing education shall be submitted to and maintained on file at the ambulance service with which the EMT is employed, or affiliated, subject to inspection by a representative of the Emergency Medical Services Branch of the cabinet.

(6) Each subject or training course claimed shall be signed by the instructor of the subject or course.

(7) The qualifications for instructors who may provide in-service and continuing education for the EMT authorized to perform automatic and semiautomatic defibrillation are the same as those identified under Section 2 of this regulation.

Section 6. Denial of Authorization for the EMT to Perform Automatic and Semiautomatic Defibrillation Procedures. The denial of authorization for the EMT to perform AED/SAED procedures may be put into effect by the EMS-MD or the cabinet for any of the following reasons:

(1) The medical director has removed permission for the EMT to perform AED/SAED procedures and has made it known to the ambulance service provider, with subsequent notice having been made by the ambulance service provider to the affiliated public safety organization, and to the EMS Branch of the cabinet, due to any reason that has been substantiated to be detrimental to patient care or to other emergency medical service personnel;

(2) The expiration of the individual's EMT certification;

(3) The individual has discontinued employment with an approved automatic or semiautomatic defibrillation ambulance service provider, or affiliated public safety organization;

(4) The previously approved ambulance service provider with whom the EMT works or is affiliated, has been denied approval to provide automatic or semiautomatic defibrillation services by either having had its ambulance service license revoked, or it no longer has a medical director under written contract; or

(5) The EMT has had his EMT certification revoked, due to having committed an infraction as specified under 902 KAR 13:090, Section 1, disciplinary actions.

Section 7. Hearing Process for an EMT Denied Authorization. When an EMT has been denied authorization to perform AED/SAED procedures:

(1) At the local level by the EMS-MD, a hearing process shall be assured for the EMT in the EMS-MD/ambulance service provider contract; or

(2) At the state level due to the EMT certification being revoked by the EMS Branch of the cabinet, a hearing process for the EMT shall be in accordance with the requirements of 902 KAR 13:090, Section 2.

Section 8. Utilization of Services. No ambulance service provider or affiliated public safety organization shall employ, utilize, permit the operation of, or advertise that said provider employs an EMT authorized to perform AED/SAED procedures, unless the provider is approved by the cabinet to provide AED/SAED services. An approved AED/SAED ambulance service provider shall:

(1) Have a written agreement with a medical director to provide medical supervision and control of the AED/SAED authorized EMT who is in the employ of the provider, and the medical director shall:

(a) Be a licensed physician in the Commonwealth of Kentucky;

(b) Be familiar with ACLS standards, and by January 1, 1995 become ACLS certified;

(c) Review and approve all AED/SAED instruction curriculum, and the instructors for the training program;

(d) Participate in the AED/SAED training program, including presentation of lectures and assisting in student practice sessions as appropriate;

(e) Approve each EMT who is to be a student trainee in the AED/SAED training program;

(f) Supply written authorization to the EMTs for standing orders relating to performance of AED/SAED procedures;

(g) Supervise the continuing education and quarterly evaluations of each EMT authorized to perform AED/SAED procedures;

(h) Review patient case records as established by a quality assessment plan, to include review of written documentation and use of electronic voice and electrocardiogram (ECG) recordings of treatment (only when defibrillation machine used) performed by the authorized EMTs in the field;

(i) Exercise authority as appropriate to remove permission for EMT to perform AED/SAED procedures as referenced in Section 6(1) of this regulation, including the provision of written notice to the EMT and ambulance service involved; and

(j) Assure the provision of a hearing process in accordance with Section 7(1) of this regulation.

(2) Be licensed minimally as a basic life support ambulance service in the Commonwealth of Kentucky; and

(3) Submit required information to the EMS Branch of the cabinet prior to the commencement of any AED/SAED training program for EMTs employed by the emergency medical services provider, and at least annually thereafter.

Section 9. Affiliated Public Safety Organization. An EMT employed (paid or volunteer) by a public safety organization shall not perform AED/SAED procedures unless the public safety organization has entered into a written affiliation agreement with an approved ambulance service within the same geographic service area.

(1) Each affiliated EMT applicant for AED/SAED training shall be approved by the ambulance service director and medical director;

(2) The affiliated EMT shall be under the medical control of and may perform AED/SAED

procedures only by authorization from the ambulance service medical director;

(3) The public safety organization shall agree to comply with the requirements of this regulation and all other terms agreed upon between the public safety organization and the approved ambulance service, as specified in the written affiliation agreement;

(4) The terms in the written affiliation agreement shall specify the responsibilities each party shall assume and shall include a plan for implementation of coordinated response activities in order to maximize appropriate patient care.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: February 6, 1991
FILED WITH LRC: February 6, 1991 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management and Development
(As Amended)

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

RELATES TO: KRS 194.050, 42 USC 8621 et seq., CHR, et al, v. Northern Kentucky Welfare Rights Association, et al (U.S. District Court, Eastern District, Ky., Civil Action No. 9-71, January 28, 1991)

STATUTORY AUTHORITY: KRS 194.050, 42 USC 8621 et seq.

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility as prescribed by 42 USC 8621 et seq. [Public Law 97-35] (Title XXVI of the Omnibus Budget Reconciliation Act of 1981 as amended) to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. [KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth.] This regulation states the eligibility and benefits criteria for [each of two (2) components of] energy assistance[, subsidy and crisis, under the Home Energy Assistance Program (HEAP)].

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

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

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

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

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

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

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

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

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

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

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

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

(b) [the place] He considers home;

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

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

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

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

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

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

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

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

Income Scale

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

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

(c) Excluded from income are:

1. Payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant must spend for that purpose;

2. Payments made to others on the household's behalf;

3. Loans;

4. Reimbursements for expenses;

5. Incentive payments (JET and JTPA) normally disregarded in AFDC;

6. Federal payments or benefits which shall be excluded according to federal law; and

7. Supplemental medical insurance premiums.

(2) Liquid assets.

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

(b) Excluded assets are;

1. Cars; [,]

2. Household or personal belongings; [,]

3. Principal residence; [,]

4. Cash surrender value of insurance policies; [,]

5. Prepaid burial policies; [,]

6. Real property; [,] and

7. Cash on hand or in a bank account if the cash is income considered under subsection (1)(a) of this section [paragraph (a) of this subsection].

(3) Crisis component.

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

[(e) Applicants for the crisis component shall]

(b) Be without heat; [,]

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

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

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

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

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

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

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

(a) Payments to the households' heating fuel providers shall be made for the full benefit amount.

(b) Benefits shall be determined from fuel usage data and from the cost of the six (6) primary heating fuels prior to the implementation of the subsidy component.

(c) The average heating season energy cost for the six (6) primary heating fuels used in determining the benefits in the subsidy component shall be:

1. Coal $796;

2. Electricity $656;

3. Fuel oil $973;

4. Natural gas $656;

5. Propane $1083; and

6. Wood $812.

(d) Households shall receive benefits based on the household's poverty level and the type of heating fuel. Those households with the lowest incomes and highest heating season fuel costs shall receive the highest benefits.

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

(f) Pursuant to the judgment of the United States District Court in Civil Action No. 90-71, the cabinet shall calculate benefits that subsidized households should have received. The cabinet shall pay subsidized households the difference between the amount received and the amount to which such households were entitled.

(g) Benefit matrix subsidy component.

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

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

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

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

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

[3. Each household's share of shelter costs will be divided by the total shelter costs of

the residence to identify the percentage of shelter costs that is borne by the household.]

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

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

[(c) Benefit matrix subsidy component.]

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

[Benefit Scales
Subsidy Component

Scale A.
Energy Sources: Electricity

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

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

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

[Scale C.
Energy Sources: Coal, Wood

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

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

(2) Crisis component. [(3)] Benefits to [eligible] households [under the crisis component] shall be the minimum amount necessary to alleviate the crisis. Benefits may be [in the form of] fuel or other energy for heating, heaters, blankets, sleeping bags, emergency shelter [vouchers to purchase these item], or repair to a heating system to obtain adequate heat. The contracting agency shall determine the type and value of assistance necessary to alleviate the crisis.

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

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

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

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

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

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

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

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

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

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

(2) [(5)] For the crisis component, no direct cash payments shall be made to the recipient. [Benefits shall be provided to eligible households by the contracting agency in the amount and value determined by the contracting agency necessary to alleviate the crisis, not to exceed the maximum allowable payment.] Payments

[under the crisis component] shall be authorized to the energy provider by one (1) party checks upon delivery of fuel, heaters, blankets, sleeping bags, emergency lodging, restoration or continuation of service, or upon repair of the heating system.

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

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

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

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

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

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

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

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

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

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

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

(2) An amount of funds sufficient to provide benefits to all eligible households that apply during the subsidy application period shall be reserved for the subsidy component. [Up to $4,990,800 of benefit funds shall be reserved for the crisis component. The funds reserved for the crisis component shall be allocated, by local administering agency, based upon the 1980 Census poverty levels of the counties served by the local administering agency. At any point after January 15, 1990 all unobligated allocations may be reallocated by the contracting agency at the discretion of the Department for Social Insurance in order to assure crisis benefits availability on a statewide basis.]

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

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

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

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

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

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

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

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

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

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

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(As Amended)

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

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050

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

Section 1. Definitions. The following definitions shall be applicable:

(1) "Patient status" means that the individual has care needs meeting the criteria set forth in this regulation for treatment in the institutional setting.

(2) "Intermittent high intensity services" means the individual requires high intensity nursing services at regular or irregular intervals, but not on a twenty-four (24) hour per day basis.

(3) "Stable medical condition" means one which is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in the patient's condition or treatment regimen.

(4) "Nursing facility" (NF) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting nursing facility standards. A facility which is certified to the department as meeting skilled nursing facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility until the first survey agency survey of the facility which occurs on or after October 1, 1990. Hospital swing beds providing services in accordance with 42 USC 1395tt and 42 USC 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. **Each** nursing **facility** [facilities] shall meet Medicare participation requirements **in at least ten (10) percent of the facility's beds (but not less than ten (10) beds).**

(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 **in at least ten (10) percent of the facility's beds (but not less than ten (10) beds** 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), and the individual does not require psychiatric inpatient treatment.

(d) An individual that does not require a planned program of active treatment to attain or maintain the individual's optimal level of functioning shall not be considered to meet patient status.

(e) It shall be the policy of the cabinet that no individual shall be denied patient status soley due to advanced age, or length of stay in an institution, or history of previous institutionalization, so long as the individual qualifies for patient status on the basis of all other factors.

(f) With regard to an individual with a "related condition" (not mental retardation) the illness or ailment shall have manifested itself prior to the individual's 22nd birthday.

Section 5. [4.] Reevaluation of Need for Service. [Skilled] Nursing facility, nursing facility with waiver, and ICF-MR services shall be provided for as long as the health status and care needs are within the scope of program benefits as described in Sections [2 and] 3 and 4 of this regulation. Patient status shall be reevaluated at least once every six (6) months. If a reevaluation of care needs reveals that the patient no longer requires high intensity, low intensity, or intermediate care for the mentally retarded services and payment is no longer appropriate in the facility [skilled care], payment shall continue for ten (10) days to permit orderly discharge or transfer to an appropriate [lesser] level of care. [Patients who met patient status criteria as of August 31, 1985 on the basis that they would have been reclassified to intermediate care patient status except for the unavailability of an intermediate care bed, and had continued to receive care in the facility while on the waiting list of suitable facilities, will be considered to meet patient status criteria through January 31, 1986 so long as the preexisting conditions for the patient status criteria continue to be met.]

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

following situations:]

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

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

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

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

(1) Injuries within the scope of benefits shall be [are]:

(a) Central nervous system injury from physical trauma;

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

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

(2) Indications for admission and continued stay shall be [are] as follows:

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

(b) The individual shall [is] not be in a persistent vegetative state;

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

(d) The individual requires coma management; and

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

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

(a) The presenting problem;

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

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

(d) The services needed.

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

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

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

(c) Progressive dementias and other mentally impairing conditions;

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

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

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

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

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

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

(2) For intermediate facilities for the mentally retarded and persons with related conditions, reserved bed days shall be covered for a maximum of forty-five (45) days per provider within a calendar quarter. Reserved bed days for hospital stays shall not exceed fifteen (15) days per stay. No more than thirty (30) consecutive reserved bed days (for hospital stay(s) plus leave(s) of absence, or leave of absence only) shall be approved for coverage.

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

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

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

(c) Due to demand at the facility for beds at that level, there is a likelihood that the bed would be occupied by some other patient were it not reserved;

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

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

Section 8. The amendments to this regulation shall be effective with regard to covered

services provided on or after October 1, 1990 [July 1, 1989].

Section 9. 907 KAR 1:024, Intermediate care facility services, is hereby repealed.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: December 7, 1990
FILED WITH LRC: December 13, 1990 at 9 a.m.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(As Amended)

907 KAR 1:025. Payments for nursing facility and intermediate care facility for the mentally retarded services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456; 42 USC 1396, a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet by regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the method for determining amounts payable by the cabinet for nursing care facility services and intermediate care facility for the mentally retarded services.

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

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

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

(a) Physical, occupational and speech therapy.
(b) Laboratory procedures.
(c) X-ray.
(d) Oxygen and other related oxygen supplies.
(e) Respiratory therapy (excluding the routine administration of oxygen).
(f) Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded only).
(g) Ventilator therapy services, subject to the coverage limitations shown in the reimbursement manual.

(3) "Nursing facility (NFs)" means **a facility** [facilities] certified to the Medicaid program by the state survey agency as meeting all nursing facility requirements, and **in at least ten (10) percent of the facility's beds (but not less than ten (1) beds meeting** 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 **have at least ten (10) percent of its beds (but not less than ten (10) beds)** 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 audited or desk reviewed cost data which is available as of May 16 of each year and trending the facility costs to July 1 of the rate year. Appropriate cost report adjustments will be made for the period between July 1, 1990 and October 1, 1990 to account for the fact a nursing facility rate adjustment related to nursing home reform shall be made effective October 1, 1990. (Unaudited, partial year, or budgeted cost data may be used if a full year's audited data is unavailable. Unaudited reports

are subject to adjustment to the audited amount. Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied. Facilities whose rates are subject to settlement back to cost will not be included in the arrays until such time as the facilities are no longer subject to cost settlement.) The following specific policies shall be used with regard to determination, application, and exclusion from upper limits.

(a) Nursing facility arrays. For purposes of setting upper limits the freestanding NFs (exclusive of the NF/MRs, NF/IMDs, and NF/pediatric facilities) shall be divided into urban and rural arrays. The urban array shall include all facilities within a standard metropolitan statistical area (SMSA). The rural array shall include all facilities in non-SMSA counties. For purposes of arraying, current multilevel facilities (i.e., SNF and ICF) shall be considered as one (1) facility, and the composite or overall rate for the facility shall be paid for services rendered in either level during the period of time preceding the first survey agency occurring on or after October 1, 1990 (with separate levels ceasing to exist for Medicaid purposes at the time of the first survey). The urban and rural arrays shall be further broken down into a nursing cost center array and an "other cost center" array for each.

(b) Nursing facility upper limits. The following NF upper limits shall be applied:

1. The upper limit for nursing costs for freestanding NFs shall be set at 115 percent of the median of the array of each facility's cost per case mix unit (urban or rural as applicable). The upper limit for "other costs" for freestanding NFs shall be set at 115 percent of the median of the allowable per diem cost array for the facilities (urban or rural as applicable).

2. The upper limit for hospital based nursing facilities shall be set at 125 percent of the appropriate upper limit for freestanding facilities.

3. The upper limit for NF/MRS shall be set at 120 percent of the appropriate upper limit for freestanding facilities.

(c) Exclusions from nursing facility upper limits. The following exclusions from usual NF payment methodology and upper limits shall be applied.

1. Nursing facilities designated as institutions for mental diseases or as pediatric facilities shall be reimbursed at full reasonable and allowable prospective cost.

2. Hospital swing beds shall be paid at the average of NF payments for the preceding calendar year; the swing bed rates shall change effective January 1, 1991 and each January 1 thereafter.

3. Hospital dual licensed beds shall be paid at the hospital based facility upper limits.

4. Facilities recognized as providing ventilator dependent care shall be paid at an all-inclusive fixed rate which shall be equal to projected costs.

5. Facilities which are Medicaid certified head injury units providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive fixed rate which shall be set at $360 per diem.

(d) Other factors relating to costs and upper limit determination.

1. When the cabinet has made a separate rate adjustment as compensation to the facilities for minimum wage updates, the cabinet shall then adjust downward trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment. The purpose of the adjustment to the factors is to avoid paying the facilities twice for the same costs. When the trending and indexing factors include costs related to a minimum wage increase, the cabinet shall not make a separate rate adjustment, and the minimum wage costs shall not be deleted from the trending and indexing factors.

2. The allowable per diem cost for NFs (excluding swing beds, dual licensed hospital beds, and facilities with all inclusive rates) shall include (through June 30, 1991) thirty-eight (38) cents for nurse aide training; and one (1) dollar and thirty-eight (38) cents for implementation of universal precautions for disease control; and four (4) cents for medical director costs; these allowable cost amounts shall not be subject to adjustment or cost settlement.

3. A special access and treatment fee shall be added to the facility per diem (without regard to upper limits) for each individual identified as having care needs associated with high infectious or communicable diseases with limited treatment potential, such as hepatitis B, methicillin-resistant staphlococcus aureaus (MRSA), acquired immune deficiency syndrome (AIDS), or who test positive for human immuno-deficiency virus (HIV).

4. The maximum payment amounts for the prospective uniform rate year shall be adjusted each July 1 so that the maximum payment amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year.

5. For purposes of administrative ease in computations, normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data except as specified in this subsection.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy and brain injury unit services which shall be paid on the basis of all-inclusive rates. Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement. Ancillary costs may be subject to maximum allowable cost limits under federal regulations. Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except in the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the cabinet exceeding twenty-five (25) percent of billed charges, or where an evaluation by the cabinet of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities

serving the same area by more than twenty-five (25) percent.

(4) Interest expense used in setting the prospective rate shall be an allowable cost if permitted under Medicare principles and if it meets these additional criteria:

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Notwithstanding the provisions contained in subsection (9) of this section, or in any other section or subsection of this regulation or the "Kentucky Medical Assistance Program Nursing Facility Reimbursement Manual," the cost basis for any facility changing ownership on or after July 18, 1984 (but not including changes of ownership pursuant to an enforceable agreement entered into prior to July 18, 1984 as specified in subsection (9)(e) of this section) shall be determined in accordance with the methodology set forth herein for the reevaluation of assets of skilled nursing and intermediate care facilities.

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

(b) The allowable historical base for

depreciation for the purchaser shall be the lesser of the allowable historical cost of the seller less any depreciation allowed to the seller in prior periods, or the actual purchase price.

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

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

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

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

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

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

(d) When a request for prior approval of projections or expansions is made, absence of a response by the cabinet shall not be construed as approval of the item or expansion.

(13) The cabinet shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of a field audit in relation to routine and ancillary service cost. If a field audit is not necessary, the report shall be settled without a field audit. Field audits shall be conducted when determined necessary. A desk review or field audit shall be used for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; audits may be conducted annually or at less frequent intervals. An audit of ancillary cost shall be conducted as needed.

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

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

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

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

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

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

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

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

(18) Qualifying nursing facilities (but not including swing beds, dual licensed hospital beds, IMDs, pediatric facilities, and facilities with all-inclusive rates) shall earn a cost savings incentive (CSI). Facilities qualifying for the CSI (except for NF/MRSs) shall be those facilities whose rate within the applicable cost array is not in excess of 110 percent of the median of the array. The CSI shall be computed at ten (10) percent of the difference between the facility's cost and the upper limit for the array with the CSI amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array. NF/MRSs shall qualify for the CSI when the NF/MRS has costs less than the NF/MRS upper limit, and the CSI shall be ten (10) percent of the difference between the facility rate and the upper limit for the class of facility with the CSI amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(19) Intermediate care facilities for the mentally retarded may qualify for a cost incentive and investment factor (CIIF) allowance based on a comparison of the facility rate with the CIIF schedule shown in this subsection. No return for investment risk shall be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the incentive or investment return. Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 10-1-90)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
$96.99 & below	$1.38	$.87
97.00 -102.99	1.29	$.75
103.00 -108.99	1.18	$.62
109.00 -114.99	1.06	$.47
115.00 -120.99	.92	$.31
121.00 -126.99	.76	$.13
127.00 -133.49*	.53	-

*There is no maximum payment limit for intermediate care facilities for the mentally retarded.

(20) Hold harmless. The NFs (but not including swing beds or dual licensed hospital beds) shall be entitled to a "hold harmless" amount for the period from October 1, 1990 through June 30, 1992. This hold harmless amount shall be the amount, if any, by which the July 1, 1990 allowable facility rate plus an adjustment for ancillary costs shifted to routine costs (less a nurse aide training per diem allowance of one (1) dollar and twenty (20) cents) exceeds the allowable facility rate as computed on October 1, 1990 and July 1, 1991 (excluding the revised nurse aide training per diem allowance and other per diem add-ons in recognition of OBRA 87 requirements) under the revised reimbursement system. For hold harmless purposes, the July 1, 1990 rate shall be increased by an inflation allowance using the appropriate data resources, incorporated index for inflation.

(21) An adjustment shall be made to the usual rate for ICF-MRs, IMDs, and pediatric facilities to account for those medical supplies, catheters, syringes, and diapers not payable under the pharmacy program (and no longer payable as ancillaries under the nursing facility payment system) which are thus included under the routine cost category.

(22) Case-mix. The nursing costs for each facility shall be divided by the average case weight (as measured by each patient's needs with regard to activities of daily living and special needs using a standardized measurement as shown in the Nursing Facility Reimbursement Manual with a range from one (1.0) (lowest level of intensity) to 4.12 (highest level of intensity) to derive the facility average case unit cost. The average case weight for the period October 1, 1990 through June 30, 1991 shall be based on Medicaid patient level of care determinations made during the period July 1, 1990 through September 30, 1990 for each facility. (The peer review organization (PRO) shall first determine whether a patient is high-intensity, low-intensity, or neither. For patients meeting patient status (high or low-intensity), the PRO will then determine the case weight). The average case weight thereafter shall be based on all level of care determinations made during the period covered by the cost report (or as appropriate the most recent period available or a projection if a fully or partial cost report is not available). The facility nursing rate shall be adjusted for each quarter throughout the year and shall be the product of the average case unit cost (subject to upper limits and with the CSI adjustment as appropriate) times the average case weight for the prior quarter (as determined using standard methodology and point-in-time analysis). The actual facility payment amount for nursing care shall thus be subject to adjustment each calendar quarter based on changes in facility average case weight, though the average case unit cost (based on prior year costs) remains the same.

(23) Nursing home reform costs. Effective October 1, 1990 and thereafter, facilities shall be required to request preauthorization for costs that must be incurred to meet nursing home reform costs in order to be reimbursed for the costs. The preauthorization request shall show the specific reform action that is involved and appropriate documentation of necessity and reasonableness of cost. Upon authorization by the Medicaid agency, the cost shall be allowable. A request for a payment rate adjustment may then be submitted to the Medicaid agency with documentation of actual cost incurred. The allowable additional amount shall then be added on the facility's rate (effective with the date the additional cost was incurred) without regard to upper limits or the CSI factor (i.e., the authorized nursing home reform cost shall be passed through at 100 percent of reasonable and allowable cost). Preauthorization shall not be required for nursing home reform costs incurred during the period July 1, 1990 through September 30, 1990; however, the actual costs incurred shall be subject to tests of reasonableness and necessity and shall be fully documented at time of the request for rate adjustment. Facilities may request multiple preauthorizations and rate adjustments (add-ons) as necessary for implementation of nursing home reform. Facility costs incurred prior to July 1, 1990 shall not (except for the costs previously recognized in a special manner, i.e., the universal precautions add-on and the nurse aide training add-on) be recognized as being nursing home reform costs. The special nursing home reform rate adjustment shall be requested using forms and methods specified by the agency. A nursing home rate adjustment shall be included within the cost base for the facility in the rate year following the rate year for which the adjustment was allowed. No interim rate adjustments for nursing home reform shall be allowed for periods after June 30, 1992.

Section 5. Prospective Rate Computation. The prospective rate for each facility (taking into account the factors described in this regulation and the case mix methodology shown in the Nursing Facility Reimbursement Manual) shall reflect the following:

(1) The adjusted allowable cost for the facility;

(2) Adjustments to allowable cost related to occupancy;

(3) Adjustments to allowable cost related to application of upper limits;

(4) Adjustments to allowable cost related to application of the cost savings incentive factor, or for ICF-MRs, the cost incentive and investment schedule;

(5) Rates shall be recomputed quarterly based on revisions in the case mix assessment classification which affects the nursing services component as described in the Nursing Facility Reimbursement Manual; however, the cost basis and the upper limits shall be revised annually using the latest available cost reports and assessments from each provider;

(6) Adjustments as appropriate for costs shifted from ancillary to routine;
(7) Nursing home reform adjustments; and
(8) Hold harmless adjustments.

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

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

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

Section 7. Implementation Date. The provisions of this regulation shall be effective with regard to payments for services provided on or after October 1, 1990.

Section 8. 907 KAR 1:036, Amounts payable for skilled nursing and intermediate care facility services, is hereby repealed.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: February 5, 1991
FILED WITH LRC: February 6, 1991 at 11 a.m.

REGULATIONS AMENDED AFTER PUBLIC HEARING OR COMMENTS RECEIVED

COUNCIL ON HIGHER EDUCATION
(Amended After Hearing)

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) "Agent" means any person employed by a college to act as solicitor, broker, or independent contractor to procure students for the college by solicitation in any form made at any place other than the main campus of the college.

(4) [(3)] The definition of "college" is governed by KRS 164.945.

(5) "In-state college" means a college that is chartered by, organized within, and has its principal location in Kentucky.

(6) [(4)] "Out-of-state college" means a college that is chartered, organized, or has its principal location outside Kentucky.

(7) "Unearned tuition" means the excess of cumulative collections of tuition and other instructional charges over the cumulative amount of earned tuition and other instructional charges in accordance with the college's refund policy.

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) **Statements from** [Evidence of good standing with regard to student default rates in student loan programs administered by] the Kentucky Higher Education Assistance Authority **related to programs administered by that agency** and **from** the United States Department of Education **related to programs administered by that department that the college is in good standing** [if the college participates in state or federal student financial aid programs];

(b) A statement prepared by an independent certified public accountant confirming that:

1. The amount of the [college's] surety bond **coverage is** [equals a penal sum] equal to or in excess of the largest amount of **unearned** [prepaid] tuition held by the college at any time **during the most recently completed fiscal year; or**

2. The amount of the college's unrestricted endowment is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

3. The letter of credit is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

4. Any combination of surety bond coverage, unrestricted endowment, and letter of credit is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year.

(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) **Statements from** [Evidence of good standing with regard to student default rates in student loan programs administered by] the Kentucky Higher Education Assistance Authority **related to programs administered by that agency** and **from** the United States Department of Education **related to programs administered by that department that the college is in good standing.** [if the college participates in state or federal student financial aid programs;]

(b) A statement prepared by an independent certified public accountant confirming that:

1. The amount of the [college's] surety bond **coverage is** [equals a penal sum] equal to or in excess of the largest amount of **unearned** [prepaid] tuition held by the college at any time **during the most recently completed fiscal year; or**

2. The amount of the college's unrestricted endowment is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

3. The letter of credit is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

4. Any combination of surety bond coverage, unrestricted endowment, and letter of credit is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year.

(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 adhere to generally accepted accounting practices and present evidence of financial stability, including the following:

(a) A financial statement including assets and liabilities and the audit report of [audited by] an independent certified public accountant for each corporation of the college;

(b) The name of a bank or other financial institution as reference; and

(c) Statements from [Evidence of good standing with regard to student default rates in student loan programs administered by] the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the United States Department of Education related to programs administered by that department that the college is in good standing [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 guarantee the refund of any unearned tuition held by the college in one (1) of the following ways: [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.]

(a) Maintain a [(b) The] surety bond which 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; or

(b) Maintain an unrestricted endowment; or

(c) Provide a letter of credit. [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) An in-state [The] college shall provide a statement by an independent certified public accountant confirming that:

1. The amount of the surety bond coverage is [equals a penal sum] equal to or in excess of the largest amount of unearned [prepaid] tuition held by the college at any time during the most recently completed fiscal year; or

2. The unrestricted endowment is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

3. The letter of credit is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

4. Any combination of surety bond coverage, unrestricted endowment, and letter of credit is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year.

(d) An out-of-state college shall provide a statement by an independent certified public accountant confirming that for the Kentucky site or sites:

1. The amount of the surety bond coverage is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

2. The unrestricted endowment is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

3. The letter of credit is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year; or

4. Any combination of surety bond coverage, unrestricted endowment, and letter of credit is equal to or in excess of the largest amount of unearned tuition held by the college at any time during the most recently completed fiscal year.

(e) A college applying for a license for the first time shall estimate the amount of unearned tuition based on projected enrollment and tuition and other instructional charges.

(f) [(e)] If the surety bond is terminated, the college shall notify the executive director and the license shall automatically expire with the bond unless a replacement bond is provided without a lapse in bonding.

(g) If the unrestricted endowment falls below the required amount, the college shall notify the executive director and the college shall obtain a surety bond for the amount of coverage or a letter of credit, which in combination with the unrestricted endowment, is equal to or in excess of the largest amount of unearned tuition held by the college in the most recently completed fiscal year.

(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, expressed 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 of 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 the [such] tuition and other instructional charges for a term or semester, whichever is less, shall be retained by the college.

2. Tuition and other instructional charges ordinarily shall be charged by the enrollment period, and the student shall not be obligated for tuition or other instructional charges relating to an enrollment period that had not begun when the student withdrew. However, the executive director may approve program tuition for specific programs at a college if a student may only enroll at the beginning of the program sequence and must remain in phase. If program tuition is approved, the college shall refund tuition and other instructional charges in accordance with its published refund policy.

3. [2.] If a [notification of withdrawal is given by the] student withdraws from the college, or if a [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 unless the student is enrolled in a program for which program tuition is charged as specified in subparagraph 2 of this paragraph.

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.

4. [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.

5. [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 <u>to the college and</u> 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: March 12, 1991
FILED WITH LRC: March 12, 1991 at 1 p.m.

COUNCIL ON HIGHER EDUCATION
(Amended After Hearing)

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 <u>administrative</u> regulation sets forth the minimum standards and policies of the council related to admission at state-supported institutions of higher education.

<u>Section 1. Definitions. (1) The term "adult student" means a student who is twenty-one (21) years of age or older.</u>

<u>(2) The term "approved unit" means a course of study included in the "Program of Studies for Kentucky Schools: Grades K-12".</u>

<u>(3) The term "nontraditional student" means a student twenty-five (25) years of age or older.</u>

Section <u>2.</u> [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 admission 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 3. [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 4. [3.] Minimum Educational Preparation. (1) Effective for the fall semester of 1987, applicants who have satisfied the minimum qualifications for institutional admission as first-time freshmen and have successfully completed twenty (20) or more approved[*] high school units including the following minimum academic preparation requirements are eligible for admission to baccalaureate programs at each university. [*(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 **1995** [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 **1995** [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 **5.** [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 6. [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 7. [6.] Admission with Advanced Standing. (1) Applicants who have attended another accredited college or university may be admitted with advanced standing in accordance with admission 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 8. [7.] General Policy [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: March 12, 1991
FILED WITH LRC: March 12, 1991 at 1 p.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Enforcement
(Amended After Hearing)

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 **January 1, 1991, Section 396.25 relating to the qualifications of brake inspectors was effective on January 1, 1991, but is not required to be implemented by motor carriers until January 1, 1992** [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. Cargo Securement. (1) The "CVSA Cargo Securement Tie-down Guidelines" adopted in October,1990 by the Commercial Vehicle Safety Alliance is hereby incorporated by reference as part of this administrative regulation. The criteria in this document shall apply to the devices used in securing loads to commercial motor vehicles.

(2) 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.

Section 7. [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, 1991 [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: March 7, 1991
FILED WITH LRC: March 12, 1991 at 1 p.m.

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

902 KAR 20:290. Nursing home standards for freestanding facilities limited to the care of patients with Alzheimer's or related disorders [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 **a nursing home** [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 **certified pursuant to KRS 310.010 or 310.030** [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

(b) [(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.]

(7) [(8)] "**Patient** [Resident]" means any **resident** [patient] admitted to an Alzheimer's facility.

(8) [(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 **or related disorder**.

(2) Facilities constructed pursuant to KRS 216B.071 shall be constructed in accordance with 902 KAR 20:046 and this regulation.

(3) These facilities shall be subject to the provisions of KRS 216.535 to 216.593.

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 **allegations** [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 **minimizing** 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 **or related disorder**. 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 **seven (7)** [five (5)] days prior to admission.

(c) **Upon** [Before] admission the patient and a responsible member of his family or **legal respresentative** [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 **life threatening** 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 **at least thirty (30) days** 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 **an employment application and a record** [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, **nursing assistants, and certified medication aides** [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 **or who has two (2) years of social work supervised experience in a health care setting working directly with individuals; or similar professional qualifications** 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.

f. Resident's rights.

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 **seven (7)** [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, **administration method,** 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, assistants, and certified medication 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 fourteen (14) [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 **fourteen (14) days** [forty-eight (48) hour]s. 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 **aides** [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.] **There shall be no PRN orders for restraints.** 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.

a. [(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**, or as a substitute for staff**.

b. [(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. **During the patient's normal waking hours, the patient must be excercised during release periods.** 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.

(c) [(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.

c. Sharp wastes.

(i) Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

(ii) Needles shall not be recapped by hand, purposely bent, 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.

d. Disposable waste.

(i) All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

(ii) The facility shall establish specific written policies regarding handling and disposal of all wastes.

(iii) The following wastes shall be disposed of by incineration, autoclaved before disposal, or carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

(iv) Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9.

e. Patients infected with the following diseases shall not be admitted to the facility: anthrax, campylobacteriosis, cholera, diphtheria, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rebella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus.

f. A facility may admit a (noninfectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

g. Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet.

h. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(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. **Activities programs shall be available to all residents and shall be planned and documented in the patient's interdisciplinary comprehensive assessment.**

(a) The activity leader shall **have specialized educational preparation concerning the care of an Alzheimer's patient, and** 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.]

5. [6.] Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

6. [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.

7. [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, **and alarm systems**.

(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, **which shall not be a keylock 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: March 5, 1991
FILED WITH LRC: March 8, 1991 at 11 a.m.

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

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. 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.

(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 **eligiblity** and posteligibility treatment of income **and resources** 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(1) 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(1) [1902(1)] 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 March 1, 1991

[February 1, 1988], the individual allowed the [forty (40) dollars as his] basic maintenance standard as shown in Section 6(2) of this regulation. 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 the basic maintenance standard as shown in Section 6(2) of this regulation [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(c)(2)(B), (C) and (D) [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 <u>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)</u>;

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 <u>42 USC 1396r-</u> [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: March 4, 1991
FILED WITH LRC: March 8, 1991 at 11 a.m.

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

907 KAR 1:020. Payment for drugs.

RELATES TO: KRS 205.550, 205.560
STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.120, 447.31, 447.332, 447.333, 42 USC 1396a, b, c, d

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 **usual and customary** 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 **usual and customary** 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 **usual and customary** 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 **for maintenance drugs (as determined by the Medicaid agency), and no more than two (2) dispensing fees allowed per drug within a calendar month for other drugs,** [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: March 4, 1991
FILED WITH LRC: March 8, 1991 at 11 a.m.

PROPOSED REGULATIONS RECEIVED AS OF NOON, MARCH 15, 1991

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:010. Contributions and interest rates.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852
STATUTORY AUTHORITY: KRS 16.576, 16.640, 61.559, 61.645, 78.780
NECESSITY AND FUNCTION: KRS 16.645, 61.565 and 78.545 require the board to determine the employer contribution rate based on an actuarial valuation. KRS 61.552 requires the board to adopt a rate of interest payable on a recontribution of refund. KRS 16.560, 61.575 and 78.640 provide that the board may determine the rate of interest payable on the members' contribution account. KRS 61.670 provides that the board shall adopt such actuarial tables as are necessary for the administration of the system. This regulation sets the employer contribution rates, and rate of interest on a recontribution of refund and member contribution account and establishes the actuarial tables for computation of retirement allowances for members of the Kentucky Employees Retirement System (KERS), County Employees Retirement System (CERS) and State Police Retirement System (SPRS).

Section 1. The employer contribution rate payable by a participating agency applicable to creditable compensation <u>effective July 1, 1991</u> shall be as follows:

KRS 61.565	State Police Retirement System - <u>19.57</u> [20.31]%
KRS 61.565	Kentucky Employees Retirement System - <u>7.65</u> [7.45]%
KRS 61.565	County Employees Retirement System - <u>7.95</u> [7.68]%
KRS 61.592	Kentucky Employees Retirement System - 15.05%
KRS 61.592	County Employees Retirement System - <u>16.10</u> [15.43]%

Section 2. Effective July 15, 1988, the interest rate on a recontribution of refund as provided under KRS 61.552 shall be as follows:
(1) For time elapsed from date of refund eight (8) percent compounded annually.
(2) The interest rate on recontribution of refund made by an employee who has been reinstated by order of the Personnel Board or by court order or by order of the Human Rights Commission shall be at the rate of zero percent, if the refund is recontributed within a reasonable period of time.

Section 3. The legal rate of interest as referenced in Section 7 of regulation 200 KAR 12:010 (a regulation relating to computing back pay after reinstatement) shall be the actuarial assumed interest rate set forth in Section 1 of 105 KAR 1:040.

Section 4. Interest creditable on a member's accumulated contributions in accordance with KRS 16.560, 61.575, and 78.640 shall be at the rate between two and one-half (2 1/2) percent and six (6) percent as determined by the board.

Section 5. Reduction factors to be applied to determine immediate annuity equivalent to annuity deferred to Normal Retirement age under KRS 16.577, 16.578, 61.595, 61.640 and 61.680 shall be as provided in Table G, unless the provisions of subsections (1) through (5) of this section are applicable and result in a higher percentage payable:
(1) A SPRS, CERS Hazardous or KERS Hazardous duty member who is age fifty (50) or older and would attain twenty (20) years of service (fifteen (15) years of which would be current service) prior to age fifty-five (55), if his employment had continued shall have his retirement benefit computed based on the appropriate factors as follows:

TABLE A

Years Required to Complete 20 Years Service	Percentage Payable
1	94.5%
2	89.0%
3	83.5%
4	78.0%
5	72.5%

(2) A KERS or CERS nonhazardous member who is age fifty-five (55) or older and would attain twenty-seven (27) years of service (fifteen (15) years of which would be current service) prior to age sixty-five (65) if employment were continued shall have benefits computed using the appropriate factor as follows:

TABLE B

Years Required to Complete 27 Years Service	Percentage Payable
0	100.0%
1	95.0%
2	90.0%
3	85.0%
4	80.0%
5	75.0%
6	71.0%
7	67.0%
8	63.0%
9	59.0%
10	55.0%

(3) A KERS or CERS nonhazardous member who dies prior to age fifty-five (55) or who retires prior to age fifty-five (55) with twenty-five (25) or more years of service (at least fifteen (15) of which are current service) shall have benefits computed using the appropriate factor as follows:

TABLE C

Years Required to Complete 27 Years Service	Percentage Payable
0	100.0%
1	95.0%
2	90.0%

(4) A KERS or CERS nonhazardous member with less than twenty-five (25) years of service who

dies prior to age fifty-five (55) or who retires prior to age fifty-five (55) based on TRS, SPRS, CERS Hazardous or KERS Hazardous Early retirement eligibility, and would have attained twenty-seven (27) or more years of service (fifteen (15) of which would be current service) on or before reaching his 65th birthday, if employment were continued, shall have benefits computed by first multiplying his deferred benefit by the percentage payable as determined from Table B based on the number of years required to complete twenty-seven (27) years of service and then multiply this result by the percentage payable as determined from Table D based on said member's age at the time of death or early retirement.

TABLE D

Years Prior to Age 55	Percentage Payable
1	97.0%
2	94.0%
3	91.0%
4	88.0%
5	85.0%
6	82.0%
7	79.0%
8	76.0%
9	73.0%
10	70.0%

(5) A SPRS, CERS Hazardous or KERS Hazardous member who dies prior to age fifty (50) and would have attained twenty (20) or more years of service (fifteen (15) of which would be current service) on or before reaching his 55th birthday, if employment were continued, shall have benefits payable as determined from Table E based on the number of years required to complete twenty (20) years of service and then multiply this result by the percentage payable as determined from Table F based on said member's age at the time of death.

TABLE E

Years Required to Complete 20 Years Service	Percentage Payable
0	100.0%
1	95.0%
2	90.0%
3	85.0%
4	80.0%
5	75.0%
6	71.0%
7	67.0%
8	63.0%
9	59.0%
10	55.0%

TABLE F

Years Prior to Age 50	Percentage Payable
1	97.0%
2	94.0%
3	91.0%
4	88.0%
5	85.0%
6	82.0%
7	79.0%
8	76.0%
9	73.0%
10	70.0%

TABLE G

Early Age	Normal Retirement Age 65	55
64	95.0%	
63	90.0%	
62	85.0%	
61	80.0%	
60	75.0%	
59	71.0%	
58	67.0%	
57	63.0%	
56	59.0%	
55	55.0%	
54	51.3%	94.5%
53	47.9%	89.0%
52	44.9%	83.5%
51	42.1%	78.0%
50	39.5%	72.5%
49	37.1%	68.8%
48	34.9%	65.2%
47	33.0%	61.7%
46	31.3%	58.2%
45	29.9%	54.7%
44	28.7%	51.3%
43	27.6%	47.9%
42	26.7%	44.9%
41	25.8%	42.1%
40	25.1%	39.5%
39	24.4%	37.1%
38	23.8%	34.9%
37	23.2%	33.0%
36	22.5%	31.3%
35	21.9%	29.9%
34	21.2%	28.7%
33	20.6%	27.6%
32	20.0%	26.7%
31	19.5%	25.8%
30	19.0%	25.1%
29	18.5%	24.4%
28	18.0%	23.8%
27	17.5%	23.2%
26	17.0%	22.5%
25	16.5%	21.9%

The member's exact age in years and months shall be determined and the above factors shall be used to extrapolate in order to determine the appropriate factors.

(6)(a) Benefits paid in the event of death prior to retirement pursuant to subsection (1) through (5) of this section, shall be: determined by "Contingent Annuity Factors," "Integrated Survivor Factors" and "Ten Year Certain Factors"; and (2) reduced as required by KRS 61.640.

(b) "Contingent Annuity Factors," "Integrated Survivor Factors" and "Ten Year Certain Factors", effective July 14, 1990 are incorporated by reference in this administrative regulation. These factors may be read or copied at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

JOHN D. ROBEY, Chairman
APPROVED BY AGENCY: March 1, 1991
FILED WITH LRC: March 1, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April

22, 1991 at 10 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by April 17, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at 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: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pamala Johnson

(1) Type and number of entities affected: 1,160 state and local government agencies.

(a) Direct and indirect costs or savings to those affected:

1. First year:

System	KERS	KERS-Haz.	CERS	CERS-Haz.	SPRS
% of payroll	.20%	0%	.27%	.67%	-.74%
Estimated Cost	$1.7 mil.	0	1.8 mil.	775,233	-192,186

2. Continuing costs or savings: Subject to 1991 actuarial analysis.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Provides funding required by KRS 61.565.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: Will require adjustment of personnel budgets. State police budget impacted favorably.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Funding method required by KRS 61.565 determines cost.

(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: Actuarial liabilities increased as a result of increased benefits, longer life expectancies and lower employee turnover.

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. All local government agencies participating in the County Employees Retirement System, approximately 865.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation provides the funding for the retirement benefits of local government employees in accordance with KRS 61.565.

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 (+/-): +$2.58 million

Other Explanation: The increase in the contribution rates for CERS agencies is required under KRS 61.565 to fund benefits for local government employees. Benefit costs increased due to improved benefits, longer life expectancy and lower turnover.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department of Law
(Proposed Amendment)

400 KAR 1:040. Administrative rules of procedure, discovery.

RELATES TO: KRS 151.182, 151.297, 151.990, 224.033, 224.071, 224.073, 224.081, 224.083, 224.750, 224.866, 224.994, 224.995, 350.028, 350.070, 350.085, 350.093, 350.130, 350.465, 350.990

STATUTORY AUTHORITY: KRS 151.125, 224.033, 350.028, 350.255, 350.465

NECESSITY AND FUNCTION: KRS Chapters 151, 224 and 350 require the cabinet to conduct hearings and investigations concerning a wide variety of matters. This regulation establishes procedures for discovery.

Section 1. General Provisions Governing Discovery. (1) Discovery methods. In all proceedings under these rules except preliminary hearings pursuant to 405 KAR 7:090, Sections 3 and 4, parties may obtain discovery by one (1) or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or, for parties other than the cabinet, permission to enter upon land or other property, for inspection and other purposes; and requests for admission. Unless the hearing officer orders otherwise under subsection (3) of this section, the frequency of use of these methods is not limited.

(2) Scope of discovery.

(a) In general. Parties may obtain discovery regarding any matter, not privileged or confidential under KRS [61.870 et seq.,] 224.035, 224.036 or under any other privilege

recognized by statute or at common law, [or other law,] whether it relates to a claim or defense of the party seeking discovery or to a claim or defense of any other party, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(b) Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(c) Hearing preparation: materials.

1. Subject to the provisions of paragraph (d) of this subsection, a party may obtain discovery of documents and tangible things otherwise discoverable under subsection (1) of this section and prepared in anticipation of the hearing by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the hearing officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

2. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order of the hearing officer. For purposes of this paragraph, a statement previously made is a written statement signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(d) Hearing preparations: experts. The parties shall exchange all information directed by the hearing officer, which may include facts known and opinions held by experts and acquired or developed in anticipation of a hearing. In addition, a party may, through interrogatories, require any other party to identify each person whom the other party expects to call as an expert witness at the hearing, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. Upon motion, the hearing officer [office] may order further discovery by other means, subject to such restrictions as to scope as the hearing officer [office] may deem appropriate.

(3) Protective orders.

(a) Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the hearing officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one (1) or more of the following: that the discovery not be had; that the discovery may be had only on specified terms and conditions, including a designation of the time or place; that the discovery may be had only by a method of discovery other than selected by the party seeking discovery; that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; that discovery be conducted with no one present except persons designated by the hearing officer; that a deposition after being sealed be opened only by order of the cabinet; that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.

(b) If the motion for a protective order is denied in whole or in part, the hearing officer may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Section 10(1)(c) of this regulation apply to the award of expenses incurred in relation to the motion.

(4) Sequence and timing of discovery. Unless the hearing officer upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(5) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement that response to include information thereafter acquired, except as follows:

(a) A party is under a duty seasonably to supplement a response with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, or the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(b) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which the party knows that the response was incorrect when made, or the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(c) A duty to supplement responses may be imposed by order of the hearing officer, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

Section 2. Persons Before Whom Depositions May Be Taken. (1) Within the state. Depositions taken in this state shall be taken before an examiner; a judge, clerk, commissioner or official reporter of a court; a notary public; or before such other persons and under such other circumstances as shall be authorized by law. The term "officer" in Sections 4(3), (5), (6), 5(1), (2), and 6(4) of this regulation means any person before whom a deposition may be taken under this section.

(2) Without the state. Depositions may be taken out of this state before a commissioner appointed by the Governor of the state where taken or before any person empowered by a commission directed to the person by consent of the parties or by order of the hearing officer; or before a judge of a court, a justice of the peace, mayor of a city, or notary public; or before such other persons and under such circumstances as shall be authorized by the law of this state or the place where the deposition is taken.

Section 3. Stipulations Regarding Discovery Procedure. Unless the hearing officer orders otherwise, the parties may, by written stipulation, provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and modify the procedures provided by these rules for other methods of discovery, except that stipulations extending the time for responses to discovery may be made only with the approval of the hearing officer.

Section 4. Depositions Upon Oral Examination. (1) When depositions may be taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of a court having appropriate jurisdiction and on such terms as the court prescribes.

(2) General requirements.

(a) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, the matter upon which each person will be examined, and the name or descriptive title and address of the person before whom the deposition is to be taken. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(b) The hearing officer may for cause shown enlarge or shorten the time for taking the deposition.

(c) The hearing officer may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at the party's own expense.

(d) The notice to a party deponent may be accompanied by a request made in compliance with Section 8 of this regulation for the production of documents and tangible things at the taking of the deposition. The procedure of Section 8(2) of this regulation shall apply to the request.

(e) A party may in the notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one (1) or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This paragraph does not preclude taking a deposition by any other procedure authorized in these rules.

(3) Examination and cross-examination.

(a) Examination and cross-examination of witnesses may proceed as permitted at the hearing. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subsection (2)(c) of this section. If requested by one (1) of the parties, the testimony shall be transcribed.

(b) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and that party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(4) Motion to terminate or limit examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the hearing officer may order the person conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Section 1(3) of this regulation. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the hearing officer. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Section 10(1)(c) of this regulation apply to the award of expenses

incurred in relation to the motion.

(5) Submission to witness. Any party to an action may make a written request before the officer taking a deposition therein that it be submitted to the witness. In such an event, when the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by the witness. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness unless the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer before whom the deposition is taken shall sign it and state on the record the fact of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress the hearing officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(6) Certification and filing by officer.

(a) The officer before whom the deposition is taken shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. The officer before whom the deposition is taken shall promptly deliver the deposition to the docket coordinator or send it by certified mail to the docket coordinator for filing.

(b) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that the person producing the materials may substitute copies to be marked for identification, if a fair opportunity is afforded all parties to verify the copies by comparison with the originals, and if the person producing the materials requests their return, the officer before whom the deposition is taken shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the hearing officer, pending final disposition of the case.

(c) Upon payment of reasonable charges therefor, not to exceed those fixed by statute, the officer shall furnish a copy of the deposition to any party or to the deponent.

(7) Failure to attend or to serve subpoena; expenses.

(a) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the hearing officer may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by the party and the party's attorney in so attending, including reasonable attorney's fees.

(b) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because the party expects the deposition of that witness to be taken, the hearing officer may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by the party and the party's attorney in so attending, including reasonable attorney's fees.

Section 5. Depositions Upon Written Questions. (1) Serving questions; notice.

(a) After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoenas. The deposition of a person confined in prison may be taken only by leave of court of appropriate jurisdiction on such terms as that court prescribes.

(b) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and the name or description title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Section 4(2)(e) of this regulation.

(c) The hearing officer may establish an expeditious schedule for the service of cross, redirect, and recross questions.

(2) The officer before whom the deposition is to be taken to take responses and prepare record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Section 4(3), (5) and (6) of this regulation, to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions which were received. Neither party agent, or attorney shall be present at the examination of the witness.

Section 6. Use of Depositions in Proceedings. (1) Use of depositions. At the hearing any part or all of a deposition so far as admissible may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(b) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Section 4(2)(e) or 5(1)(b) of this regulation to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(c) The deposition of a witness, whether or not a party, may be used by any party for any

purpose if the hearing officer finds that: the witness is dead; or the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or the witness is at a greater distance than 100 miles from the place of the hearing or out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or the witness is the Governor, Secretary, Auditor or Treasurer of the state; or the witness is a judge or clerk of a court; or the witness is a postmaster; or the witness is a president, cashier, teller or clerk of a bank; or the witness is a practicing physician, dentist or lawyer; or the witness is a keeper, officer or guard of a penitentiary; or the witness is of unsound mind, having been of sound mind when his deposition was taken; or the witness is prevented from attending the trial by illness, infirmity, or imprisonment; or the witness is in the military service of the United States or of this state or if the hearing officer finds that such circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally at the hearing, to allow the deposition to be used.

(d) If only a part of a deposition is offered in evidence by a party, an adverse party may require introduction of any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

(e) Substitution of parties does not affect the right to use depositions previously taken.

(2) Objections to admissibility. Objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(3) Effect of taking or using depositions. The taking of a deposition or the questioning of a deponent shall not make evidence admissible which is otherwise incompetent or constitute a waiver of objections to its admissibility.

(4) Effect of errors and irregularities.

(a) As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(b) As to disqualification of person before whom deposition is to be taken. Objection to taking a deposition because of disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) As to taking of deposition.

1. Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one (1) which might have been obviated or removed if presented at that time.

2. Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

3. Objections to the form of written questions are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within three (3) days after service of the last questions authorized.

(d) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer before whom the deposition was taken under this section and Section 5 of this regulation are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

Section 7. Interrogatories to Parties. (1) Availability; procedures for use.

(a) Any party may serve upon any other party written interrogatories to be answered by the party served, or if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may be served upon any party at any time after the commencement of the action. A copy of the interrogatories, answers and all related pleadings shall be filed with the docket coordinator and, unless otherwise ordered, upon all parties.

(b) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty (30) days of service or within such other time as specified by the hearing officer. The party submitting the interrogatories may move for an order under Section 10(1) of this regulation with respect to any objection to or other failure to answer an interrogatory.

(2) Scope; use at trial.

(a) Interrogatories may relate to any matters which may be inquired into under Section 1(2) of this regulation, and the answers may be used to the extent permitted by the rules of evidence.

(b) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the hearing officer may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

(3) Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party

serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

Section 8. Production of Documents and Things. (1) Scope. Any party may serve on any other party a request to produce and permit the party making the request, or someone acting on the party's behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Section 1(2) of this regulation and which are in the possession, custody or control of the party upon whom the request is served; provided, however, that nothing herein shall be construed so as to limit or impose additional requirements on the cabinet with respect to its authority to enter property or to conduct inspections authorized by law.

(2) Procedure. The request may be served on any party without leave of the hearing officer at any time after commencement of the action. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The party upon whom the request is made shall serve written response within thirty (30) days or within such other time as specified by the hearing officer.

Section 9. Requests for Admission. (1) A party may serve upon any other party a written request for admission, for purposes of the pending action only, of the truth of any matters within the scope of Section 1(2) of this regulation set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. The request may be served at any time after the commencement of the action. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.

(2) Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the hearing officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that a reasonable inquiry has been made and that the information known or readily obtainable is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for the hearing may not, on that ground alone, object to the request; the party may deny the matter or set forth reasons why the matter cannot be admitted or denied.

(3) The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the objection is justified, the hearing officer shall order that an answer be served. If the hearing officer determines that an answer does not comply with the requirements of this section, the hearing officer may order either that the matter is admitted or that an amended answer be served. The hearing officer may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to the hearing. The provisions of Section 10(3) of this regulation apply to the award of expenses incurred in relation to the motion.

(4) Effect of admission. Any matter admitted under this section is conclusively established unless the hearing officer on motion permits withdrawal or amendment of the admission. The hearing officer may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the hearing officer that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits. An admission made by a party under this section is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

Section 10. Failure to Make Discovery: Sanctions. (1) Motion for order compelling discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(a) Motion.

1. If a deponent fails to answer a question propounded or submitted under Section 4 or 5 of this regulation or a corporation or other entity fails to make a designation under Sections 4(2)(e) or 5(1)(b) of this regulation, or a party fails to answer an interrogatory submitted under Section 7 of this regulation, or a party fails to allow examination under Section 8 of this regulation, the discovering party may move for an order compelling an answer or a designation or an order compelling examination in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

2. If the motion is denied in whole or in part, the hearing officer may make such protective order as the hearing officer would have been empowered to make on a motion made pursuant to Section 1(3) of this regulation.

(b) Evasive or incomplete answer. For the purposes of this rule an evasive or incomplete answer is to be treated as a failure to answer.

(c) Award of expenses of motion.

1. If the motion is granted the hearing officer shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the hearing officer finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

2. If the motion is denied, the hearing officer shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the hearing officer finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

3. If the motion is granted in part and denied in part, the hearing officer may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(2) Failure to comply with order.

(a) Sanctions by the hearing officer. If a party or an officer, director, or managing agent of a party or a person designated under Section 4(2)(e) or 5(1)(b) of this regulation to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subsection (1) of this section, the hearing officer may make such orders in regard to the failure as are just, and among others the following:

1. An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

2. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters in evidence;

3. An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

(b) Expenses on failure to obey order. In lieu of any of the foregoing orders or in addition thereto, the hearing officer shall require the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the hearing officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(3) Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Section 9 of this regulation, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the hearing officer for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The hearing officer shall make the order unless it finds that the request was held objectionable pursuant to Section 9(1) of this regulation, or the admission sought was of no substantial importance, or the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or there was other good reason for the failure to admit.

(4) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection.

(a) If a party or an officer, director, or managing agent of a party or a person designated under Section 4(2)(e) or 5(1)(b) of this regulation to testify on behalf of a party fails to appear before the officer who is to take his deposition, after being served with a proper notice, or to serve answers or objections to interrogatories submitted under Section 7 of this regulation, after proper service of the interrogatories, or to serve a written response to a request for examination submitted under Section 8 of this regulation, after proper service of the request, the hearing officer on motion may make such orders in regard to the failure as are just, and among others, the hearing officer may take any action authorized under subparagraphs 1, 2, and 3 of subsection (2)(a) of this section. In lieu of any order or in addition thereto, the hearing officer shall require the party failing to act to pay the reasonable expenses, including attorney's fees, caused by the failure unless the hearing officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(b) The failure to act described in this rule may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided in Section 1(3) of this regulation.

(5) Expenses against the Commonwealth. Expenses and attorney's fees are not to be imposed upon the Commonwealth under this section, except as otherwise provided in 405 KAR 7:090, Section 13.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: March 15, 1991
FILED WITH LRC: March 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 25, 1991 at 9:30 a.m. at Hudson Hollow Office Park, #2 Hudson Hollow, Frankfort, Kentucky in Room D-16. Persons interested in being heard at this hearing shall notify this agency in writing by April 20, 1991 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. No transcript or recording will automatically be taken of the hearing unless a written request for a transcript or recording is made, in which case the person making the request shall have the responsibility of paying for same. Written comments on the proposed amendment may be

submitted at any time before 4:30 p.m. on April 25, 1991. Comments received after that time will not be considered. Written notification of intent to be heard at the public hearing and written comments must be submitted to the following contact person: Ronald P. Mills, Department of Law, Fifth Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ronald P. Mills

(1) Type and number of entities affected: This regulation will affect entities who are parties in formal administrative hearings conducted before the cabinet. In 1990 there were approximately 147 formal hearings scheduled before the cabinet wherein discovery could be initiated.

(a) Direct and indirect costs or savings to those affected:

1. First year: None

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: These amendments have no affect on reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Since the cabinet's administrative hearing process has been in place for numerous years there will not be any direct or indirect costs or savings.

2. Continuing costs or savings: See (2)(a)1.

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 since this change is mandated by the order of Franklin Circuit Court in Coal Corporation of America, Inc. v. Commonwealth of Kentucky, NREPC, Case No. 90-CI-00175.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. The same administrative hearing procedures apply to all parties who appear in formal administrative hearings conducted before the cabinet.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Proposed Amendment)

405 KAR 10:050. Bond forfeiture.

RELATES TO: KRS 350.020, 350.060, 350.064, 350.093, 350.095, 350.110, 350.130, 350.151, 350.465, 30 CFR Parts 730-733, 735, 800.4, 800.50, 917, 30 USC 1253, 1255, 1271

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064, 350.130, 350.151, 350.465, 30 CFR Parts 730-733, 735, 800.4, 800.50, 917, 30 USC 1253, 1255, 1271

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to regulate surface coal mining and reclamation operations in a manner as to insure that satisfactory reclamation is accomplished. This regulation sets forth the procedures and criteria by means of which a bond may be forfeited to the cabinet. This regulation sets forth that certain violations of KRS Chapter 350 and regulations promulgated pursuant to that chapter may cause a bond to be forfeited. This regulation sets forth that a hearing may be requested before such forfeiture can be effected. This regulation also specifies a method to determine the amount of bond forfeiture.

Section 1. General. (1) The cabinet shall forfeit all of the remaining bond amount for any permit or increment pursuant to the procedures and criteria of this regulation.

(2) The cabinet may withhold forfeiture if the permittee [or the surety] agrees to a compliance schedule to correct the violations of the permit or bond conditions.

(3) The cabinet shall withhold forfeiture and allow the surety or other financial institution providing bond to complete the reclamation plan if the surety or other financial institution can demonstrate the ability to complete the reclamation plan, including achievement of the capability to support the postmining land use approved by the cabinet, and will undertake to do so within a reasonable time frame and agrees to a compliance schedule. Neither the surety company nor other financial institution shall employ anyone to perform said measures who has been barred from mining pursuant to the provisions of KRS Chapter 350.

Section 2. Procedures. (1) In the event forfeiture of the bond is required by Section 3 of this regulation, the cabinet shall:

(a) Send written notification by certified mail, return receipt requested, to the permittee, and to the surety on the bond, if applicable, of the cabinet's determination to initiate forfeiture of the bond and the reasons for the forfeiture;

(b) Advise the permittee and surety, if applicable, of their right to challenge the determination pursuant to 405 KAR 7:090; and

(c) If no hearing is requested within thirty (30) days following notification and the bond proceeds are not received, the secretary shall enter a final order of forfeiture and the cabinet shall proceed in an action for collection on the bond.

(2) The cabinet may, as an alternative to following the procedures of subsection (1) of

this section, initiate formal hearing procedures concerning forfeiture of the bond alone or in conjunction with the cabinet's action for other appropriate remedies against the permittee pursuant to 405 KAR 7:090.

(3) The cabinet shall utilize funds collected from bond forfeiture to complete the reclamation plan on the permit area or increment on which bond coverage applied, and to cover associated administrative expenses. Such funds shall be deposited in an appropriate account for the payment of such costs. Funds remaining after reclamation shall be returned to the person from whom the forfeiture proceeds were received, subject to the cabinet's right to attach or setoff such proceeds under state law.

(4) In the event the amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The cabinet may complete, or authorize completion of, reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.

Section 3. Criteria for Forfeiture. (1) A bond for a permit area or increment shall be forfeited, if the cabinet finds that:

(a) The permittee has violated any of the terms or conditions of the bond and has failed to take corrective action;

(b) The permittee has failed to conduct the surface mining and reclamation operations in accordance with KRS Chapter 350, the conditions of the permit or Title 405, Chapters 7 through 24 within the time required;

(c) The permit for the area or increment under bond has been revoked or the operation terminated, unless the permittee, surety, or other financial institution providing bond assumes liability pursuant to an agreement for the completion of reclamation; or

(d) The permittee, surety, or other financial institution providing bond has failed to comply with a compliance schedule approved pursuant to Section 1(2) or (3) of this regulation.

(2) A bond may be forfeited if the cabinet finds that:

(a)1. The permittee has become insolvent; or

2. A creditor of the permittee has attached or executed judgment against the permittee's equipment, materials, or facilities, at the permit area; and

(b) The permittee cannot demonstrate or prove the ability to continue to operate in compliance with KRS Chapter 350, Title 405, Chapters 7 through 24, and the permit.

(3) The cabinet may forfeit a bond solely upon the permittee's failure to pay penalties or fines (where all reclamation requirements have been fully met) and retain the bond proceeds, or portion thereof as necessary to offset the penalty or fine owed (including administrative costs incurred by the cabinet), but the cabinet shall forfeit a bond under this circumstance only after the five (5) year liability period has expired; except that for surety bonds or bonds secured by a letter of credit:

(a) In no event shall the cabinet take any action to forfeit a surety bond or bond secured by a letter of credit under this circumstance until reclamation phase I and II monies have been released and the five (5) year liability period has expired; and

(b) Where a forfeiture of a surety bond or a bond secured by a letter of credit under this circumstance has occurred, the cabinet shall not retain the surety bond or bond secured by letter of credit or any proceeds thereof and the permittee shall continue to be responsible for payment of the penalties or fines as well as administrative costs incurred by the cabinet.

Section 4. Forfeiture Amount. The cabinet shall forfeit the entire amount of the bond for the permit area or increment.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: March 15, 1991
FILED WITH LRC: March 15, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 25, 1991 at 9:30 a.m. at Hudson Hollow Office Park, #2 Hudson Hollow, Frankfort, Kentucky in Room D-16. Persons interested in being heard at this hearing shall notify this agency in writing by April 20, 1991 of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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. To assure an accurate record, the cabinet requests that each person testifying at the hearing provide the cabinet with a written copy of his or her testimony. No transcript or recording will automatically be taken of the hearing unless a written request for a transcript or recording is made, in which case the person making the request shall have the responsibility of paying for same. Written comments on the proposed amendment may be submitted at any time before 4:30 p.m. on April 25, 1991. Comments received after that time will not be considered. Written notification of intent to be heard at the public hearing and written comments must be submitted to the following contact person: Jim Villines, Department for Surface Mining Reclamation and Enforcement, Hudson Hollow Office Park, 2 Hudson Hollow, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Glenna Jo Curry

(1) Type and number of entities affected: This regulation governs forfeiture of bonds for surface coal mining operations which becomes necessary when there has been a failure to reclaim or comply with the law. Surety companies are affected by this amendment. During fiscal year 1990 76 forfeitures were initiated on permanent program surface coal mining operations wherein the performance of reclamation was secured by a surety bond.

(a) Direct and indirect costs or savings to those affected:

1. First year: In order to prevent bond forfeiture, surety companies have the right to complete the reclamation plan for a permit. The amendment removes the opportunity for sureties to prevent bond forfeiture by correcting only current violations. Additional costs may be incurred by a surety in completing the reclamation plan as compared to abating only current violations. Conversely, a surety may realize savings since under the amendment the surety will not be expending funds to abate current violations which may recur, resulting in

repeated expenditures to abate and providing only a temporary avoidance of forfeiture.

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: These amendments have no affect on reporting or paperwork requirements.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered since this change is mandated either by federal regulation or state law.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict, overlap or duplicate the proposed amendment.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. Federal law and regulations and state law mandate the same bond forfeiture procedures and criteria for all surface coal mining operations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 30 CFR 800.50

2. State compliance standards. This amendment ensures that the surety company will complete reclamation in situations where the permittee has failed or refused to complete reclamation.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations do not contemplate surety companies abating only current violations.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation does not impose stricter requirements, or additional or different responsibilities, than those required by federal law.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A stricter standard has not been imposed.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of 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 March 15, 1991 [December 14, 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
7.3	Hazardous Waste (Added 3/15/91)
8.4	Emergency Preparedness
9.1	Use of Force
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
9.18	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 (Amended 3/15/91)
13.6	Sex Offender Treatment Program
14.2	Personal Hygiene Items
14.3	Marriage of Inmates
14.4	Legal Services Program
14.6	Inmate Grievance Procedures
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 3/15/91) [(Amended 12/14/90)]
18.6 Classification Document (Amended 3/15/91)
18.7 Transfers (Amended 3/15/91)
18.8 Guidelines for Transfers Between Institutions (Amended 3/15/91)
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 3/15/91) [(Amended 12/14/90)]
25.7 Expedient Release
25.8 Extended Furloughs
25.10 Administrative Release of Inmates (Added 3/15/91)

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 (Amended 3/15/91)
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 (Amended 3/15/91)
27-20-01 Division of Probation and Parole Controlled Intake Program [(Amended 12/14/90)]
27-20-02 Prisoner Intake Notification (Amended 3/15/91)
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 (Amended 3/15/91)
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: March 15, 1991
FILED WITH LRC: March 15, 1991 at noon
PUBLIC HEARING: A public hearing on this regulation has been scheduled for April 22, 1991 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron or Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 2,891 employees of the Corrections Cabinet, 7,774 inmates, 12,420 parolees and probationers, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:070. Kentucky Correctional Institution for Women.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on March 15, 1991 [October 15, 1990] and hereinafter shall be referred to as Kentucky Correctional Institution for Women Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel on weekdays between 8 a.m. to 4:30 p.m.

KCIW 01-06-01	Legal Assistance for Corrections Staff
KCIW 01-08-01	News Media Access
KCIW 02-01-01	Comprehensive Insurance Coverage
KCIW 02-02-01	Fiscal Management: Audits
KCIW 02-02-03	Fiscal Management: Checks
KCIW 02-02-04	Institution Purchasing Procedures (Amended 3/15/91)
KCIW 02-03-01	Inventory Control of Nonexpendable Personal Property
KCIW 02-03-03	Criteria for Selection of Bidders and Vendors
KCIW 02-04-01	Accounting Procedures
KCIW 02-05-01	Inmate Canteen/Staff Canteen
KCIW 02-07-01	Release of CETA Money Earned
KCIW 06-01-01	Inmate Records
KCIW 06-01-02	Transfers to Community Centers and the Minimum Security Unit
KCIW 06-01-03	Storage of Expunged Records
KCIW 10-01-01	Special Management Unit General Operation and Regulations (Amended 3/15/91)
KCIW 10-01-02	Special Management Unit Programs, Placement and Review
KCIW 10-01-04	Special Security [(Amended 10/15/90)]
KCIW 11-01-01	Food Service Operation Inspections
KCIW 11-01-02	Budgeting, Accounting, and Purchasing Procedures for Food Products
KCIW 11-02-01	Menu Preparation/Special Diets
KCIW 11-03-01	General Guidelines for Food Service Workers
KCIW 11-03-02	General Guidelines for Food Service Workers
KCIW 11-04-01	Health Regulations and General Guidelines for the Food Service Area
KCIW 12-01-01	Control of Pests and Vermin
KCIW 12-02-01	Laundry Facilities/Clothing Issuance
KCIW 12-02-03	Donated Items
KCIW 12-04-01	Sanitation and General Living Conditions
KCIW 13-01-01	Provision of Medical and Dental Care
KCIW 13-01-02	Preliminary Health Screening and Appraisal
KCIW 13-01-03	Use of Pharmaceutical Products
KCIW 13-03-01	Emergency Care
KCIW 13-03-02	Infirmary Care and Outside Services
KCIW 13-03-03	Outside Hospital Security
KCIW 13-04-01	Medical Alert System
KCIW 13-04-02	Psychiatric/Psychological Services
KCIW 13-06-01	Informed Consent
KCIW 13-07-01	Detoxification and Alcohol or Chemical Dependency Guidelines
KCIW 13-08-01	Medical Exams for New Employees

KCIW 13-09-01	Suicide Prevention and Intervention Program
KCIW 13-11-01	Infection Control
KCIW 14-01-02	Inmate Rights
KCIW 14-02-01	Access to Attorneys and Designated Counsel Substitutes
KCIW 14-03-01	Inmates Are Not Subject to Discrimination Based on Race, Religion, National Origin, Sex, Handicap, or Political Beliefs
KCIW 14-04-01	Inmate Grievance Procedure
KCIW 15-01-01	Offenses and Penalties
KCIW 15-01-02	Adjustment Committee Procedures and Programs
KCIW 15-03-01	Inmate Rule Book
KCIW 15-04-01	Honor Program [(Amended 10/15/90)]
KCIW 15-06-01	Restriction Guidelines
KCIW 16-01-01	Inmate Correspondence
KCIW 16-01-03	Staff Mail
KCIW 16-02-01	Inmate Access to Telephone
KCIW 16-02-02	Intra-Institution Phone Calls
KCIW 16-03-01	Inmate Visiting Regulations
KCIW 16-03-02	Unauthorized Items for Picnic Lunches, Food Packages and Regular Packages
KCIW 16-04-01	Inmate Indigent Fund
KCIW 16-05-01	Inmate Packages [(Amended 10/15/90)]
KCIW 17-01-01	Assessment Center Operation and Reception Programs
KCIW 17-01-02	Assessment/Classification Center Operations, Rules and Regulations
KCIW 17-01-03	Assessment and Classification Unit Property Guidelines
KCIW 17-02-01	Identification Department Admissions
KCIW 17-03-01	Notifying Inmates Families of Admission and Procedures for Mail and Visiting
KCIW 17-05-01	Inmate Personal Property Guidelines [(Amended 10/15/90)]
KCIW 18-01-02	Institutional Housing Assignments
KCIW 18-02-01	Classification Procedures
KCIW 18-05-01	Special Needs Inmates (Amended 3/15/91)
KCIW 18-06-01	Institutional Status Codes
KCIW 19-01-01	Inmate Work/Program Assignments
KCIW 19-03-01	Landscape and Maintenance Work Details
KCIW 20-01-01	Education Programs
KCIW 20-01-03	Vocational Education: Curriculum Flexible Schedule, Upgrade Programs and Release Preparation Program
KCIW 20-01-04	Entry - Exit Vocational School
KCIW 20-01-05	Vocational Programs: Approved, Assessed and Contain Guidelines for Vocational Records
KCIW 20-01-06	Vocational Education: Staffing Patterns/Requirements
KCIW 20-01-07	Vocational Counselor
KCIW 20-01-08	Vocational Education: Community Resources and the Integration with Academic Progress
KCIW 20-01-09	Vocational Education: Support Equipment
KCIW 20-01-10	Control of Flammable, Hazardous, Toxic and Caustic Materials in the Vocational Area
KCIW 22-01-04	Inmate Club Activities
KCIW 23-01-01	Religious Services
KCIW 25-01-01	Preparole Progress Report
KCIW 25-02-01	Temporary Release/Community Center
KCIW 25-02-02	Furloughs
KCIW 25-03-01	Escorted Leave into the Community

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: March 15, 1991
FILED WITH LRC: March 15, 1991 at noon
PUBLIC HEARING: A public hearing on this regulation has been scheduled for April 22, 1991 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron or Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 125 employees of the Kentucky Correctional Institution for Women, 279 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:080. Corrections Cabinet Manuals.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards 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 March 15, 1991 [July 13, 1990] and hereinafter should be referred to as Corrections Cabinet Manuals. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

Offender Records Manual - None.
Stock Procedure Manual - None.
Food Services Manual - None.
Classification Manual - Yes.

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: March 15, 1991
FILED WITH LRC: March 15, 1991 at noon
PUBLIC HEARING: A public hearing on this regulation has been scheduled for April 22, 1991 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron or Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 2,891 employees of the Corrections Cabinet, 7,774 inmates, 12,420 parolees and probationers, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:140. Bell County Forestry Camp.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This regulation is in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on March 15, 1991 [November 15, 1989] and hereinafter should be referred to as Bell County Forestry Camp Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

BCFC 01-02-01	Organization and Assignment of Responsibility [(Amended 11/15/89)]
BCFC 01-04-02	Extraordinary Occurrence Procedure
BCFC 01-05-01	Procedures Office: Duties and Responsibilities
BCFC 01-08-01	Public Information and Inmate Access to News Media
BCFC 01-09-01	Staff Participation in Professional Organization and Conferences; Provision for Leave and Reimbursement for Expenses
BCFC 01-11-01	Institutional Duty Officer's Responsibilities
BCFC 02-01-02	Fiscal Management: Accounting Procedures
BCFC 02-01-03	Fiscal Management: Agency Funds [(Amended 11/15/89)]
BCFC 02-01-04	Fiscal Management: Insurance [(Amended 11/15/89)]
BCFC 02-01-05	Fiscal Management: Budget [(Amended 11/15/89)]
BCFC 02-01-06	Fiscal Management: Audit
BCFC 02-02-01	Inmate Accounts [(Amended 11/15/89)]
BCFC 02-02-02	Inmate Control of Personal Funds [(Amended 11/15/89)]
BCFC 02-02-03	Storage and Disposition of Inmate Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays
BCFC 02-03-01	Purchase Orders [(Amended 11/15/89)]
BCFC 02-04-01	Processing of Invoices
BCFC 02-05-01	BCFC Materials Receiving Procedure
BCFC 02-06-01	Property Inventory
BCFC 04-01-01	Employee Training and Development
BCFC 05-01-01	Information System
BCFC 06-01-01	Offender Records
BCFC 06-02-01	Storage of Expunged Records
BCFC 06-03-01	Court Trips
BCFC 06-03-02	Receipt of Order of Appearance
BCFC 08-02-01	Fire Prevention [(Amended 11/15/89)]

BCFC 08-03-01 Fire Procedures [(Amended 11/15/89)]
BCFC 08-03-02 Fire Extinguishers and Their Use
BCFC 08-09-01 Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances
BCFC 08-09-02 OHSA Hazard Communication Program
BCFC 09-06-01 Search Policy/Disposition of Contraband
BCFC 09-14-01 Bell County Forestry Camp - Restricted Area [(Amended 11/15/89)]
[BCFC 10-01-01 Special Management Inmates (Amended 11/15/89) (Deleted 3/15/91)]
BCFC 11-01-01 Food Services: General Guidelines [(Amended 11/15/89)]
BCFC 11-02-01 Food Service: Security
BCFC 11-03-01 Dining Room Guidelines [(Amended 11/15/89)]
BCFC 11-04-01 Food Service: Meals
BCFC 11-04-02 Food Service: Menu, Nutrition and Special Diets
BCFC 11-05-02 Health Requirements of Food Handlers
BCFC 11-06-01 Food Service: Inspection and Sanitation
BCFC 11-07-01 Food Service: Purchasing, Storage and Farm Products
BCFC 11-08-01 Staff/Visitor Meals
BCFC 12-01-01 Sanitation, Living Conditions Standards, and Clothing Issues [(Amended 11/15/89)]
BCFC 12-01-02 Bed Areas, Assignments/Conditions Standards [(Amended 11/15/89)]
BCFC 12-02-01 Issuance of Clean Laundry and Receiving of Dirty Laundry
BCFC 12-03-01 Personal Hygiene Items: Issuance and Placement Schedule
BCFC 12-03-02 Barbershop Services and Equipment Control [(Amended 11/15/89)]
BCFC 12-04-01 Institutional Inspections
BCFC 12-05-01 Fire Safety and Use of Noncombustible Receptacles
BCFC 12-06-01 Pest Control
BCFC 13-01-01 Organization of Health Services
BCFC 13-02-01 Health Maintenance Services: Sick Call and Pill Call
BCFC 13-03-01 Dental Policy/Sick Call
BCFC 13-04-01 Inmate Medical Screenings and Health Evaluations
BCFC 13-05-01 Licensure and Training Standards
BCFC 13-06-01 Suicide Prevention and Intervention Program
BCFC 13-06-02 First Aid/CPR Training Program
BCFC 13-06-03 Emergency Medical/Dental Care Services
BCFC 13-07-01 Health Records
BCFC 13-08-01 Special Diets
BCFC 13-09-01 Notification of Inmate, Family in the Event of Serious Illness, Surgery, or Inmate Death
BCFC 13-10-01 Health Education/Special Health Programs
BCFC 13-11-01 Informed Consent
BCFC 13-12-01 Mental Health/Provision of Psychiatric Services by KCPC
BCFC 13-12-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center (KCPC)
BCFC 13-13-01 Identification of Special Needs Inmates
BCFC 13-14-01 Use of Pharmaceutical Products
BCFC 13-15-01 Medical Restraints
BCFC 13-16-01 Specialized Health Services
BCFC 13-17-01 Vision Care/Optometry Services
BCFC 14-01-01 Inmate Rights and Responsibilities
BCFC 14-02-01 Legal Services Program [(Amended 11/15/89)]
BCFC 14-03-01 Inmate Grievance Procedure [(Amended 11/15/89)]
BCFC 14-04-01 Inmate Participation in Authorized Research
[BCFC 15-01-01 Due Process/Disciplinary Procedures (Amended 11/15/89) Deleted 3/15/91]
BCFC 16-01-01 Inmate Visiting
BCFC 16-02-01 Telephone Communications
BCFC 16-03-01 Mail Regulations [(Amended 11/15/89)]
BCFC 16-03-02 Inmate Packages
BCFC 17-01-01 Assessment/Orientation Procedure
BCFC 17-02-01 Inmate Reception Process
BCFC 17-03-01 Inmate Personal Property and Property Control [(Amended 11/15/89)]
BCFC 17-04-01 Unauthorized Items [(Amended 11/15/89)]
BCFC 17-05-01 Inmate Canteen [(Amended 11/15/89)]
BCFC 18-01-01 Institutional Classification Committee [(Amended 11/15/89)]
BCFC 18-02-01 Classification Document [(Amended 11/15/89)]
BCFC 18-03-01 Classification Process [(Amended 11/15/89)]
BCFC 18-03-02 Classification Program Planning [(Amended 11/15/89)]
BCFC 18-03-03 Population Category Status
BCFC 18-04-01 Instructions for Six Month Review [(Amended 11/15/89)]
BCFC 18-05-01 Transfers to Other Minimum Security Institutions [(Amended 11/15/89)]
BCFC 19-01-01 Job and Vocational Program Assignments [(Amended 11/15/89)]
BCFC 19-02-01 Government Service Details
BCFC 20-01-01 Academic/Vocational School
BCFC 20-01-02 Testing and Verification Procedure
BCFC 20-02-01 Educational Program Planning
BCFC 20-03-01 Academic and Vocational Curriculum
BCFC 20-04-01 Educational Personnel Practices
BCFC 21-01-01 Library Services [(Amended 11/15/89)]
BCFC 22-01-01 Recreation and Inmate Activities
BCFC 22-02-01 Inmate Clubs and Organizations
BCFC 22-02-02 Conducting Inmate Organizational Meetings and Programs
BCFC 22-03-01 Privilege Trips
BCFC 23-01-01 Religious Service
BCFC 23-02-01 Visitors for Religious Programs
BCFC 23-03-01 Marriage of Inmates
BCFC 24-01-01 Social Services and Counseling Program
BCFC 24-01-02 Casework Services
BCFC 25-01-01 Release Preparation Program Description
BCFC 25-02-01 Temporary Release/Community Center Release
BCFC 25-02-02 Furloughs
BCFC 25-03-01 Preparole Progress Report
BCFC 25-03-02 Parole Eligibility Dates
BCFC 25-04-01 Inmate Discharge Procedure
BCFC 26-01-01 Citizen Involvement and Volunteer Services Program

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: March 15, 1991
FILED WITH LRC: March 15, 1991 at noon
PUBLIC HEARING: A public hearing on this

regulation has been scheduled for April 22, 1991 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron or Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 39 employees of the Bell County Forestry Camp and 200 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:150. Eastern Kentucky Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. <u>These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.</u> 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 <u>March 15, 1991</u> [May 15, 1990], hereinafter should be referred to as the Eastern Kentucky Correctional Complex Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

EKCC 01-01-01 Institutional Legal Assistance
EKCC 01-02-01 Public Information and News Media Access
EKCC 01-06-01 Inmate Death
EKCC 01-06-02 Crime Scene Camera
EKCC 01-07-01 Institutional Tours of EKCC
EKCC 01-07-02 EKCC Cooperation with Outside Bodies Including Courts, Governmental, Legislative, Executive, and Community Agencies
EKCC 01-07-03 Outside Consultation and Research
EKCC 01-08-01 Monthly Reports
EKCC 01-09-01 Duty Officer Responsibilities
EKCC 01-10-01 Annual Planning Document and Conference
EKCC 01-10-02 Organization and Assignment of Responsibility
EKCC 01-10-03 Institutional Planning
EKCC 01-13-01 Organization of Operations Manual
EKCC 01-13-02 Monitoring of Operations, Policies and Procedures
EKCC 01-13-03 Formulation and Revision of EKCC Operating Procedures
EKCC 01-13-04 Meetings Conducted and Their Purpose
EKCC 02-01-01 Canteen Cards: Issuance and Distribution
EKCC 02-01-02 Inmate Canteen
EKCC 02-02-01 Fiscal Management: Agency Funds
EKCC 02-05-01 Fiscal Management: Budget
EKCC 02-08-01 Property Inventory
EKCC 02-08-02 Warehouse Operation and Inventory Control
EKCC 02-11-01 Purchase and Supply Requisition
EKCC 02-12-01 Fiscal Management: Audits
EKCC 02-13-01 Fiscal Management: Accounting Procedures
EKCC 02-14-01 Screening Disbursements from Inmate Personal Accounts
EKCC 03-01-01 Construction Crew Entry/Exit
EKCC 03-08-01 Replacement of Damaged or Destroyed Personal Property
EKCC 03-09-01 Use of Interns and Students
EKCC 03-18-01 Fiscal Management: Insurance
EKCC 04-01-01 Staff Participation in Professional Organizations and Conferences; Provision for Leave and Reimbursement for Expenses
EKCC 04-02-01 Emergency Preparedness Training
EKCC 05-01-01 Inmate Participation in Authorized Research
EKCC 05-02-01 Information System
EKCC 06-01-01 Confidentiality of Information, Roles and Services of Consultants, Contract Personnel and Volunteers
EKCC 06-03-01 Offender Records
EKCC 08-02-01 Fire Safety
EKCC 08-02-02 Fire Procedures
EKCC 08-02-03 Fire Prevention [(Added 5/15/90)]
EKCC 08-03-01 Emergency Preparedness Manual
EKCC 08-03-03 Emergency Medical Transportation [(Added 5/15/90)]
EKCC 08-05-01 Emergency Squad: Selection, Training and Evaluation

EKCC 09-04-01 Inmates Immediate Family, Bedside Visits; and Funeral Trips
EKCC 09-06-01 Unauthorized Items
EKCC 09-08-01 Unit Searches/Control of Excess Property
EKCC 09-08-02 Contraband, Dangerous Contraband, Search Policy
EKCC 09-09-01 Transportation of Inmates
EKCC 09-10-01 Institutional Inspections
EKCC 09-12-01 Key Control
EKCC 09-13-01 Institutional Post Orders
EKCC 09-14-01 Count Procedures
EKCC 09-15-01 Standards for Maintaining Perimeter Safety
EKCC 09-15-02 Lobby/Reception: Entry and Exit Procedure
EKCC 09-19-01 Contraband Outside Institutional Perimeter
EKCC 09-20-01 Drug Abuse/Intoxicants Testing
EKCC 09-21-01 Collection, Preservation of Evidence
EKCC 09-22-01 Restricted Areas
EKCC 09-23-01 Regulation of Inmate Movement
EKCC 09-24-01 Guidelines for Unit Staff
EKCC 09-25-01 Procedures for Prohibiting Inmate Authority over Other Inmates
EKCC 09-26-01 Security Activity Logs
EKCC 10-02-01 Special Management Unit: Operating Procedures and Living Conditions
EKCC 10-02-02 Special Management Inmates: Assignment, Classification, Reviews and Release
EKCC 10-02-03 Grooming Standards for Special Management [(Added 5/15/90)]
EKCC 11-02-01 Meal Planning for General Population [(Added 5/15/90)]
EKCC 11-02-02 Food Service: Purchasing, Storage and Farm Products [(Added 5/15/90)]
EKCC 11-03-01 Food Service: Menu, Nutrition and Special Diets [(Added 5/15/90)]
EKCC 11-04-01 Food Service: Inspections and Sanitation [(Added 5/15/90)]
EKCC 11-04-02 Medical Screening of Food Handlers [(Added 5/15/90)]
EKCC 11-05-01 Food Service: Security [(Added 5/15/90)]
EKCC 11-06-01 Food Service: Kitchen and Dining Room Inmate Worker Responsibilities [(Added 5/15/90)]
EKCC 11-07-01 Dining Room Guidelines [(Added 5/15/90)]
EKCC 11-08-01 OJT Food Service Training Placement [(Added 5/15/90)]
EKCC 12-01-01 Vermin and Insect Control
EKCC 12-02-01 Inmate Dress and Use of Access Areas [(Amended 5/15/90)]
EKCC 13-01-01 Pharmacy Policy (Added 3/15/91)
EKCC 13-02-01 Emergency Medical Procedure (Amended 3/15/91) [(Added 5/15/90)]
EKCC 13-02-02 Disaster and Mass Casualty Plan [(Added 5/15/90)]
EKCC 13-02-03 Consultations (Added 3/15/91)
EKCC 13-02-04 Hospital Services (Added 3/15/91)
EKCC 13-01-05 Health Evaluations (Added 3/15/91)
EKCC 13-02-06 Sick Call (Added 3/15/91)
EKCC 13-02-07 First Aid Kits (Added 3/15/91)
EKCC 13-02-08 Transportation of Injured or Ill Staff (Added 3/15/91)
EKCC 13-02-09 Emergency Dental Care (Added 3/15/91)
EKCC 13-02-10 Dental Services for Special Management Units (Added 3/15/91)
EKCC 13-05-01 Aids and Hepatitis B (Added 3/15/91)
EKCC 13-07-01 Serious Illness, Major Injuries, Death (Added 3/15/91)
EKCC 13-08-01 Psychiatric and Psychological Services (Added 3/15/91)
EKCC 13-08-02 Psychiatric and Psychological Services Team (Added 3/15/91)
EKCC 13-09-01 Optometric Services (Added 3/15/91)
EKCC 13-10-01 Detoxification (Added 3/15/91)
EKCC 13-11-01 Therapeutic Diets (Added 3/15/91)
EKCC 13-12-02 Resident Transfer/Medical Profiles (Added 3/15/91)
EKCC 13-13-01 Syringes, Needles and Sharps Control (Added 3/15/91)
EKCC 13-14-01 Fire and Emergency Evacuation Plan (Added 3/15/91)
EKCC 13-15-01 Medical Department - General Housekeeping, Sanitation and Protection Standards and Requirements (Added 3/15/91)
EKCC 14-02-01 Personal Hygiene Items: Issuance and Replacement Schedule
EKCC 14-04-01 Inmate Legal Services
EKCC 14-06-01 Inmate Grievance Procedure
EKCC 15-05-01 Restoration of Forfeited Good Time
EKCC 15-06-01 Due Process/Disciplinary Procedure
EKCC 16-01-01 Inmate Visiting
EKCC 16-02-01 Inmate Correspondence
EKCC 16-05-01 Inmate Access to and Communication with EKCC Staff
EKCC 16-05-02 Unit Bulletin Boards
EKCC 17-01-01 Authorized Inmate Personal Property
EKCC 17-01-02 Personal Property Control
EKCC 17-02-01 Assessment/Orientation
EKCC 17-04-01 Inmate Reception Process at the EKCC
EKCC 18-01-01 Inmate Classification
EKCC 18-10-01 Preparole Progress Report
EKCC 19-04-01 Inmate Work Program
EKCC 21-01-01 Library Services
EKCC 23-01-01 Religious Services
EKCC 23-01-02 Muslim Services - Ramadan [(Added 5/15/90)]
EKCC 25-02-01 Inmate Discharge Procedure
EKCC 25-03-01 Prerelease Preparation
EKCC 25-04-01 Extended Visits (Furlough)
EKCC 25-06-01 Community Center Program
EKCC 26-01-01 Citizens Involvement and Volunteers

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: March 15, 1991
FILED WITH LRC: March 15, 1991 at noon
PUBLIC HEARING: A public hearing on this regulation has been scheduled for April 22, 1991 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron or Ellen Tharpe, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 291 employees of the Eastern Kentucky Correctional Complex, 936 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative

body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

JUSTICE CABINET
Department of State Police
(Proposed Amendment)

502 KAR 45:080. Oral interview.

RELATES TO: KRS 16.050
STATUTORY AUTHORITY: KRS 16.050
NECESSITY AND FUNCTION: KRS 16.050 requires the State Police Personnel Board to establish open competitive examination of applicants for employment as officers. This regulation describes the oral interview component of the examination.

Section 1. (1) [Each] Applicants having the statutory qualifications and who have passed [passes] the written, physical ability and vision examinations shall be interviewed in rank order by an oral interview panel appointed by the commissioner. The number of applicants to be interviewed shall be determined by the commissioner based on the needs of the department. The rank order of applicants shall be determined by the cumulative score received on the application and written examination scores.
(2) Each oral interview panel shall consist of three (3) members. Two (2) members shall be either active or retired officers of the department and the third member shall be a civilian. All members shall be familiar with the equal employment opportunity provision of Chapter 344 of the Kentucky Revised Statutes.
(3) The commissioner shall appoint one (1) or more panels as needed.
(4) A member of the panel shall disclose each instance in which he knows an applicant personally and that applicant shall be interviewed by another panel or the member who knows the applicant shall be replaced by an alternate for that particular interview, whichever is more practical under the circumstances.

Section 2. (1) Each interview shall be structured in such a manner that all applicants are asked the same questions and rated in the same manner.
(2) Each applicant interviewed will be scored in each of six (6) categories by each panel member. The categories are:
(a) Maturity, emotional stability and ego strength;
(b) Conscientiousness and persistence;
(c) Social boldness and venturesomeness;
(d) Self-assuredness;
(e) Self-sufficiency; and
(f) Self-discipline.
For each category, the applicant will be scored on a range from zero to five (5). For purpose of overall scoring, a weight of fifty (50) percent will be assigned.
(3) The score sheets submitted by the members of the oral interview panel shall be retained in the applicant's file and shall be confidential. Applicants shall be notified of their score on the oral interview upon request and presentation of proper identification. Applicants shall not be allowed to see the score sheets submitted by the individual members of the oral interview panel.

W. MICHAEL TROOP, Secretary/Commissioner
APPROVED BY AGENCY: February 28, 1991
FILED WITH LRC: March 7, 1991 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 22, 1991 at 10 a.m. at Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 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: Sergeant John E. Thorpe, Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sgt. John E. Thorpe
(1) Type and number of entities affected: All applicants.
(a) Direct and indirect costs or savings to those affected: Decrease in expenditures related to processing applicants for employment.
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: Decrease
(2) Effects on the promulgating administrative body: Decrease the number of applicants to be processed through final stages to the amount needed in rank order.
(a) Direct and indirect costs or savings: Decrease in expenditures related to processing

applicants for employment.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: No fiscal impact.
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. This regulation is applicable to all cadet applicants equally and will be applied uniformly based on cumulative score in examination process up to the oral interview phase. It will allow the agency to process applicants in rank order from the oral examination phase as needed.

JUSTICE CABINET
Department of State Police
(Proposed Amendment)

502 KAR 45:100. Psychological assessment.

RELATES TO: KRS 16.040, 16.050
STATUTORY AUTHORITY: KRS 16.050, 16.080
NECESSITY AND FUNCTION: KRS 16.040 and 16.050 direct the Commissioner of the Department of State Police and the State Police Personnel Board to assure the fitness of candidates for employment. This regulation describes the psychological assessment required of candidates.

Section 1. All [selected] applicants who after completion of a background examination and not otherwise disqualified shall submit to a psychological assessment by a qualified, licensed psychologist retained by the department for that purpose. The applicant shall consent to such assessment and must sign a form specifically indicating his consent. Failure to consent to a psychological assessment shall eliminate an applicant for consideration from employment.

Section 2. All reports of psychological assessment shall be confidential. No copies of such reports shall be made or disseminated.

Section 3. The psychological assessment shall provide a basis for determination by the board as to whether the applicant is psychologically fit to be employed by the department.

Section 4. After the report has been reviewed by the board, the report shall then be filed at Kentucky State Police Headquarters in a secure file to which only the commissioner or his authorized designee shall have access.

W. MICHAEL TROOP, Secretary/Commissioner
APPROVED BY AGENCY: February 28, 1991
FILED WITH LRC: March 7, 1991 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 22, 1991 at 10 a.m. at Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 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: Sergeant John E. Thorpe, Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sgt. John E. Thorpe
(1) Type and number of entities affected: All applicants.
(a) Direct and indirect costs or savings to those affected: Decrease in expenditures related to processing applicants for employment.
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: Decrease
(2) Effects on the promulgating administrative body: Decrease the number of applicants to be processed through final stages to the amount needed in rank order.
(a) Direct and indirect costs or savings: Decrease in expenditures related to processing applicants for employment.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: No fiscal impact.
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. This regulation is applicable to all cadet applicants equally and will be applied uniformly based on cumulative score in examination process up to the oral interview phase. It will allow the agency to process applicants in rank order from the oral examination phase as needed.

JUSTICE CABINET
Department of State Police
(Proposed Amendment)

502 KAR 45:110. Register.

RELATES TO: KRS 16.050
STATUTORY AUTHORITY: KRS 16.050
NECESSITY AND FUNCTION: KRS 16.050 requires the State Police Personnel Board to establish a list of persons eligible for employment as officers of the department. The lists are to be based on the results of the competitive exams. This regulation describes the register.

Section 1. The commissioner shall establish and maintain a register of the names of applicants eligible for appointment to the position of cadet trooper. The commissioner, in his discretion, shall determine, based upon the needs of the department, projected attrition, authorized strength levels, and numbers of applicants, the date of establishment of the register and the number of appointments to be made from the register.

Section 2. The register shall be a continuous register unless the period is shortened by action of the commissioner. An applicant who has not been selected for employment within eighteen (18) months after being placed on the register, shall be stricken from the register.

Section 3. (1) [Selected] Applicants who have passed all phases of the examination process shall be presented to the board in rank order.
(2) [All selected applicants shall be presented to the board in rank order.] The board may approve an applicant for employment, or disapprove an applicant for employment, in which case the applicant shall not be allowed to again apply for twelve (12) months.

Section 4. The commissioner may, on receipt of authoritative information, remove the name of a candidate from a register:
(1) For any of the reasons found in those regulations relating to disqualification of applicants;
(2) If the candidate cannot be located by postal authorities;
(3) If the candidate responds that he no longer desires consideration for a position;
(4) If the candidate declines an offer of appointment;
(5) If it is shown that the candidate is not qualified or is unsuitable for appointment;
(6) If the candidate accepts an appointment and fails to present himself for duty without giving a satisfactory reason for his failure to appear; or
(7) If the candidate indicates he is not available or does not wish to be considered for employment.

W. MICHAEL TROOP, Secretary/Commissioner
APPROVED BY AGENCY: February 28, 1991
FILED WITH LRC: March 7, 1991 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 22, 1991 at 10 a.m. at Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 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: Sergeant John E. Thorpe, Headquarters, Kentucky State Police, 919 Versailles Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sgt. John E. Thorpe
(1) Type and number of entities affected: All applicants.
(a) Direct and indirect costs or savings to those affected: Decrease in expenditures related to processing applicants for employment.
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: Decrease
(2) Effects on the promulgating administrative body: Decrease the number of applicants to be processed through final stages to the amount needed in rank order.
(a) Direct and indirect costs or savings: Decrease in expenditures related to processing applicants for employment.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: No fiscal impact.
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. This regulation is applicable to all cadet applicants equally and will be applied uniformly based on cumulative score in examination process up to the oral interview phase. It will allow the agency to process applicants in rank order from the oral examination phase as needed.

TRANSPORTATION CABINET
(Proposed Amendment)

600 KAR 2:010. Toll assessment on turnpikes.

RELATES TO: KRS 175.450, 175.470, 175.520
STATUTORY AUTHORITY: KRS 174.080, 175.470, 175.520
NECESSITY AND FUNCTION: KRS 175.450 authorizes

the Turnpike Authority to fix, revise, charge, and collect tolls for transit over each turnpike project except to the extent that this authority is surrendered to the Department of Highways pursuant to a lease. This authority has been surrendered to the Department of Highways. This administrative regulation has been promulgated to establish the tolls to be collected at each toll collection station for each vehicle classification.

Section 1. The toll schedules set forth in TC34-12, "Transportation Cabinet, Division of Toll Facilities, Toll Schedule" revised February, 1991 [March, 1987] and the Vehicle Classification Chart, Form TC34-15, revised February, 1985 are hereby adopted and incorporated by reference as a part of this administrative regulation. All vehicle[s] operators except those exempted by 600 KAR 2:020 shall [must] pay the toll shown on the toll schedule for each vehicle classification.

Section 2. The forms incorporated in Section 1 of this regulation may be obtained from the Transportation Cabinet, Division of Toll Facilities, 9th Floor State Office Building, Frankfort, Kentucky 40622 by writing, telephoning or appearing in person. The telephone number is (502)564-4628. The regular office hours of the Division of Toll Facilities are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday on those days worked by Kentucky state government.

MILO D. BRYANT, Secretary
APPROVED BY AGENCY: February 18, 1991
FILED WITH LRC: February 20, 1991 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on April 22, 1991 at 9 a.m. local prevailing time in the 4th floor hearing room of the State Office Building. The State Office Building is located on the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this meeting must in writing by April 17, 1991, so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given 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. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will only be accepted until April 17, 1991. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: All vehicle operators in the Commonwealth who use the toll roads.
(a) Direct and indirect costs or savings to those affected:
1. First year: $3.8 million savings.
2. Continuing costs or savings: $3.8 million per year.
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $3.8 million loss.
2. Continuing costs or savings: $3.8 million per year.
3. Additional factors increasing or decreasing costs: The loss is mitigated by reduction in work force on the Bluegrass Parkway.
(b) Reporting and paperwork requirements: Bookkeeping no longer required on this parkway.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None. The toll road was freed; therefore, the toll fee schedule had to be amended.
(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. There is a graduated fee schedule.

TRANSPORTATION CABINET
(Proposed Amendment)

600 KAR 3:010. Relocation assistance payments of the Transportation Cabinet.

RELATES TO: KRS 56.610 to 56.760, 49 CFR Part 24
STATUTORY AUTHORITY: KRS 56.690, 174.080, 183.024, 49 CFR Part 24
NECESSITY AND FUNCTION: The Transportation Cabinet is required to adopt administrative regulations and procedures to implement the provisions of KRS 56.610 to 56.760 with regard to providing for uniform relocation assistance services and compensation to persons displaced by the land acquisition programs of the Transportation Cabinet.

Section 1. Definitions. (1) "Average annual net earnings" means one-half (1/2) of the net earnings of the business or farm operation before federal, state, and local income taxes during the two (2) taxable years immediately prior to the taxable year in which it was displaced. If the business or farm operation was not in operation for the full two (2) taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two (2) taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when it is determined by the Transportation Cabinet to be more equitable.
(2) "Business" means any lawful activity, except a farm operation, conducted:
(a) Primarily for the purchase, sale, lease,

or rental of personal or real property, or for the manufacture, processing, or marketing of products, commodities, or any other personal property; or

(b) Primarily for the sale of services to the public; or

(c) Primarily for outdoor advertising display purposes, when the display is required to be moved as a result of the project; or

(d) By a nonprofit organization.

(3) "Comparable replacement dwelling" means a dwelling which is:

(a) Decent, safe and sanitary;

(b) Functionally equivalent to the displacement dwelling;

(c) Adequate in size to accommodate the occupants;

(d) In an area not subject to unreasonable adverse environmental conditions, and is not generally less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities and reasonably accessible to the person's place of employment;

(e) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses;

(f) Currently available to the displaced person on the private market; and

(g) Within the financial means of the displaced person.

(4) "Contributes materially" means that during the two (2) taxable years prior to the taxable year in which displacement occurs the business or farm operation:

(a) Had average annual gross receipts of not less than $5,000; or

(b) Had average annual net earnings of not less than $1,000; or

(c) Contributed at least one-third (1/3) of the owner's or operator's average annual gross income from all sources.

(5) "Control of the property" means that the Transportation Cabinet has paid the owner for the property to be acquired or if acquisition is by condemnation, the Transportation Cabinet has posted the purchase price of the property with the circuit court.

(6) "Decent, safe and sanitary dwelling" means a dwelling which meets local housing and occupancy codes, but at a minimum shall:

(a) Be structurally sound, weathertight and in good repair;

(b) Contain a safe, electrical wiring system adequate for lights and other electrical devices;

(c) Contain a heating system capable of sustaining a healthful temperature of approximately seventy (70) degrees for a displaced person;

(d) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink and a toilet, all in good working order and properly connected to a source of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system and adequate space and utility service connections for a stove and refrigerator;

(e) Contain unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor shall have at least two (2) means of egress; and

(f) If the displaced person is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by the displaced person.

(7) "Displaced person" means a person who moves from the real property or moves his personal property from the real property, including a person who occupies the real property prior to its acquisition but who does not meet the length of occupancy requirements:

(a) As a direct result of a written notice of intent of the Transportation Cabinet to acquire, or the initiation of negotiations for, or the acquisition of, the real property in whole or in part; or

(b) As a direct result of a written notice of intent of the Transportation Cabinet to acquire, or the acquisition of, in whole or in part, other real property on which the person conducts a business or farm operation. However, eligibility under this subsection applies only for the purpose of obtaining relocation assistance advisory services and moving expenses.

(8) "Dwelling" means the place of permanent or customary and usual residence of a person including a single-family house; a single-family unit in a two (2) family, multifamily, or multipurpose property; a unit of a condominium or cooperative housing project; a nonhousekeeping unit; a mobile home; or any other residential unit.

(9) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.

(10) "Family" means two (2) or more individuals living together in a single-family dwelling unit who:

(a) Are related by blood, adoption, marriage, or legal guardianship who live together as a family unit, plus all other individuals regardless of blood or legal ties who live with and are considered a part of the family unit; or

(b) Are not related by blood or legal ties but live together by mutual consent.

(11) "Farm operation" means any activity conducted solely or primarily for the production of one (1) or more agricultural products or commodities, including timber, for sale or home use, and customarily producing the products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(12) "Furnished dwelling unit" means a unit in which the furnishings are owned by someone other than the displaced person.

(13) "Initiation of negotiations" means the delivery of the initial written offer of compensation to purchase the real property by the Transportation Cabinet to the owner or the owner's representative. If the Transportation Cabinet issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the date of "initiation of negotiations" is the date of the actual move

of the person from the property.

(14) "Mortgage" means the classes of liens that are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the Commonwealth of Kentucky together with the credit instrument, if any, secured thereby.

(15) "Net earnings" means any compensation obtained from the business or farm operation by its owner or the owner's spouse and dependents.

(16) "No duplication of payment" means that no person shall receive any payment under this administrative regulation if that person receives a payment under federal, state or local law which is determined to have the same purpose and effect as the payment under this administrative regulation.

(17) "Nonprofit organization" means an organization incorporated in the Commonwealth of Kentucky as a nonprofit organization under the provisions of KRS Chapter 273 and which is exempt from paying federal income taxes under the Internal Revenue Code (26 U.S.C. 501).

(18) "Notice of intent to acquire" or "notice of eligibility for relocation assistance" means written notice furnished to a person who is to be displaced, which establishes eligibility for relocation benefits prior to initiation of negotiations.

(19) "Owner of a dwelling" means a person who has purchased or holds any of the following interest in the real property:

(a) Fee title, a life estate, a ninety-nine (99) year lease, or a lease including any options, for extension with at least fifty (50) years to run from the date of acquisition; or

(b) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(c) A contract to purchase any of the interests or estates described in paragraph (a) or (b) of this subsection; or

(d) Any other interest, including a partial interest, which warrants consideration as ownership.

(20) "Person" means any individual, family, partnership, corporation, or association.

(21) "Persons not displaced" means but is not limited to the following:

(a) One who moves before the initiation of negotiations, unless the Transportation Cabinet determines that the person was displaced as a direct result of the project; or

(b) One who initially occupies the property after the date of its acquisition by the Transportation Cabinet; or

(c) One who occupies the property for the purpose of obtaining assistance under this administrative regulation; or

(d) One who the Transportation Cabinet determines is not displaced as a direct result of partial acquisition of the property; or

(e) An owner-occupant who voluntarily conveys his property, after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Transportation Cabinet does not intend to acquire the property. In these cases, however, any resulting displacement of a tenant is subject to the provisions of this administrative regulation; or

(f) A person who is determined to be in unlawful occupancy prior to the initiation of negotiations, or a person who has been evicted for cause, under applicable law; or

(g) A person determined by the Transportation Cabinet to not be displaced because of another special condition.

(22) "Purchases a dwelling" means, in addition to actually buying a dwelling, the following:

(a) Purchases and rehabilitates a substandard dwelling; or

(b) Relocates a dwelling which he owns or purchases; or

(c) Constructs a dwelling on a site he owns or purchases; or

(d) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or

(e) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(23) "Real property" means land, and generally whatever is erected or growing upon or affixed to land.

(24) "Salvage value" means the probable sale price of an item if offered for sale on the condition that it is to be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which the item is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(25) "Small business" means a business having at least one (1) but not more than 500 employees working at the site being acquired or displaced by the project.

(26) "Subsequent occupant" means any person who did not occupy the property at the time negotiations began for acquisition of the property and who is in occupancy at the time the property is acquired and who subsequently moves from the real property. Relocation assistance payments made to a subsequent occupant shall be through the provisions of Last Resort Housing in Section 29 of this regulation.

(27) "Tenant" means a person who has the temporary use and occupancy of real property owned by another.

(28) "Uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the Transportation Cabinet has determined has little or no value or utility to the owner.

(29) "Unlawful occupancy" means that a person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the Transportation Cabinet to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property. The Transportation Cabinet may, at its discretion, consider a squatter to be in lawful occupancy.

(30) "Utility costs" means expenses for heat, light, water, and sewer.

Section 2. Applicability. The payments and services set forth in this administrative regulation which involve a Transportation Cabinet project in which a person, business, farm operation or nonprofit organization is required to relocate or discontinue operation shall be made regardless of whether federal funds are used or not used in the project. If the Transportation Cabinet acquires real

property on behalf of another agency that agency may authorize the cabinet to follow the provisions of this administrative regulation.

Section 3. Relocation Notices - General. (1) Each relocation notice provided by the Transportation Cabinet shall be personally delivered or sent by certified or registered mail, return receipt requested.

(2) As soon as feasible, a person scheduled to be displaced shall be notified of the possibility of his displacement. He shall also be furnished with a general written description of the relocation program which gives at least the following information:

(a) Informs the person that he may be displaced because of the project and generally describes any relocation payment for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment;

(b) Indicates that any person displaced shall be given reasonable relocation advisory services to help the person relocate successfully including housing referrals, help in filing payment claims and other necessary assistance;

(c) Informs any displaced person lawfully occupying the property that he shall not be required to move without at least ninety (90) days advance notice except under the most unusual of circumstances;

(d) Describes the person's right to appeal the determination of eligibility for, or the amount of, any relocation payment for which the person may be eligible;

(e) Informs the person that in order to be eligible for benefits he is required to occupy the property at the time of initiation of negotiations and includes a definition of initiation of negotiations; and

(f) Informs the displaced person that he cannot be required to move permanently unless at least one (1) comparable replacement dwelling has been made available.

(3) Eligibility for relocation assistance shall begin on the date of initiation of negotiations for acquisition of the occupied property. At this time the Transportation Cabinet shall notify each occupant or family to be displaced in writing of his eligibility for relocation assistance.

(4) No lawful occupant shall be required to move unless he has received at least ninety (90) days advance written notice of the earliest date by which he may be required to move. Only in unusual circumstances, such as a substantial danger to the person's health or safety, shall an occupant be required to vacate the property on less than ninety (90) days advance written notice.

(5) At the initiation of negotiations the Transportation Cabinet shall give the displaced person a ninety (90) day notice. Included in that notice shall be either a specific date which is the earliest date by which he shall be required to move or a statement that before the displaced person is required to move from the property, he shall be given a thirty (30) day written notice specifying the date by which the property shall be vacated.

(6) After the Transportation Cabinet gains control of the property to be acquired and after sixty (60) or more days have passed since the issuance of a ninety (90) day notice and if comparable replacement housing has been made available to the displaced person, the cabinet may issue a notice to the displaced person specifying the date by which he is required to vacate the acquired property. The required vacation date shall be at least thirty (30) days after this notice is issued.

Section 4. Notice at Initiation of Negotiations. (1) The Transportation Cabinet shall furnish an owner-occupant of 180 days or more no later than seven (7) working days after the fair market value offer for the property, the following written information:

(a) The maximum amount of replacement housing computation and eligibility requirements to receive the payment;

(b) The address of comparable housing used to compute the replacement housing payment;

(c) The possibility of his eligibility to receive an increased interest payment, or payment of incidental expenses incurred in the purchase of replacement housing;

(d) His option to rent rather than purchase replacement housing;

(e) The availability of relocation assistance advisory services and how they may be obtained;

(f) A ninety (90) day notice; and

(g) His right to appeal.

(2) The Transportation Cabinet shall furnish an owner-occupant of less than 180 days no later than seven (7) working days after the fair market value offer for the property, the following written information:

(a) The maximum amount of a rental replacement housing payment and the maximum amount of a down payment for the purchase of replacement housing, as well as the requirements to receive these payments;

(b) The address of comparable housing used to compute the replacement housing payment;

(c) The requirements to receive reimbursement for incidental expenses;

(d) The availability of relocation assistance advisory services and how they may be obtained;

(e) A ninety (90) day notice; and

(f) His right to appeal.

(3) The Transportation Cabinet shall furnish a tenant-occupant of ninety (90) days or more no later than seven (7) working days after the fair market value offer for the property, the following written information:

(a) The amount of rental and purchase replacement housing payments and the eligibility requirements to receive these payments;

(b) The address of the comparable housing used to compute the rental and replacement housing payments;

(c) The requirements to receive reimbursement for incidental expenses;

(d) The availability of relocation assistance advisory services and how they may be obtained;

(e) A ninety (90) day notice;

(f) His right to appeal; and

(g) The date of the initiation of negotiations for the property.

(4) The Transportation Cabinet shall furnish in writing to a subsequent tenant-occupant within seven (7) working days from the date the cabinet acquires the property the following information:

(a) His eligibility to receive moving expense payments;

(b) The availability of relocation advisory services and how they may be obtained;

(c) Assurance that comparable replacement

housing is available within his financial means; and

(d) The ninety (90) day notice to vacate. This notice shall specify the date by which the property shall be vacated, and shall not be issued until comparable housing is available.

Section 5. Alternate Notices. (1) In some rare and unusual cases, an alternate method may be used in issuing the ninety (90) day or thirty (30) day notices. This is most likely to occur if the property has many tenant-occupied units and there are not sufficient rental units available to compute their replacement housing payments. In these cases, the requirement to make the replacement housing payment offer to the tenants within seven (7) working days could not be met. The alternate procedure used by the Transportation Cabinet shall be as follows:

(a) Contact the owner and make the fair market value offer for the property;

(b) Within seven (7) working days, contact the tenants and give each a written statement which shall include:

1. The date of initiation of negotiations for the parcel; and

2. An explanation of the eligibility requirements to receive a rental replacement housing payment, or a down payment.

(c) At the time the replacement housing payment is computed and the written statement required in paragraph (b) of this subsection is given the tenant, the ninety (90) day notice shall be included. The cabinet shall use the procedure in issuing the thirty (30) day vacation written notice that is used in normal type displacements.

(d) The thirty (30) day notice to vacate shall not be required if an occupant moves of his own volition prior to the date the Transportation Cabinet would have issued the notice.

(2) A notice of intent to acquire the property shall be furnished to an owner or tenant only if it becomes necessary to establish eligibility requirements prior to negotiations on the parcel. This notice shall not be issued until acquisition has been authorized for the project. The notice of intent to acquire the property shall contain the following:

(a) Statement of eligibility and any restrictions on eligibility;

(b) The anticipated date of the initiation of negotiations for acquisition of the property; and

(c) How additional information regarding relocation payments and services can be obtained.

(3) If a notice of intent to acquire the property is given to an owner, the tenant shall be issued the notice within fifteen (15) days. The owner shall be given a copy of the notice issued to the tenant.

(4) If no property is acquired and the occupant becomes eligible for relocation assistance because of landlocking, a ninety (90) day notice shall not be issued. In this case, the occupant shall have one (1) year from the date the Transportation Cabinet makes payment for damages to the property, either by successful negotiations with the owner, or posting the money in court, in which to obtain and occupy decent, safe and sanitary replacement housing. A letter outlining the eligibility requirements to receive relocation assistance payments shall be given to the displaced person when the damage payment is made to the nonresident owner of the property.

Section 6. Availability of Comparable Replacement Dwelling Prior to Displacement. (1) No person to be displaced shall be required to move from his dwelling unless at least one (1) comparable replacement dwelling has been made available to the person. When possible, three (3) or more comparable replacement dwellings shall be made available. A comparable replacement dwelling shall be considered to have been made available to a person if:

(a) The person is informed of its location;

(b) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(c) The person is assured of receiving the relocation assistance and acquisition compensation, subject to reasonable safeguards, to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(2) The requirements of subsection (1) of this section may be waived if the person is required to move in an emergency situation such as a major disaster as described in Section 102(c) of the National Disaster Relief Act of 1974, a presidentially declared national emergency, highway slides or floods or when continued occupancy would constitute a substantial danger to the health or safety or the occupants or the public.

(3) If a person is required by the Transportation Cabinet to relocate for a temporary period due to an emergency, the Transportation Cabinet shall do the following:

(a) Take the necessary steps to assure the person is temporarily relocated to decent, safe and sanitary housing;

(b) Pay actual reasonable out-of-pocket moving expenses and any reasonable increases in rent and utility costs incurred in connection with the temporary relocation; and

(c) Make available to the displaced person as soon as feasible at least one (1) comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily occupied dwelling).

Section 7. Relocation Advisory Services. (1) The Transportation Cabinet Advisory Services Program shall include the measures, facilities, and services that may be necessary or appropriate in order to:

(a) Personally interview each family or person to be displaced, determine the person's relocation needs and preferences, and explain the relocation payments and other assistance for which the person may be eligible, including requirements for obtaining the assistance;

(b) Provide current and continuing information on the availability, price and rental cost of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one (1) comparable replacement dwelling is made available;

(c) Inform the displaced person, in writing, of the specific comparable replacement dwelling and the price and rent used as a basis for establishing the upper limit of the replacement housing payment and the basis for the determination in order that the displaced person is made aware of the amount of the replacement housing payment to which he may be entitled;

(d) If feasible, inspect the comparable

housing prior to its being made available to assure that it is decent, safe and sanitary;

(e) If possible, give a minority displaced person an opportunity to relocate to a decent, safe and sanitary replacement dwelling which is not located in an area of minority concentration and that is within his financial means. This policy, however, shall not mandate that the Transportation Cabinet provide a person a larger payment than is required to enable him to relocate to a comparable replacement dwelling;

(f) Offer the displaced person transportation to inspect housing to which he is referred;

(g) Provide current and continuing information on the availability, location purchase price, and rental cost of comparable and suitable commercial and farm properties. Assist any person displaced from a business, farm operation, or nonprofit organization to obtain and become established in a suitable replacement location;

(h) Minimize hardships to persons in adjusting to relocation by providing counseling, advice about other sources of assistance that may be available, and other help that may be appropriate;

(i) Supply persons to be displaced with information concerning federal and state housing programs, disaster loans and other programs administered by the Small Business Administration, and other federal and state programs offering assistance to persons to be displaced;

(j) Advise a displaced person that no payments received under the relocation assistance program shall be considered as income for the purposes of the federal Internal Revenue Code or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other federal or state law; and

(k) Maintain contact with other governmental agencies to determine the extent of other programs which might affect the Transportation Cabinet relocation program and the availability of housing resources.

(2) The amount and extent of the relocation advisory services rendered shall be determined by the needs of the displaced person.

(3) The Transportation Cabinet may offer relocation advisory services to a person occupying property adjacent to the real property acquired if that person is caused substantial economic injury because of the cabinet's acquisition of the real property.

(4) The Transportation Cabinet shall coordinate relocation activities with project work and other displacement-causing activities to ensure that persons displaced receive consistent treatment and duplication of functions is minimized.

Section 8. Claims for Relocation Assistance Payments. (1) Any claim for relocation assistance payment shall be accompanied by documentation to support expenses incurred. A displaced person shall be provided reasonable assistance in completing and filing a claim for payment. The Transportation Cabinet shall review claims in an expeditious manner and promptly notify the claimant if additional documentation is required. Payment for a relocation assistance claim shall ordinarily be made only after the displaced person has moved or after closing and as soon as feasible following receipt of sufficient documentation to support the claim. The payment for a claim may be processed in advance of a move or closing but shall not be made until it can be reasonably expected that the objective of the payment has been or is to be accomplished.

(2) All claims for a relocation payment shall be filed based on the following unless the time limits have been waived for good cause by the Transportation Cabinet:

(a) For tenants, within eighteen (18) months after the date of displacement; or

(b) For owners, within eighteen (18) months of the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(3) If two (2) or more occupants of one (1) household of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a prorated share of all relocation payments that would have been made if the occupants had moved together to a comparable replacement dwelling. However, if it is determined that two (2) or more occupants maintained separate households within the same dwelling, the occupants shall have separate entitlements to relocation payments.

(4) If a person to be displaced owes rent to the Transportation Cabinet, the amount owed may be deducted from his relocation assistance payment unless the deduction would prevent the displaced person from obtaining comparable replacement housing. The Transportation Cabinet shall not withhold any part of a relocation assistance payment to a displaced person to satisfy an obligation to any other creditor.

(5) By written agreement between the displaced person, the mover and the Transportation Cabinet, the displaced person may present an unpaid moving bill to the Transportation Cabinet for direct payment to the mover. The displaced person shall initially make this request on forms prescribed and furnished by the Transportation Cabinet.

(6) If the Transportation Cabinet denies a claim of eligibility for or the amount of a payment, the claimant shall be promptly notified in writing of the reason for denying the claim and his right to appeal.

Section 9. Moving and Related Expense Payments-General. Moving and related expense payments are types of relocation assistance payments. Any eligible individual, family, business, farm operation or nonprofit organization displaced by a Transportation Cabinet project and who qualifies as a displaced person is entitled to payment of his actual moving and related expenses as the Transportation Cabinet determines to be reasonable and necessary.

(1) To be eligible for moving and related expense payments the displaced person shall:

(a) Be in legal occupancy at the initiation of negotiations for the real property or at the time the property is acquired, in whole or in part by the Transportation Cabinet or at the time he is given a written notice by the Transportation Cabinet of intent to acquire the real property; and

(b) Move from the real property, or move his personal property from the real property subsequent to the dates established in paragraph (a) of this subsection.

(2) If the acquisition of real property used

for a business, farm operation, or nonprofit organization causes a person to vacate a dwelling or other real property not acquired by the Transportation Cabinet, the additional moving cost shall be eligible for reimbursement. Also, if it is necessary to move personal property that is legally located within the acquired property, the cost shall be eligible for reimbursement.

(3) A second move for a displaced person shall not be automatically authorized, nor generally eligible for payment. However, under exceptional circumstances, a second moving payment may be made. Prior to authorizing a second move, the Transportation Cabinet shall consider all special circumstances.

(4) The displaced person shall be informed in writing as soon as possible after the initiation of negotiations of the following requirements:

(a) The displaced person shall provide the Transportation Cabinet reasonable advance notice of the approximate date of the start of the move or disposition of his personal property and a list of the items to be moved; and

(b) The displaced person shall allow the Transportation Cabinet to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and allow the cabinet to monitor the move.

Section 10. Moving and Related Expense Payments for Residential Moves. A displaced person, owner-occupant or tenant of a dwelling who qualifies as a displaced person is entitled to receive payment for the actual, reasonable and necessary moving expenses of his personal property, himself, and his family. He has the option to receive reimbursement on the basis of actual, reasonable expenses, or from the fixed-rate schedule listed in subsection (5) of this section which is based on the number of rooms of personal property. An owner-occupant of a multiple-family dwelling may be entitled to a moving payment for a residential move for himself and moving payments for his personal property located in other units.

(1) In order to determine that more than one (1) household exists in a single dwelling unit, each family unit shall have separate baths, kitchen areas and bedrooms.

(a) Two (2) or more families occupying the same dwelling unit, who are required to relocate into separate dwelling units because a single comparable dwelling unit is not available, may elect to be reimbursed either on an actual cost basis or from the fixed-rate schedule.

(b) Two (2) or more families occupying the same dwelling unit, who relocate into separate dwelling units on a voluntary basis when a single comparable dwelling unit is available, may elect to be reimbursed either on an actual cost basis or from the fixed-rate schedule. A fixed-rate schedule move payment shall be based on the number of rooms actually occupied by each family, plus community rooms utilized by each family.

(c) Two (2) or more individuals who occupy the same dwelling unit are considered to be a single family and payments shall be made accordingly.

(2) When an owner retains his dwelling, the cost of moving it onto a different site is not eligible for reimbursement as a part of the cost of moving personal property. However, if he chooses to use his dwelling as a means of moving personal property, the cost of moving the personal property may be considered eligible for reimbursement. Payments in these cases shall be from the fixed-rate schedule.

(3) If the displaced person elects to move on an actual cost basis, the following expenses are eligible for payment:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond fifty (50) miles are not eligible, unless it is determined by the Transportation Cabinet that relocation beyond fifty (50) miles is justified;

(b) Packing, crating, unpacking, and uncrating of the personal property;

(c) Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property;

(d) Storage of the personal property for a period not to exceed twelve (12) months, unless it is determined by the Transportation Cabinet that a longer period of time is necessary. For the storage costs to be eligible the Transportation Cabinet shall determine that storage is reasonable and necessary and that the personal property is not stored on property being acquired or property owned or leased by the displaced person;

(e) Insurance for the replacement value of the property in connection with the move and necessary storage;

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available; and

(g) Other moving related expenses not listed as ineligible in Section 13 of this regulation but which are determined by the Transportation Cabinet to be reasonable and necessary.

(4) The displaced person may elect to move by the use of a licensed commercial mover and receive reimbursement for the actual, reasonable expenses. These expenses shall be supported by receipted bills. The Transportation Cabinet may furnish the displaced person a list of licensed movers in the area. The displaced person shall select one (1) mover and the Transportation Cabinet shall select one (1). The Transportation Cabinet shall obtain from both movers an estimate of the moving costs. The estimates shall include any necessary utility service connections. The Transportation Cabinet shall base payment on the lower estimate. However, the displaced person may hire either company.

(5) The displaced person, including a person displaced from a seasonal residence, may elect to move his personal property according to the fixed-rate schedule. The separate items authorized under commercial and self moves have been included in establishing the fixed-rate schedule and no additional moving payments shall be authorized. The room count of furniture shall be based on the actual number of furnished rooms, plus basements, attics, garages and out buildings if such spaces contain sufficient personality as to constitute a room. Payment shall be based on the following schedule:

1 Room = $250	5 Rooms = $ 750
2 Rooms = $400	6 Rooms = $ 850
3 Rooms = $550	7 Rooms = $ 950
4 Rooms = $650	8 Rooms = $1050

Each Additional Room = $100

(6) If the displaced person lives in a furnished dwelling unit, he shall be paid moving

costs for moving his personal property according to the following schedule:

First Room = $225

Each Additional Room = $35

(7) The moving expenses of a person with minimal personal possessions who occupies a dormitory style room shared by two (2) or more other unrelated persons or a person whose residential move is performed by an agency at no cost to the person shall be limited to fifty (50) dollars.

Section 11. Moving and Related Expense Payments for Business, Farm Operations or Nonprofit Organizations. The owner of a displaced business, farm operation or nonprofit organization is entitled to receive a payment for moving and related expenses.

(1) Any business, farm operation or nonprofit organization which qualifies as a displaced person is entitled to payment for the actual moving and related expenses as the Transportation Cabinet determines to be reasonable and necessary, including expenses for the following:

(a) Transportation of personal property. Transportation costs for a distance beyond fifty (50) miles are ineligible, unless it is determined by the Transportation Cabinet that the relocation beyond fifty (50) miles is justified;

(b) Packing, crating, unpacking and uncrating of the personal property;

(c) Disconnecting, dismantling, removing, reassembling and reinstalling relocated machinery, equipment and other personal property including substitute personal property and including connection to utilities available nearby. Also, included are modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded);

(d) Storage of the personal property for a period not to exceed twelve (12) months unless it is determined by the Transportation Cabinet that a longer period of time is necessary. For the storage costs to be eligible the Transportation Cabinet shall determine that storage is reasonable and necessary and that the personal property is not stored on property being acquired or property owned or leased by the displaced person;

(e) Insurance for the replacement value of the personal property in connection with the move and necessary storage;

(f) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be prorated, based on the remaining useful life of the existing license, permit or certification;

(g) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his agent, or employee), where insurance covering the loss, theft, or damage is not reasonably available; and

(h) Professional services necessary for planning the move of the personal property; moving the personal property; and installing the relocated personal property at the replacement location.

(2) The owner of a business, farm operation or nonprofit organization, may be paid the actual reasonable cost of moving his personal property as determined to be reasonable and necessary by using a qualified commercial mover. These expenses shall be supported by receipted bills. Prior to authorizing the move, the Transportation Cabinet shall:

(a) Obtain a certified inventory of the personal property to be moved. The displaced person shall certify that the items are to actually be moved to the replacement site. If there is any significant deviation from the list of items actually relocated the amount to be paid shall be revised accordingly. If the business, farm operation or nonprofit organization has a fluctuating inventory, the cabinet may require a reinventory just prior to authorizing the move; and

(b) Obtain two (2) bids from qualified movers when a replacement property has been found. The payment of moving expenses shall be authorized only on the basis of the lower of the bids.

(3) The owner of the business, farm operation or nonprofit organization, may elect to move himself. Under this circumstance the Transportation Cabinet shall:

(a) Obtain a certified inventory of the personal property to be moved. The displaced person shall certify that the items actually are to be moved to the replacement site. If there is any significant deviation from the list of items actually relocated the amount to be paid shall be revised accordingly. If the business, farm operation or nonprofit organization has a fluctuating inventory, the cabinet may require a reinventory just prior to authorizing the move; and

(b) Obtain two (2) bids from qualified movers after a replacement property has been found. The move may be authorized only on the basis of the lower of the bids. The Transportation Cabinet shall pay to the displaced person the amount of the lower bid once it is determined that all property was moved to the new location.

(4) If the cost of the move is not likely to exceed $5,000, a single estimate may be prepared by a qualified staff employee of the Transportation Cabinet other than the person preparing the claim.

(5) When the Transportation Cabinet obtains bids for a business, farm operation or nonprofit organization move, the bidder shall be instructed in writing that the amount of his bid shall be the property of the Transportation Cabinet and shall be considered confidential information. The bidder shall state in his letter transmitting his bid to the cabinet that he shall not divulge the amount of his bid to any other person, including the displaced person. Any bidder who does not adhere to these requirements shall not be permitted to submit future bids.

(6) If it is necessary to reprint available stationery because the business, farm operation or nonprofit organization, has been relocated, the Transportation Cabinet shall pay the actual cost for reprinting the number and type of item to be replaced. Payment shall be made for only the number of each item approved in advance of the reprinting by the Transportation Cabinet. The claim for payment shall be documented by receipted bills from the provider.

(7) If it is necessary to reletter a sign that

has been made obsolete as a result of the move, if possible, only that portion of the sign which changes shall be eligible to be relettered. However, if necessary, the cost of relettering the complete sign shall be an eligible expense. The payment request shall be documented by receipted bills from the provider. Approval of the relettering shall be obtained from the Transportation Cabinet in advance of work being performed.

(8) The Transportation Cabinet shall reimburse the displaced business, farm operation, or nonprofit organization actual and reasonable expenses in searching for a new location. Payment shall be limited to $1,000. The items for which an invoice may be submitted are transportation; lodging and meals away from home; time spent in searching, based on reasonable salary or earnings, of the person conducting the search; and fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site. The claim for payment shall be documented by receipted bills for meals and lodging when away from home and an affidavit shall be required for mileage and time. The affidavit shall show persons contacted, places visited, activity involved and basis for the hourly rate charged for time.

(9)(a) Payment of actual direct losses of tangible personal property may be made when the business, farm operation or nonprofit organization owner moves or discontinues his operation. Payment for actual direct losses of tangible personal property may be made only after a bona fide effort has been made by the owner to sell the items involved. The payment shall consist of the lesser of:

1. The fair market value of the item for continued use at the displacement site less the proceeds from its sale. (The claimant shall make a good faith effort to sell the personal property, unless the Transportation Cabinet determines that the effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price); or

2. The estimated cost of moving the item, with no allowance for storage. If the business, farm operation, or nonprofit organization is discontinued, the estimate shall be based on a move of fifty (50) miles;

(b) The prompt purchase of substitute personal property to replace an item not to be moved in a business, farm operation or nonprofit organization move, yet which performs a comparable function at the replacement site. Payment shall be the lesser of:

1. The cost of the substitute item, including installation costs at the replacement site, less any proceeds from the sale or trade-in of the replaced item; or

2. The estimated cost of moving and reinstalling the replaced item, with no allowance for storage. If the estimated cost for the move is $5,000 or less, the estimated cost may be based on a single estimate prepared by a qualified Transportation Cabinet employee.

(c) If no offers are received for the property at the sale and the property is abandoned, payment for the actual direct loss of that item shall not be more than the fair market value of the item for continued use at its location prior to displacement or the estimated cost of moving the item fifty (50) miles, whichever is less, plus the reasonable costs of the attempted sale, irrespective of the cost to the Transportation Cabinet of removing the item.

(d) If personal property is abandoned with no effort made by the owner to dispose of the property by sale, the owner shall not be entitled to moving expenses, or losses, for the item involved.

(e) The cost of removal by the Transportation Cabinet of personal property shall not be considered as an offsetting charge against other payments to the displaced person.

(f) The sale price, if any, and the actual reasonable costs of advertising and conducting the sale shall be supported by a copy of the bill of sale or similar documents, and by copies of any advertisements, offers to sell, auction records, and other data which support the sale.

(g) The direct loss payment for an advertising sign which is personal property shall be the lesser of the depreciated reproduction cost of the sign less the proceeds from its sale; or the estimated cost of moving the sign as determined by the Transportation Cabinet but with no allowance for storage.

(10) An owner of a discontinued or relocated business otherwise eligible for payment of moving expenses may choose to receive a fixed payment in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses.

(a) The fixed payment shall not be less than $1,000 nor more than $20,000.

(b) For an owner of a business to be entitled to this payment, it shall be determined that:

1. The business owns or rents personal property which has to be moved in connection with the displacement and for which an expense would be incurred in the move and the business vacates or relocates from the displacement site;

2. The business cannot be relocated without a substantial loss of patronage (clientele or net earnings). A business is assumed to meet this test unless it is determined by the Transportation Cabinet that it will not suffer a substantial loss of its existing patronage;

3. The business is not part of a commercial enterprise having more than three (3) other entitles which are not being acquired, and which are under the same ownership and engaged in the same or similar business activities;

4. The business is not operated at a displacement dwelling solely for the purpose of renting the dwelling to others; and

5. The business contributed materially to the income of the displaced person during the two (2) taxable years prior to displacement. The displaced person shall furnish the Transportation Cabinet copies of his income tax returns and other proof of net earnings.

(c) In determining whether two (2) or more displaced legal entitles constitute a single business which is entitled to only one (1) fixed payment, all pertinent factors shall be considered, including the extent to which:

1. The same premises and equipment are shared;

2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

3. The entities are held out to the public, to those customarily dealing with them, as one (1) business; and

4. The same person or closely related persons own, control, or manage the affairs of the

entities.

(11) An owner of a displaced farm operation may choose to apply for a fixed payment in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses. This payment shall not be less than $1,000 nor more than $20,000. In the case of partial acquisition of land which was a farm operation before the acquisition, a fixed payment may be made only if the Transportation Cabinet determines that:

(a) The farm operation contributed materially to the income of the displaced person during the two (2) taxable years prior to displacement;

(b) Acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(c) The partial acquisition caused a substantial change in the nature of the farm operation.

(12) A displaced nonprofit organization may choose to apply for a fixed payment in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses. The payment shall not be less than $1,000 nor more than $20,000. Any request for payment in excess of $1,000 shall be supported with financial statements for the two (2) twelve (12) month periods prior to the acquisition. The amount to be used in determining the payment is the average of two (2) years annual gross revenues less administrative expenses. Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other fund raising activities. Administrative expenses include rent, utilities, salaries, advertising and fund raising expenses. Operating expenses for carrying out the purpose of the nonprofit organization are not included in administrative expenses. Monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

Section 12. Miscellaneous Moves. There are entities to be relocated that meet none of the definitions of a business, a farm operation or a nonprofit organization. The moving expenses in these instances shall usually be paid as a self-move. Examples of moves of this type are:

(1) Partial taking of a farm or residential lot on which only a shed, barn or garage contains personal property;

(2) Acquisition of a tenant-occupied residence if the owner has some personal property in the building; or

(3) Acquisition of a tenant-occupied service station where the owner or distributor has personal property to be moved.

Section 13. Ineligible Moving and Related Expenses. A displaced person shall not be entitled to payment for the following:

(1) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership;

(2) Interest on a loan to cover moving expenses;

(3) Loss of good will;

(4) Loss of profits;

(5) Loss of trained employees;

(6) Any additional operating expenses of a business or farm operation incurred because of operating in a new location (except as provided for under reestablishment expenses);

(7) Personal injury;

(8) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Transportation Cabinet;

(9) Expenses for searching for a replacement dwelling;

(10) Physical changes to the real property at the replacement location of a business, farm, or nonprofit organization except as provided for under actual reasonable moving expenses and reestablishment expenses; or

(11) Costs for storage of personal property on real property already owned or leased by the displaced person.

Section 14. Reestablishment Expenses of Businesses, Farm Operations or Nonprofit Organizations. A small business, farm or nonprofit organization may be eligible to receive a payment not to exceed $10,000 for expenses actually incurred in relocating and reestablishing the small business, farm operation or nonprofit organization at the replacement site.

(1) Eligible expenses shall be reasonable and necessary as determined by the Transportation Cabinet and may include, but are not limited to the following:

(a) Repairs or improvements to the replacement real property as required by federal, state, or local law, code, regulation or ordinance;

(b) Modification to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business;

(c) Construction and installation costs not to exceed $1,500 for exterior signing to advertise the business;

(d) Provision of utilities from the right-of-way to improvements on the replacement site;

(e) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting;

(f) Licenses, fees and permits when not paid as a part of moving expenses;

(g) Feasibility surveys, soil testing and marketing studies;

(h) Advertisement of the replacement location not to exceed $1,500;

(i) Professional services in connection with the purchase or lease of a replacement site;

(j) Increased cost of operation during the first two (2) years at the replacement site not to exceed $5,000 for items such as lease or rental charges, personal or real property taxes, insurance premiums, and utility charges, excluding impact fees;

(k) Impact fees or one (1) time assessments for anticipated heavy utility usage; and

(l) Other items determined by the Transportation Cabinet to be essential to the reestablishment of the business.

(2) Expenses in excess of the maximums set forth in subsection (1)(c), (h) and (j) of this section may be considered eligible if large and legitimate disparities exist between the cost of operation at the displacement site and cost of operation at an otherwise similar replacement site. In these cases, the limitations for reimbursement of the cost may be waived by the Transportation Cabinet, but in no case shall the total costs payable for reestablishment expenses exceed the $10,000 maximum.

(3) A representative of the Transportation Cabinet and the displaced person shall meet at the replacement site prior to any work being done in order to determine what repair or changes are necessary. After the move has been completed, the displaced person shall submit to the Transportation Cabinet the itemized paid receipts for those reestablishment expenses he has incurred.

(4) The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(a) Purchase of capital assets, such as, office furniture, filing cabinets, machinery or trade fixtures;

(b) Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operations;

(c) Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in subsection (1)(e) of this section;

(d) Interest on money borrowed to make the move or purchase the replacement property;

(e) Payment to a part-time business in the home which does not contribute materially to the household income.[; or]

[(f) Payment to a person whose sole business at a displacement dwelling is the rental of the dwelling to others.]

Section 15. Replacement Housing Payments - General. (1) In addition to other payments authorized by this administrative regulation, individuals and families displaced from dwellings, including condominium or cooperative apartments, acquired by the Transportation Cabinet are eligible for replacement housing payments. Recognizing that it is impossible to foresee every possible replacement housing situation which may arise, the Transportation Cabinet shall strive for consistency with the provisions of this administrative regulation when a situation not specifically set forth is encountered.

(2) The displaced individual or family shall not be required to relocate to the same occupancy (owner or tenant) status in order to receive the replacement housing payment, but has other options based on his ownership status and tenure of occupancy.

(3) The Transportation Cabinet shall not participate in more than one (1) replacement housing payment for each dwelling unit, except in the case of multifamily occupancy of a single family dwelling as described in Section 17 of this regulation. The claim for payment shall be filed with the cabinet no more than eighteen (18) months after the date of displacement for tenants. For owners, the claim for payment shall be filed no more than eighteen (18) months after the date of displacement or the date of the final payment for the acquisition of real property, whichever is later. Before the payment is made to the displaced person, the Transportation Cabinet shall determine that the replacement dwelling is decent, safe and sanitary.

(5) If a displaced person otherwise qualifies for a replacement housing payment, except that he has not yet purchased or occupied a suitable replacement dwelling, the Transportation Cabinet after inspecting the proposed dwelling and finding that it is a decent, safe and sanitary dwelling shall, upon request of the displaced person who is purchasing the dwelling, state to any interested party, financial institution or lending agency that the displaced person is eligible for the payment of a specific amount, provided he purchases and occupies the inspected dwelling within the one (1) year time limit. This statement shall include the address of the property inspected and the amount of money the displaced person is required to spend for the replacement property in order to receive the full amount of his replacement housing payment.

(6) Replacement housing payments may be made directly to the relocated individual or family, or upon written instructions from the displaced person, directly to the lessor for rent or the seller for use toward the purchase of a dwelling. This written instruction from the displaced person shall be submitted with the application for payment. In cases where an applicant otherwise qualifies for a replacement housing payment, and upon his specific request in the application, the Transportation Cabinet may make the payment into escrow prior to the displaced person's moving.

(7) The Transportation Cabinet shall determine the probable selling price of a comparable dwelling by analyzing at least three (3) comparable dwellings representative of the dwelling unit to be acquired which are available on the private market. Less than three (3) comparable dwellings may only be used for this determination when sufficient comparable dwellings are not available. Selection of comparable dwellings and computation of payment shall be made by a qualified Transportation Cabinet employee other than the appraiser or review appraiser on the parcel involved. The selected comparable dwellings shall be the most nearly comparable available and equal to or better than the subject property.

(8) If the lapse of time between obtaining a listing of an available dwelling which is used to compute a replacement housing payment and the offer of the replacement housing payment amount to the displaced person exceeds thirty (30) days, the Transportation Cabinet shall determine that the property is still on the market. If a check of the market reveals the comparable dwelling relied upon is not available, a new comparable dwelling shall be selected and a new replacement housing payment computed.

(9) An adjustment shall be made to the asking price of the selected comparable dwelling only when the market reflects a substantial difference in the asking price and the sale price of comparable housing in the area. To determine whether an adjustment to the asking price is needed the Transportation Cabinet may contact realtors or use multiple listings books for recent sales.

(10) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site (for example, the site is significantly smaller or does not contain a swimming pool), the value of the attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment. If an uneconomic remnant of land remains after the Transportation Cabinet acquired only a portion of a tract of property and the owner of the remaining property refuses to sell it to the Transportation Cabinet, the fair market value of the uneconomic remnant

shall be deducted from the before value of the displacement dwelling for purposes of computing the replacement housing payment.

(11) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(12) A person who occupies a property for less than ninety (90) days before initiation of negotiations or who occupies the property subsequent to the initiation of negotiations but before the property is acquired is entitled to moving expenses and advisory services. Any replacement housing payment if applicable shall be made under the provisions of Section 29 of this regulation.

(13) No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in this administrative regulation for a reason beyond his control, such as a disaster, an emergency, or an imminent threat to the public health or welfare as determined by the President, the federal agency funding the project, or the Transportation Cabinet; or a delay in the construction of the replacement dwelling, military reserve duty, or a hospital stay.

(14) A displaced tenant who initially rents a replacement dwelling and receives a rental assistance payment is eligible to receive a purchase or down payment assistance payment if he meets the eligibility criteria for the payments, including purchase and occupancy within the prescribed one (1) year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment. A displaced owner-occupant who originally rents a replacement dwelling and receives a rent supplement payment is eligible to receive a replacement housing payment, if he purchases and occupies a dwelling within the prescribed one (1) year.

(15) A replacement housing payment is personal to the displaced person and upon his death, the undisbursed portion of any payment shall not be paid to the heirs or assigns, except that the amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid. The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family members continue to occupy a decent, safe and sanitary replacement dwelling. Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

(16) In order to avoid duplicate compensation, the amount of any insurance proceeds received by a displaced person in connection with a loss to the displacement dwelling shall be included in the acquisition cost of the displacement dwelling when the Transportation Cabinet computes the replacement housing payment.

Section 16. Replacement Housing Payments - Partial Tract Acquisition. (1) If the acquired dwelling is located on a tract typical in size for residential use in the area and if only a portion of the tract is acquired by the Transportation Cabinet, the maximum replacement housing payment shall be the probable selling price of a comparable replacement dwelling on a tract typical in size for the area, less the difference in the before and after values of the residential property. This difference represents the acquisition price and shall include any damages to the portion of the tract not acquired by the Transportation Cabinet.

(2) If the acquired dwelling is located on a tract larger in size than typical for residential use in the area and if only a portion of the tract is acquired by the Transportation Cabinet, the cabinet shall only consider that portion of the tract which is a typical size for computation of the maximum replacement housing payment. The maximum housing payment shall be the probable selling price of a comparable replacement dwelling and tract typical in size for residential use in the area, less the difference in the before and after value of the typical size residential property which was carved out of the total tract.

(3) If the acquired dwelling is located on a farm and if only a portion of the farm is acquired by the Transportation Cabinet, the cabinet shall only consider that portion of the farm which is a typical size tract for a residential property in the area for computation of the maximum replacement housing payment. The maximum replacement housing payment shall be the probable selling price of a comparable replacement dwelling and tract typical in size for residential use in the area, less the difference in the before and after value of the typical size residential property which was carved out of the total farm.

(4) If an outbuilding is located on the tract to be acquired and if the outbuilding is used for nonresidential purposes such as corncribs or implement storage, its value shall not be included in the computation of the replacement housing payment.

(5) If the acquired dwelling is located on a tract where the fair market value is established on a use higher and better than residential and if only a portion of the tract is acquired by the Transportation Cabinet, the maximum amount payable is the probable selling price of a comparable replacement dwelling on a tract typical in size for residential use in the area, less the difference in the before and after value of the typical size homesite using the value indicated by the higher and better use, or if larger than typical, the difference in the value before and after a portion is carved out. This difference shall represent the acquisition price.

Section 17. Replacement Housing Payments - Multiple Occupancy of Same Dwelling Unit. (1) If two (2) or more eligible families occupy the same single-family dwelling unit, and a comparable replacement dwelling is available, the occupants are entitled to only one (1) replacement housing or rent supplement payment. If a comparable replacement dwelling is not available, a replacement housing or rent supplement payment for each family shall be based on housing which is comparable to the quarters privately occupied by each family plus community rooms which have been shared with other occupants. For owner-occupants the acquisition price to be used as the basis for replacement housing payment computations is that amount each owner received from the total

payment for the property to be acquired.

(2) If two (2) or more eligible individuals occupy the same single-family dwelling unit, they are considered one (1) family for replacement housing payment or rent supplement purposes. If all individuals do not relocate to decent, safe and sanitary housing, the Transportation Cabinet shall determine and pay those individuals who do relocate into decent, safe and sanitary housing a proportional share of the payment that would have been received if all individuals had relocated together in the same ownership or rental status as they had at the time of initiation of negotiations.

(3) If a displaced individual or family occupies living quarters on the same premises as a displaced business, farm or nonprofit organization, the individual or family is a separate displaced person for purposes of determining entitlement to relocation payments. The Transportation Cabinet shall compute the replacement housing payment for joint residential and business use properties as follows:

(a) If the owner occupies living quarters in the building the replacement housing payment shall be determined by establishing the difference in the before and after value of the land using the appraised value (if acquiring the entire tract the cabinet shall use the total land value) adding the value of the living quarters portion of the building and then subtracting the total from the most comparable property to the living quarters available for sale on the market.

(b) If a tenant occupies living quarters in the building to be acquired, the replacement housing payment shall be determined by subtracting the base monthly rent of the displaced tenant in the acquired dwelling as determined in Section 23(2) of this regulation from the amount the displaced person actually pays per month for a rental replacement dwelling including the estimated average monthly utilities or, if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities. That amount shall be multiplied by forty-two (42) to establish the replacement housing payment.

(c) A displaced person eligible for a rental replacement housing payment under Section 23(1) of this regulation may receive a down payment assistance payment not to exceed $5,250. In order to receive this payment, the full amount of the payment shall be applied toward the purchase price of the replacement dwelling and related incidental expenses.

(4) The procedure for computing replacement housing payment amounts to an owner of a multifamily dwelling who occupies one (1) unit is as follows:

(a) The comparable dwellings considered in the computation shall be the same as that acquired, that is, if the property is a triplex, then the comparable dwellings shall be triplexes. If comparable dwellings are not available, structures of the next lowest density shall be used. If there are not any available comparable multifamily structures to be found, the comparison of the owner's living unit shall be to a single-family residence. A higher density structure shall never be used as a comparable structure.

(b) The value of the owner's unit shall be used as the basis for the replacement housing payment determination, not the entire fair market value of the property being acquired. The replacement housing payment determination is that difference, if any, between the value of the owner's living unit and the value of a living unit on the most comparable available property. If the comparable housing is a triplex, the replacement housing payment is based on the value of only one (1) of the three (3) units; if a duplex, the payment is based on the value of only one (1) of the two (2) units; if a single-family dwelling, the payment is based on the entire value of the dwelling. The other living units of a multifamily dwelling shall not be included in the value of a comparable unit because these are considered as income producing and not part of the owner's personal living area.

Section 18. Replacement Housing Payments - Owner-Occupants of 180 Days or More. (1) A displaced owner-occupant may receive replacement housing payments if the displaced person has actually owned and occupied the displacement dwelling for 180 days or more immediately prior to the initiation of negotiations and if he purchases and occupies a decent, safe and sanitary replacement dwelling within a one (1) year period, beginning on the later of the following dates:

(a) The date the person receives final payment from the Transportation Cabinet for the displacement dwelling; or

(b) In the case of condemnation, the date the full amount of the estimate of just compensation is deposited in court; or

(c) The date the person is advised by the Transportation Cabinet of the availability of comparable housing.

(2) The owner-occupant is eligible for a replacement housing payment when:

(a) He is in occupancy at the initiation of negotiations for the acquisition of the real property, in whole or part;

(b) He is in occupancy at the time he is given a written notice by the Transportation Cabinet of intent to acquire the property by a given date;

(c) His occupancy of the property has been for at least 180 consecutive days immediately prior to the date of vacation or initiation of negotiations, whichever is earlier; and

(d) He purchased and occupied a decent, safe and sanitary dwelling within the time period specified in subsection (1) of this section;

(3) The combined total of the replacement housing payments for an owner-occupant of 180 days shall not exceed $22,500 for the additional costs necessary to purchase replacement housing; for compensation to the owner for the loss of favorable financing on his existing mortgage in the financing of replacement housing; and to reimburse the owner for expenses incidental to the purchase of replacement housing which are incurred.

(4) The amount of the replacement housing payment for the sole owner of a dwelling is the amount, if any, which when added to the amount for which the Transportation Cabinet acquired his dwelling, equals the actual cost which the owner is required to pay for a decent, safe and sanitary replacement dwelling, or the amount determined by the Transportation Cabinet as necessary to purchase a comparable dwelling,

whichever is less. When the displaced person obtains his decent, safe and sanitary replacement dwelling (not necessarily comparable to the dwelling from which he was displaced), his replacement housing payment shall be based on the amount spent for the replacement dwelling. If the replacement dwelling is not decent, safe and sanitary, he may be paid to correct the deficiencies if he maintains documented receipts. Any payment to correct a decent, safe and sanitary deficiency shall be counted toward the actual cost that the owner is required to pay for decent, safe and sanitary replacement dwelling.

(5) If a single-family dwelling is owned by several persons, and occupied by only part of the owners, the replacement housing payment shall be the lesser of:

(a) The difference between the owner-occupants' share of the acquisition cost of the acquired dwelling and the actual cost of the replacement dwelling; or

(b) The difference between the total acquisition cost of the acquired dwelling and the amount determined by the Transportation Cabinet as necessary to purchase a comparable dwelling.

(6) If the displaced owner-occupant of 180 days or more does not purchase and occupy a decent, safe and sanitary dwelling, he shall be entitled to receive a rent supplement payment if he rents and occupies a decent, safe and sanitary dwelling.

(7) It shall be the Transportation Cabinet's responsibility to make available a comparable replacement dwelling unit and to relocate the displaced person to his original ownership status if this is his desire. If the displaced owner-occupant desires to rent, the Transportation Cabinet shall make a reasonable effort to accomplish the request.

(8) When an owner-occupant of 180 days or more retains and moves his dwelling to another location, the Transportation Cabinet shall determine if he is eligible for a replacement housing payment. If the dwelling meets the decent, safe and sanitary standards, improvements such as room additions or remodeling shall not be allowed in determining the amount of the replacement housing payment. If the dwelling retained and moved is not decent, safe and sanitary, the cost to improve it so that it complies with adequate standards shall be allowed if documented receipts are maintained. Any payment to correct a decent, safe and sanitary deficiency shall be counted toward the actual cost that the owner is required to pay for a decent, safe and sanitary replacement dwelling.

(9) If an owner-occupant of 180 days or more has received a rental replacement housing payment and subsequently chooses to purchase a replacement dwelling, the amount of the rental replacement housing payment shall be deducted from the amount he would have been entitled to receive if he had purchased a replacement dwelling immediately. The combined payments shall not exceed $22,500.

(10) If the owner is allowed the option of retaining his dwelling, the replacement housing payment shall be computed in accordance with the appropriate paragraph below. The payments computed under paragraphs (a) through (c) of this subsection shall not exceed the amount the displaced person would have received if he had purchased a replacement dwelling.

(a) If the dwelling is decent, safe and sanitary, the payment, if any, shall be the amount by which the cost to relocate the retained dwelling exceeds the acquisition price of the dwelling and homesite. The cost to relocate may include the reasonable costs of acquiring a new site and other expenses incidental to retaining and moving the dwelling, and restoring it to a condition comparable to that before the move. Payment shall not exceed $22,500;

(b) If the owner chooses to move his dwelling to a part of the tract not acquired by the Transportation Cabinet, the current fair market value for purchase of a residential site, not to exceed a typical size homesite, may be included as a cost to relocate the dwelling; or

(c) If the retained dwelling is not decent, safe and sanitary, the payment shall be computed as shown above, except the costs to correct deficiencies shall be included in the costs to relocate.

(11) An owner-occupant of 180 days or more eligible for a purchase replacement housing payment who elects to rent a replacement dwelling is eligible for a rental replacement housing payment which shall not exceed $5,250 unless the conditions of subsection (12) of this section exist. To compute the eligible payment, from the amount the displaced person actually pays for a rental replacement dwelling, including the estimated average monthly utilities, or if less, the amount determined by the cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities the Transportation Cabinet shall subtract the fair market rent including monthly utilities of the acquired dwelling as determined by the cabinet, then multiply that amount by forty-two (42).

(12) The rental payment authorized by subsection (11) of this section may only exceed $5,250 if the payment to purchase for an owner-occupant of 180 days could have been authorized as a last resort housing payment under Section 29 of this regulation and therefore, could have exceeded $22,500.

Section 19. Replacement Housing Payments - Owner-Occupants of Less Than 180 Days. (1) A displaced owner-occupant who has owned and occupied the dwelling for less than 180 days and who elects to rent a replacement dwelling is eligible for a rental replacement housing payment not to exceed $5,250. To compute the rental payment, from the amount the displaced person actually pays for a rental replacement dwelling including the estimated average monthly utilities, or if less, the amount determined by the cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities the Transportation Cabinet shall subtract the monthly fair market rent of the acquired dwelling as determined by the cabinet, then multiply that amount by forty-two (42).

(2) A displaced owner-occupant who has owned and occupied the dwelling for less than 180 days, may elect to receive an amount to enable him to make a down payment on the purchase of a replacement dwelling including the actual expenses incidental to the purchase, not to exceed $5,250, or for additional costs to relocate his retained dwelling in accordance with the following:

(a) The full amount of the payment shall be applied toward the purchase of the replacement dwelling and related incidental expenses and the displaced person shall purchase and occupy the dwelling within the time frame specified in Section 23(1) of this regulation;

(b) The displaced person may be eligible for the entire $5,250 for a down payment including incidental expenses, when the amount of the rental replacement housing computation is less than $5,250 or is zero, except either payment shall not exceed the amount the displaced person would receive if he were an owner-occupant of 180 days or more.

(3) If an owner-occupant of less than 180 days retains his dwelling, then the replacement housing payment, if any, shall be determined in accordance with the provisions of Section 18 (10) of this regulation, but the payment shall not exceed $5,250. If an owner-occupant of less than 180 days has received a rental replacement housing payment, the amount of the rental payment shall be deducted from the amount to which he is entitled. The combined payments shall not exceed $5,250.

Section 20. Revisions to Replacement Housing Payment. (1) If the comparable housing used in the Transportation Cabinet's computation is not available at the time of the relocation offer, a new replacement housing payment shall be computed cased on available housing which is equal to or better than the dwelling acquired and meets the other comparable criteria. However, the new replacement housing payment amount shall not be less than the original computed amount.

(2) When an adjustment is made in the fair market value offer to the owner-occupant because of an administrative settlement, an appeal from the commissioners' award, jury award or similar reason the replacement housing payment shall be recomputed based on the new acquisition price.

Section 21. Replacement Housing Payments - Increased Interest Payments. Increased interest payments are provided to compensate a displaced person for the increased interest costs he is required to pay for financing a replacement dwelling.

(1) The increased interest payment shall be allowed only when the dwelling acquired by the Transportation Cabinet was encumbered by a mortgage which was made in good faith without fraud or deceit and which was a valid lien on the dwelling for not less than 180 days prior to initiation of negotiations for the acquisition of the real property, in whole or in part, or at the time a written notice is given of the Transportation Cabinet's intent to acquire the property and the displaced person obtains a mortgage on his replacement dwelling at a higher interest rate than the mortgage rate on the dwelling acquired by the Transportation Cabinet. All mortgages on the dwelling acquired by the Transportation Cabinet shall be considered in computing the increased interest cost portion of the replacement housing payment. In the case of a home equity loan, the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) In determining the amount of the increased interest payment, the computation shall be based on the monthly payment of the old mortgage, the remaining term of the old mortgage or term of new mortgage, whichever is shorter, and the old and new interest rates. Most increased interest payments shall also be based on the unpaid mortgage balance on the displacement dwelling. However, if the new mortgage amount is less, the payment shall be reduced accordingly.

(3) Documentation of the terms, amount and interest rate for the existing and new mortgages shall be submitted on a form prescribed and furnished by the Transportation Cabinet. This form shall be completed for the existing and new mortgages and signed by a representative of the lending agency. When a loan is included in a land contract, a copy of the contract may be used for documentation.

(4) Payment for purchaser's points, loan origination fees or assumption fees but not seller's points, shall be paid to the extent that:

(a) They are not paid as incidental expenses;

(b) They do not exceed rates normal to real estate transactions in the area; and

(c) They are determined to be necessary; and

(d) The points and fees are based on the unpaid mortgage balance on the displacement dwelling, less the amount of the mortgage payment computed in this section. To document these charges, the Transportation Cabinet shall be provided a copy of the lending agency's closing statement.

(5) The interest rate on the mortgage for the replacement dwelling to be used in the computation shall be the actual interest rate but shall not exceed the prevailing fixed interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(6) Increased interest payments normally shall be made directly to the displaced person. However, upon written request from the displaced person the payment may be made directly to the mortgagee of the replacement dwelling or may be paid into escrow prior to the displaced person's moving.

(7)(a) If the dwelling acquired is located on a tract normal for residential use in the area and only a portion of the tract is acquired by the Transportation Cabinet, the mortgage balance shall be reduced by the percentage ratio the acquisition price bears to the before value of the total tract. The reduction shall not apply when the mortgagee requires the entire mortgage balance to be paid because of the acquisition and it is necessary to refinance.

(b) If a dwelling is located on a tract larger than normal for residential use in the area and only a portion of the tract is acquired by the Transportation Cabinet, the total mortgage balance shall be reduced to the percentage ratio that the value of the residential portion bears to the before value. This reduction shall apply whether or not it is required that the entire mortgage balance be paid.

(8) The interest payment on multiuse properties shall be reduced to the percentage ratio the residential value of the multiuse property bears to the before value.

(9)(a) If a dwelling is located on a tract where the fair market value is established on a higher and better than residential use, and if the mortgage is based on residential value, the interest payment shall be computed as shown in subsection (7)(b) of this section.

(b) If the mortgage interest rate is obviously

based on the higher use, the interest payment shall be reduced to the percentage ratio that the estimated residential value of the parcel has to the before value of the parcel.

Section 22. Replacement Housing Payments-Incidental Relocation Expenses. The incidental expenses which may be paid are those necessary and reasonable costs actually incurred by the displaced person incidental to the purchase of a replacement dwelling and customarily paid by the buyer.

(1) The type of incidental expenses eligible for payment include, but shall not be limited to, the following:

(a) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats and recording fees;

(b) Lender, Federal Housing Administration, or Veteran's Administration application and apprising fees;

(c) Loan origination or assumption fees that do not represent prepaid interest;

(d) Certification of structural soundness and termite inspection when required;

(e) Credit report;

(f) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for preparation of title insurance of a comparable replacement dwelling;

(g) Escrow agent's fee;

(h) State revenue or documentary stamps, sales on transfer taxes (not to exceed the costs for a comparable replacement dwelling); and

(i) Other costs as determined by the Transportation Cabinet to be incidental to the purchase.

(2)(a) An owner-occupant of 180 days or more who has a mortgage on the dwelling acquired and who places a mortgage on his replacement dwelling shall be reimbursed for the necessary and reasonable incidental expenses incurred when obtaining a mortgage on his replacement dwelling.

(b) An owner-occupant of 180 days or more who has no mortgage on the acquired dwelling, but who places a mortgage on his replacement dwelling shall not be reimbursed for the incidental expenses of obtaining his loan.

(c) An owner-occupant of less than 180 days, or a tenant-occupant of more than ninety (90) days who chooses to purchase a replacement dwelling may be reimbursed for eligible incidental expenses if they are included in the down payment. However, the total of the down payment and incidental expenses is limited to a maximum of $5,250.

Section 23. Replacement Housing Payments - Rental Payments. (1) A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed $5,250 for rental assistance, if the displaced person:

(a) Actually and lawfully occupied the displacement dwelling for at least ninety (90) days immediately prior to the initiation of negotiations; and

(b) Has rented or purchased and occupied a decent, safe and sanitary replacement dwelling within one (1) year after the date he moves from the displacement dwelling if he is a tenant; or

(c) In the case of an owner-occupant, has rented or purchased and occupied decent, safe and sanitary dwelling within one (1) year of the later of the date he received final payment for the displacement dwelling, or in the case of condemnation, the date the full amount of the estimate of just compensation is deposited with the court; or the date he moved from the displacement dwelling.

(2) The base monthly rental for the displacement dwelling shall be the least of the three (3) computations below:

(a) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement using either actual or fair market rent. For a tenant who paid little or no rent for the displacement dwelling, fair market rent shall be used unless it would result in a hardship due to his personal income or other circumstances; or

(b) Thirty (30) percent of the person's average monthly gross household income. If a person refuses to provide evidence of income or is a dependent, the base monthly rent shall be the average monthly cost for rent or utilities. A full-time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise; or

(c) The total of the amount designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amount for shelter and utilities. The base monthly rental shall include any rent supplement supplied by others unless the supplement is to be discontinued upon vacation of the property.

(3) To compute the rental assistance payment, from the amount the displaced person actually pays for a rental replacement dwelling including the estimated average monthly utilities or, if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities the Transportation Cabinet shall subtract the base monthly rent of the acquired dwelling as determined in subsection (2) of this section. Then the cabinet shall multiply that amount by forty-two (42) to determine the actual payment. However, for owner-occupants the cabinet shall use the actual or fair market rent instead of the base monthly rent when computing the payment amount. In determining the amount necessary to rent a comparable dwelling the Transportation Cabinet shall examine, if available, three (3) comparable rental properties. Only when the local housing market does not contain three (3) comparable rental properties may the Transportation Cabinet determine the payment based on less than three (3).

(4) The disbursement of rental replacement housing payments may be in a lump sum payment, or in installments. The full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

Section 24. Replacement Housing Payments - Down Payment Assistance. Down payment assistance may be given to a tenant-occupant of ninety (90) days or more who purchases a replacement dwelling. A displaced person eligible for rental replacement housing payment under Section 23 of this regulation may receive a down payment assistance payment not to exceed $5,250. In order to receive this payment, the full amount of the payment shall be applied toward the purchase price of the replacement dwelling and related incidental expenses. If the rental

assistance payment computed under Section 23 of this regulation would be zero dollars, the displaced person is entitled to receive the $5,250 for a down payment. A displaced person eligible to receive a replacement housing payment as a 180 or more day owner-occupant is not eligible for this payment.

Section 25. Replacement Housing Payment - Sleeping Room Tenant. A displaced person who has occupied a sleeping room for ninety (90) days or more and who is eligible to receive a replacement housing payment, may receive an amount not to exceed $5,250 as a rent supplement, or to enable him to make a down payment on a replacement dwelling. The provisions of Sections 23 or 24 of this regulation shall be followed.

Section 26. Mobile Homes - General. (1) The general provisions for moving expense payments to owners and tenants of conventional dwellings shall be applicable to owners or tenants of mobile homes.

(2) If it is determined that a sufficient portion of a mobile home park is taken that the remainder is not sufficient to continue the operation, and a mobile home in the remaining part of the park is required to be moved as a result of the project, the owner and any tenant shall each be considered a displaced person. A mobile home may be considered a replacement dwelling provided it is substantially a decent, safe and sanitary dwelling.

(3) The ownership or tenancy of the mobile home (not the land on which it is located) shall determine the occupant's status as an owner or a tenant. The length of ownership and occupancy of the mobile home or the mobile home site shall determine the occupant's status as a 180 day or ninety (90) day owner or tenant. The mobile home shall have been occupied on the same site (or in the same mobile home park) for the requisite 180 days or ninety (90) days to make the occupant eligible for a replacement housing payment or rent supplement.

(4) A nonoccupant-owner of a mobile home is eligible for an actual cost moving expense payment.

(5) If the person is displaced from a mobile home park, a nonreturnable mobile home park entrance fee is reimbursable provided it does not exceed the fee at a comparable park or if the Transportation Cabinet determines that it is necessary to pay the fee to effect relocation.

(6) There is no limit to the distance of the move of the displaced person. However, a relocation assistance moving expense payment shall be computed on a move of a distance of no more than fifty (50) miles, except when it is determined that the relocation cannot be accomplished within a fifty (50) mile radius. Beyond the fifty (50) mile radius, approval for a distance payment shall be limited to the nearest available mobile home site.

(7) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a comparable conventional dwelling. If it is determined that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the cost of a comparable replacement dwelling shall be assumed to be the sum of the value of the mobile home, the cost of any necessary repairs or modifications, and the estimated cost of moving the mobile home to a replacement site. If a mobile home is not actually acquired, but the occupant is considered displaced under this administrative regulation, the initiation of negotiations shall be the date of the initiation of negotiations to acquire the land, or, if the land is not acquired, the date the occupant is notified in writing that he is a displaced person for the purpose of these procedures. If the owner is reimbursed for the cost of moving the mobile home under this administrative regulation, he is not eligible for a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(8) There may be other combinations of ownership of occupancy relating to mobile homes not covered in these procedures. In these cases, the Transportation Cabinet shall make every effort to treat the displaced person in a manner consistent with the other provisions of this section.

Section 27. Mobile Home Moving Expense Payments. (1) The general provisions for moving expense payments to owners and tenants of conventional dwellings shall also be applicable to owners and tenants of mobile homes. Displaced individuals or families occupying a mobile home may receive payment for the actual, reasonable expense of moving their personal property. If an owner-occupied mobile home is considered personal property, the cost of moving the mobile home is reimbursable. If the owner chooses to move the mobile home, it shall be moved by a commercial mobile home carrier licensed by the Department of Vehicle Regulation. The owner may choose the mover, and receive reimbursement for the actual, reasonable expenses. Request for payment of moving expenses shall be supported by receipted bills. Prior to authorizing a move of a mobile home, the Transportation Cabinet shall determine the items of personal property to be moved, including the mobile home and any items stored in accessory buildings, and determine that the mobile home mover is a licensed commercial mobile home carrier and obtain from him an estimate of the moving costs. This estimate shall include any necessary utility service connections. If this estimate is not reasonable, the cabinet may approach another mobile home mover or renegotiate the price.

(2) If the mobile home is not acquired, but the mobile home owner-occupant obtains a replacement housing payment under one (1) of the circumstances described in Section 28 (2)(c) of this regulation, the owner shall not be eligible for payment for moving the mobile home, but may be eligible for payment for moving personal property from the mobile home.

(3) However, the following expenses shall be eligible for an actual cost moving expense payment:

(a) The reasonable cost of disassembling, moving, and reassembling any attached appurtenance, such as a porch, deck, skirting, or awning; anchoring of the unit; and utility hookup charges; and

(b) The reasonable cost of repairs or modifications if a mobile home requires repairs or modifications so that it can be moved or made decent, safe and sanitary, and it is determined that it would be economically feasible to incur

the additional expense.

(3) Arrangements may be made between the Transportation Cabinet, the displaced person, and the mover so that the displaced person may present an unpaid moving bill to the Transportation Cabinet for direct payment to the mover.

(4) An application for moving expense payments may be submitted in advance of the move so that payment is made available immediately upon completion of the move. In some unusual circumstances, and with prior approval of the Transportation Cabinet, moving expense payments may be made prior to the actual move.

(5) If a mobile home is considered real property, acquired by the Transportation Cabinet and included in the appraised value of the site, and if the owner repurchases the mobile home from the Transportation Cabinet, the cost of moving the mobile home shall not be eligible for moving expense payments.

(6) If the landowner occupies the mobile home and the mobile home is acquired by the Transportation Cabinet or if a tenant-occupant of a mobile home is displaced, the displaced person shall move his personal property from his mobile home by one (1) of the following methods:

(a) The displaced person may elect to move his personal belongings by the use of a commercial mover as prescribed in Section 10(4) of this regulation.

(b) The displaced person may elect to move his personal property from the mobile home according to the fixed-rate schedule set out in Section 10(5) of this regulation. The room count of furniture shall be based on the actual number of furnished rooms. A small detached shed or building used to store such things as lawn mowers, lawn chairs, hoses, etc., shall be considered as an additional room, if the shed or building contains sufficient personality as to constitute a room.

Section 28. Mobile Home Replacement Housing and Rent Supplement Payments. (1) The replacement housing or rent supplement payment for a mobile home shall be computed in two (2) parts:

(a) The replacement housing or rent supplement payment for the mobile home shall be computed in accordance with the procedures set forth in Sections 15 and 18 through 25 of this regulation.

(b) The replacement housing or rent supplement payment for the mobile home site shall be computed based on comparable sites, but the total payment shall be limited to the maximums established in this administrative regulation according to the displaced person's ownership or tenancy of the land.

(c) The sum of these two (2) parts cannot exceed the $5,250 or $22,500 limit set for rent supplement or replacement housing payments. The total of these two (2) parts cannot exceed $22,500.

(2) A mobile home owner-occupant who has owned and occupied the mobile home for 180 days or more shall be eligible for a replacement housing payment not to exceed $22,500 provided:

(a) The displaced person owns the displacement mobile home and occupied it on the displacement site at least 180 days immediately prior to the initiation of negotiations;

(b) The displaced person meets the other basic eligibility requirements in Section 18 of this regulation; and

(c) The Transportation Cabinet acquired the mobile home as real property, or the mobile home is not acquired by the Transportation Cabinet but the owner is displaced because it is determined that the mobile home:

1. Is not and cannot economically be made decent, safe and sanitary; or

2. Cannot be relocated without substantial damage or unreasonable cost; or

3. Cannot be moved because there is no available comparable replacement site; or

4. Cannot be relocated because it does not meet mobile home park entrance requirements.

If the mobile home is not actually acquired, the acquisition cost of the displacement dwelling used for the purpose of computing the price differential amount, shall include the salvage value or trade-in value of the mobile home, whichever is higher.

(3) A displaced owner-occupant of 180 days or more of a mobile home and site who meets the provisions of subsection (2) of this section:

(a) Shall be eligible for replacement housing payments for the following specific items:

1. The additional costs necessary to purchase replacement housing in accordance with Section 18 of this regulation;

2. The amount necessary to compensate him for the loss of favorable financing on his existing mortgage in the financing of replacement housing under the provisions of Section 21 of this regulation; and

3. An amount to reimburse the owner for incidental expenses incurred in the purchase of replacement housing in accordance with Section 22 of this regulation.

(b) Who is eligible for a replacement housing payment and who elects to rent is eligible for a rental replacement housing payment, not to exceed $5,250.

(4) If the Transportation Cabinet acquires both the mobile home and site from the owner-occupant of 180 days described in subsection (2) of this section, the replacement housing payment shall be computed as follows:

(a) If the owner purchases replacement housing the amount, if any, which when added to the amount for which the Transportation Cabinet acquired his mobile home and site equals the lesser of the amount the owner is required to pay for a decent, safe and sanitary replacement mobile home and site, or if a mobile home and site are not available, the cost of a conventional dwelling, and the amount determined by the Transportation Cabinet as necessary to purchase a comparable mobile home and site or conventional dwelling in accordance with the provisions of Section 18 of this regulation.

(b) If the owner elects to rent, the Transportation Cabinet shall compute the rental replacement housing payment by subtracting the fair market rent, including utilities as determined by the Transportation Cabinet from the amount the displaced person actually pays for a rental replacement dwelling, including estimated average monthly utilities, if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home and mobile home site or conventional dwelling, including the estimated average monthly utilities multiplied by forty-two (42).

(5) If the Transportation Cabinet from the owner-occupant of 180 days or more described in subsection (2) of this section acquires the site, but not the mobile home situated upon the

site, and the mobile home is required to be moved, the replacement housing payment shall be computed as follows:

(a) If the owner purchases a replacement site, the amount, if any, which when added to the amount for which the Transportation Cabinet acquired his mobile home site equals the lesser of the amount the owner is required to pay for a comparable site, or the amount determined by the Transportation Cabinet as necessary to purchase a comparable mobile home site;

(b) If the owner elects to rent a replacement site, the rental replacement housing payment shall be computed by subtracting the fair market rent including utilities as determined by the Transportation Cabinet from the amount the displaced person actually pays for a rental site, including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home site, including the estimated average monthly utilities. To compute the actual payment the cabinet shall multiply that amount by forty-two (42).

(6) If an owner-occupied mobile home situated on a rental site is acquired from the owner-occupant of 180 days described in subsection (2) of this section, the replacement housing payment shall be computed as follows:

(a) If the owner purchases a replacement mobile home, the amount, if any, which when added to the amount for which the Transportation Cabinet acquired the mobile home equals the lesser of the actual amount the owner is required to pay for a replacement dwelling, or the amount determined by the Transportation Cabinet as necessary to purchase a comparable mobile home, plus a site rental payment computed by subtracting the actual or fair market rent, including utilities as determined by the Transportation Cabinet from the amount the owner pays for a rental site including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home site, including the estimated average monthly utilities. To determine the actual payment the Transportation Cabinet shall multiply that amount by forty-two (42). The owner of the mobile home may choose to purchase a comparable mobile home site as an alternative to renting a site. If so, to receive the replacement housing payment, the full amount of the payment shall be applied toward the purchase price of the replacement lot and related incidental expenses. Also, the displaced person shall purchase the lot and place his mobile home on the replacement lot. This payment shall be limited to $5,250.

(b) If the owner elects to rent a replacement mobile home, the rent supplement payment shall be computed by subtracting the actual or fair market rent, including utilities as determined by the Transportation Cabinet from the amount the displaced person pays for a rental mobile home and site, including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home and site including the estimated average monthly utilities. The Transportation Cabinet shall then multiply that amount by forty-two (42) to compute the actual payment.

(7) If the Transportation Cabinet acquires the site where the owner-occupant of 180 days of a mobile home described in subsection (2) of this section rents the site but the cabinet does not acquire the mobile home, the replacement housing payment shall be determined as follows:

(a) If the owner of the mobile home elects to purchase a replacement site, the replacement housing payment shall be a down payment assistance payment not to exceed $5,250 if the owner of the mobile home purchases and occupies the replacement site within one (1) year. The full amount of the payment shall be applied to the purchase of a replacement mobile home site and related expenses.

(b) If the owner of the mobile home elects to rent a replacement site, the rental replacement housing payment shall be determined by subtracting the actual or fair market rent including utilities as determined by the Transportation Cabinet from the amount the owner pays for a rental mobile home site including the estimated average monthly utilities, or if less, the amount determined by the cabinet as necessary to rent a comparable mobile home site including utilities. The Transportation Cabinet shall then multiply that amount by forty-two (42).

(8) A displaced owner-occupant of a mobile home who has occupied for less than 180 days the mobile home on the site from which he is being displaced, and who is otherwise eligible under the provisions of Section 18 of this regulation is eligible for a replacement housing payment not to exceed $5,250. The replacement housing payment may enable him to make a down payment on the purchase of replacement housing in accordance with the provisions of paragraph (a) of this subsection and reimburse him for the actual expenses incidental to the purchase. If he elects to rent, a rental replacement housing payment shall be determined as provided in paragraph (b) of this subsection. The payment is to be computed and disbursed in accordance with the provisions of Section 23 of this regulation.

(a) When the cabinet is acquiring both the mobile home and site from the owner-occupant, the displaced person eligible for a rental replacement housing payment may receive a down payment assistance payment not to exceed $5,250 only if the full amount of the payment is applied to the purchase price of the replacement dwelling and related incidental expenses. The amount for which he is eligible shall be limited to the amount he would receive if he were an owner-occupant of 180 days or more.

(b) If the Transportation Cabinet acquires the mobile home and site from the less than 180 days owner-occupant, a rental replacement housing payment shall be computed by subtracting the monthly fair market rent of the mobile home and site including utilities as determined in by the cabinet from the amount the owner actually pays for a rental mobile home and site including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home and site, including the estimated average monthly utilities. To compute the actual payment the Transportation Cabinet shall multiply this amount by forty-two (42).

(9) If the Transportation Cabinet acquires the site but not the mobile home from the owner-occupant described in subsection (2) of this section except that he had occupied the mobile home for less than 180 days, the replacement housing payment shall be determined as follows:

(a) If the owner purchases conventional replacement housing or purchases a site to which the mobile home is moved, the replacement housing payment shall be determined as in subsection 8(a) of this section.

(b) If the owner elects to rent replacement housing, a rental replacement housing payment shall be computed by subtracting the monthly fair market rent of the acquired site, including utilities as determined by the cabinet from the amount the displaced person actually pays for a rental replacement mobile home site, including the estimated average monthly utilities, or if less, the amount determined by the Transportation Cabinet as necessary to rent comparable mobile home site including the estimated average monthly utilities. To compute the actual payment the Transportation Cabinet shall then multiply this amount by forty-two (42).

(10) A displaced tenant of a mobile home who has occupied for at least ninety (90) days the mobile home on the site from which he has been displaced and who is otherwise eligible under the provisions of Section 23(1) of this regulation, is eligible for a replacement housing payment, not to exceed $5,250. The rental replacement housing payment shall be determined in accordance with the provisions of Section 23 of this regulation. If the displaced person elects to purchase a replacement dwelling, he shall receive a payment in accordance with Section 24 of this regulation.

Section 29. Last Resort Housing. The last resort housing procedures of this section shall be implemented when it is determined that a Transportation Cabinet project cannot proceed to actual construction because comparable replacement sale or rental housing, within the monetary limits is not available and the housing cannot otherwise be made available. A person cannot be required to move from his dwelling unless at least one (1) comparable replacement dwelling is made available to the person.

(1) If comparable decent, safe and sanitary housing is not available, any decision to provide last resort housing assistance shall be justified either:

(a) On a case-by-case basis, during which consideration has been given to:

1. Availability of comparable housing in the area of the project;

2. Resources available to provide comparable housing; and

3. Individual circumstances of the displaced person; or

(b) It is determined that:

1. There is little, if any, comparable replacement housing available to a displaced person within an entire project area. Therefore, a case-by-case justification for last resort housing assistance is not necessary;

2. A project cannot be advanced to completion in a timely manner without last resort housing assistance; and

3. The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total project costs.

(2) No displaced person shall be deprived of any rights the person may have under KRS 56.610 to 56.760. No displaced person shall be required, without the person's written consent, to accept a dwelling provided by the Transportation Cabinet under the procedures described in subsection (3) of this section in lieu of any acquisition payment or any relocation payment for which the person may be eligible;

(3) The methods of providing last resort housing include, but are not limited to:

(a) A replacement housing payment in excess of the limits set forth in Sections 18 and 23 of this regulation. Rental assistance subsidy in last resort housing may be provided in installments or in a lump sum as determined by the Transportation Cabinet;

(b) Rehabilitation of or addition to an existing replacement dwelling;

(c) Construction of a new replacement dwelling;

(d) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may or may not be secured by the real property. The loan may or may not be interest free;

(e) The relocation and, if necessary, rehabilitation of a dwelling;

(f) The purchase of land or a replacement dwelling by the Transportation Cabinet and subsequent sale or lease to or exchange with a displaced person;

(g) Removal of barriers to the handicapped; and

(h) The change in status of the displaced person from tenant to homeowner when it is more cost effective to do so, as in cases where a down payment may be less expensive than a last resort rental assistance payment.

(4) Under special circumstances, modified methods of providing housing of last resort permit consideration of:

(a) Replacement housing based on space and physical characteristics different from those in the displacement dwelling;

(b) Upgraded, but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate the individuals or families displaced from marginal or substandard housing with probable functional obsolescence; or

(c) For the displaced person who is ineligible for a rent supplement or a replacement housing payment (for example, a tenant of less than ninety (90) days or a person who occupies the property subsequent to the initiation of negotiation) when comparable rental replacement housing is not available at rental rates within the person's financial means. The housing provided shall be comparable housing. To determine if a tenant in this category is entitled to a replacement housing payment, the Transportation Cabinet shall subtract thirty (30) percent of the person's gross monthly household income from the cost of a comparable replacement dwelling and multiply the difference by forty-two (42). There shall be no prohibition against making direct payments to a displaced person under last resort housing. Each case shall be reviewed to determine if it is the best interest of the person or family. The payment may be made to a third party or in installments.

Section 30. Appeals. (1) A person may file a written appeal and request for hearing with the Transportation Cabinet in any case in which the person believes that the cabinet has failed to properly determine his eligibility for, or the amount of the payment required under the provisions of this administrative regulation. The Transportation Cabinet shall consider a written appeal regardless of form. The appeal

shall be filed within sixty (60) days of the date of his written notice from the Transportation Cabinet of the Cabinet's determination on the person's claim.

(2) A person may be represented by legal counsel or other representative in connection with his appeal, but solely at his own expense.

(3) The Secretary of the Transportation Cabinet shall appoint a hearing officer for the purpose of conducting the hearing and making a recommendation to the secretary with reference to the appeal. At the hearing, technical rules of evidence shall not apply. However, the hearing officer shall be authorized to issue rulings regarding the competency, relevancy and materiality of the evidence to be presented at the hearing. A record of all evidence introduced at the hearing shall be made by the Transportation Cabinet.

(4) The hearing officer shall make findings of facts, conclusions of law and a recommended decision on the disposition of the appeal. A copy of this shall be made available to all parties concerned, including the person requesting the hearing and the attorney representing the Transportation Cabinet in this appeal procedure. They shall have twenty (20) days in which to comment on or object to the hearing officer's recommended decision. These comments or objections shall be presented in writing.

(5) The Transportation Secretary or his representative, who shall not have been directly involved in the action appealed, shall consider not only the hearing officer's recommended decision but also any written comments received from the involved parties in making his final ruling.

(6) If the full relief requested in the appeal is not granted, the Transportation Cabinet shall advise the person of his right to seek judicial review.

O. GILBERT NEWMAN, State Highway Engineer
B. G. BODNER, Executive Director
MILO D. BRYANT, Secretary

APPROVED BY AGENCY: February 23, 1991

FILED WITH LRC: March 4, 1991 at 8 a.m.

PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on April 22, 1991 at 9:30 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by April 17, 1991 so notify this agency. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is cancelled, written comments will only be accepted until April 17, 1991. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen

(1) Type and number of entities affected: Three or four persons who own rental property which the Transportation Cabinet is acquiring.

(a) Direct and indirect costs or savings to those affected:

1. First year: Savings not to exceed $10,000 per person.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Cost not to exceed $30,000.

2. Continuing costs or savings: Same

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: No alternative. The Federal Highway Administration determined that these persons should be eligible for business reestablishment costs.

(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. The entire administrative regulation is a tiering of the level of payments to relocated persons.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings & Construction
Division of Building Codes Enforcement
(Proposed Amendment)

815 KAR 7:013. Kentucky building code plan review fees.

RELATES TO: KRS Chapter 198B

STATUTORY AUTHORITY: KRS 198B.050(5), 198B.060(17)

NECESSITY AND FUNCTION: KRS 198B.050(5) authorizes the Board of Housing, Buildings and Construction to issue regulations which are necessary to implement the Kentucky Building Code, and KRS 198B.060(17) authorizes the department to create a schedule of fees to fully cover the cost of the services performed under the code. The fees set forth herein are identical to the fee schedule used by the department since December of 1982. <u>This amendment is necessary to more closely approach covering the costs of the statutory services. The Board of Housing approved the increased fees in February, 1991.</u>

Section 1. Submission of Plans and Fees. (1) All plans and specifications required to be submitted to the department under the Kentucky Building Code shall be accompanied by the applicable fee as set forth in this regulation, rounded to the nearest dollar.

(2) All fees required herein shall be in check form payable to the Kentucky State Treasurer.

(3) No approval for construction shall be issued by the department until all required fees have been paid.

(4) The plan review fees required by this regulation are intended to cover the cost of corresponding inspections for compliance with the [such] plans.

Section 2. New Construction. (1) Departmental plan review fees for new buildings shall be calculated by multiplying the total square footage times the cost per square foot of each occupancy type as listed in the following table. Total square footage shall [will] be determined by the outside dimensions of the building. Minimum fee for review of plans under this section shall [will] be seventy-five (75) [fifty (50)] dollars.

Occupancy Type	Cost per Square Foot
Residential (excluding single family dwellings and duplexes)	4 [2] cents
Assembly Occupancies	
Nightclub/restaurants	5 [3.5] cents
All other assembly	5 [3] cents
Educational	4 [2] cents
Day care centers	4 [2] cents
Business	4 [2] cents
Mercantile	4 [2] cents
Industrial factories	3 [2] cents
Warehouses	2.5 [1.5] cents
Institutional	5 [2.5] cents
Frozen food plants	4 [2] cents
High hazard	4 [3] cents
All other nonresidential	4 [2] cents

(2) Plan review fees for additions to existing buildings, which do not require the entire building to conform to the Kentucky Building Code, shall be calculated in accordance with subsection (1) of this section by the measurement of the square footage of the addition, only, as determined by the outside dimensions of the addition. Minimum fee for review of plans under this section shall [will] be seventy-five (75) [fifty (50)] dollars.

(3) Plan review fees for existing buildings in which the use group or occupancy type is changed shall be calculated in accordance with subsection (1) of this section by using the total square footage of the entire building or structure under the new occupancy type as determined by the outside dimensions. Minimum fee for review of plans under this section shall [will] be seventy-five (75) [fifty (50)] dollars.

(4) Plan review fees for alternations and repairs not otherwise covered by this section shall be calculated by multiplying the cost for the repairs by .002 [.001]. Minimum fee for review of plans under this section shall [will] be seventy-five (75) [fifty (50)] dollars.

Section 3. Specialized Fees. In addition to the fees required by Section 2 of this regulation, the following fees shall [must] be paid for the specialized plan reviews listed:

(1) Sprinkler fees.

Automatic Sprinkler Review Fee Table

Sprinkler Heads	Plan Review Fee
4-200	$ 75 [50]
201-300	100 [60]
301-400	125 [80]
401-750	150 [100]
over 750	$150 plus 15 cents [100 plus 10 cents] per sprinkler over 750

(2) Fire detection system review fee: zero to 20,000 square feet shall be seventy-five (75) dollars; over 20,000 square feet shall be seventy-five (75) dollars plus fifteen (15) dollars for each additional 10,000 square feet in excess of 20,000 square feet [ten (10) dollars per 5,000 square feet up to 70,000 square feet; over 70,000 square feet - $140 plus fifteen (15) dollars per each additional 20,000 square feet].

(3) Standpipe plan review fee: fifty (50) [thirty (30)] dollars (Combination standpipe and riser plans will be reviewed under automatic sprinkler review fee schedule.)

(4) Carbon dioxide suppression system review fee: One (1) to 200 pounds of agent shall be seventy-five (75) [- fifty (50)] dollars; over 200 pounds of agent shall be seventy-five (75) [- fifty (50)] dollars plus two (2) cents per pound in excess of 200 pounds.

(5) Halon suppression system review fee: Up to thirty-five (35) pounds of agent shall be seventy-five (75) [- fifty (50)] dollars; over thirty-five (35) pounds shall be seventy-five (75) [- fifty (50)] dollars plus five (5) cents per pound in excess of thirty-five (35) pounds.

(6) Foam suppression system review fee: one (1) dollar per gallon of foam concentrate. The fee for review of plans under this section shall not be less than seventy-five (75) [fifty (50)] dollars or more than $1,500 [1,000].

(7) Commercial range hood review fee: seventy-five (75) [twenty (20)] dollars per hood.

(8) Dry chemical systems review fee (except range hoods): one (1) to thirty (30) pounds of agent shall be seventy-five (75) [- thirty (30)] dollars; over thirty (30) pounds of agent shall be seventy-five (75) [- thirty (30)] dollars plus twenty (20) cents per pound in excess of thirty (30) pounds.

(9) Flammable, combustible liquids or gases and hazardous materials plan review fee: fifty (50) dollars per tank, plus twenty-five (25) dollars for each additional tank and fifty (50) dollars per piping system including valves, fillpipes, vents, leak detection, spill and overfill detection, cathodic protection or associated components. [Flammable liquid or pressure tank fee: twenty-five (25) dollars for the first tank and five (5) dollars for each additional tank.]

CHARLES A. COTTON, Commissioner
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: February 21, 1991
FILED WITH LRC: March 15, 1991 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on April 23, 1991 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, U.S. 127 South, Frankfort, Kentucky. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the

public hearing will not be made unless a written request for a transcript is received. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, U.S. 127 South, Frankfort, Kentucky 40601. If no written requests to appear at the public hearing are received by April 18, 1991, the hearing may be cancelled.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected:

(a) Direct and indirect costs or savings to those affected: Direct costs are that fees are doubled and if level of construction is consistent, then the total increase in costs spread over all projects is projected at $375,000 but savings are indirect and proportionate in quality of services, reduction of delays and more efficient plan review and inspection.

1. First year: $375,000 costs.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs (note any effects upon competition): Level of construction, quality of plans, availability of sufficient personnel are variable factors which reduce or increase both costs and savings.

(b) Reporting and paperwork requirements: Remains the same. Single submission concept for architectural drawings.

(2) Effects on the promulgating administrative body: The increased fees will allow the department to hire sufficient personnel, qualified for this purpose.

(a) Direct and indirect costs or savings: There is no direct costs or savings, as such, but the result is better services in first year and, hopefully, on a continuing basis.

1. First year: Increase in fees allows retention of technical personnel and computerization to handle massive amount of technical data.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: Level of construction and adequacy of plans submission.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There is no effect on local revenue by this regulation; but this agency's receipts will increase by $375,000 (estim) which will be used up in salaries and office travel expenses.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Flat fees for each permit requested because not appropriate. Large buildings require more time in inspection and plan review, sprinkler systems require separate review and certain occupancies are more complicated to review and inspect and paperwork more detailed. General fund money not sufficient to support existing programs.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The department is not aware of any statute, regulation or policy in conflict with this regulation. However, local governments are required to adopt their own fee schedules and they should not be duplicative but reflect value of services rendered.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The regulation specifically states that the fees only apply to the department.

(6) Any additional information or comments: The Board of Housing, Buildings and Construction approved the increased fees in February, 1991.

TIERING: Was tiering applied? Yes. Each occupancy type has had assigned to it a factor which represents the percentage value of time and expertise necessary to plan review and inspect the facility category. Therefore, the fee for the building depends both on the size and type of occupancy.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 10:030. Sanitarians.

RELATES TO: KRS 223.010 to 223.080, 223.990

STATUTORY AUTHORITY: KRS 194.050, 211.090[, HB 799 of the 1990 GA]

NECESSITY AND FUNCTION: KRS 223.010 to 223.080, and 223.990 [and HB 799] authorize the Cabinet for Human Resources to establish minimum standards and qualifications for registered sanitarians. This regulation provides uniform standards for registered sanitarians and procedures for processing applications and to establish fees for examination and registration.

Section 1. Definitions. As used in this regulation: "Contact hour" means a unit of measure for approved instruction by Registered Sanitarian Examining Committee. This unit is determined to equal actual classroom hours. Units of measure may be in half hour increments.

[(1) "Committee" means the Sanitarian Examining Committee consisting of five (5) members who are appointed in accordance with KRS 223.020.]

[(2) "Cabinet" means the Cabinet for Human Resources.]

[(3) "Registered sanitarian" means a person trained in the field of public health sanitation who has qualified for registration in accordance with the provisions of KRS 223.010 to 223.080 and 223.990, and the regulations promulgated thereunder.]

Section 2. Minimum Standards and Qualifications. In addition to the specific requirements provided by KRS 223.030, an applicant for registration as a sanitarian shall[:]

[(1)] have graduated from an accredited college or university with a baccalaureate or higher degree, which shall include satisfactory completion of at least twenty-seven (27) quarter hours, or eighteen (18) semester hours, of academic training in the basic physical, chemical, biological, or sanitary sciences. [; and]

[(2) Be of good moral character.]

Section 3. Applications for Registration. Applications for registration as a registered sanitarian shall be submitted to the committee on forms prepared and issued by them. Each application fee shall be remitted by a Post Office or express money order, bank draft, or check payable to the order of the Kentucky State Treasury [cabinet]. The committee may correspond with any references given on the applicant's application and may also contact any former employer of the applicant concerning his prior service in the field of public health sanitation.

Section 4. Examinations. The committee shall conduct examinations at least once a year at such time and place as it may deem expedient. The examination may be either oral, written, or both. A fee of thirty (30) dollars shall accompany the application for examination. All registration certificates issued under the provisions of this regulation shall expire June 30 following date of issue, unless renewed by the payment of a twelve (12) dollar registration fee.

Section 5. Certificates of Registration. After the committee has approved an application and all the requirements provided by law are fulfilled, the committee shall certify such fact to the secretary, who in turn shall issue a small card to the approved applicant certifying that he holds a certificate of registration. The committee shall assign serial numbers to each certificate of registration.

Section 6. Renewals. It shall be the duty of the secretary-treasurer of the committee to notify all registered sanitarians at least thirty (30) days prior to the expiration date of their certificate that they renew their certificate of registration as provided by law. Effective July 1, 1992 before renewal of registration can be issued the registrant must submit evidence of having completed ten (10) contact hours approved by the committee. The committee shall establish guidelines for retaining registration by inactive registrants.

Section 7. Revocation of Certificates of Registration. In any action involving the revocation of a certificate of registration, the committee shall refer the matter to the secretary. The committee is authorized to set the time and place of a hearing and the respondent shall be given at least thirty (30) days prior notice. At the conclusion of the hearing, the committee shall make a recommendation to the secretary in writing. The secretary is authorized to affirm, reverse, cancel, or modify the recommendation of the committee.

Section 8. Expenditure of Funds. Expenditures for examinations, clerical expenses, training and reference materials, including approved home study courses, and for affiliation with any national sanitarian registration organization, may be made out of the trust and agency fund created by KRS 223.050.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: March 5, 1991
FILED WITH LRC: March 14, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for April 22, 1991, at 9 a.m. in the Employment Services Conference Room, 2nd Floor of the Cabinet for Human Resources Building. However, this hearing will be cancelled unless interested persons notify the following office in writing by April 17, 1991 of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James Corum
(1) Type and number of entities affected: 319 registered sanitarians.
(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: Requires proof of attendance.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: Minor administrative cost relating to recordkeeping.
2. Continuing costs or savings: Minor administrative cost relating to recordkeeping.
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues: Minor effect on state revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: CEU's (continuing education units) were considered but opted for contact hours because of costs.
(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. No way to tier.

PROPOSED REGULATIONS RECEIVED THROUGH NOON, MARCH 15, 1991

BOARD OF ELECTIONS

31 KAR 5:010. Absentee voting.

RELATES TO: KRS Chapter 117
STATUTORY AUTHORITY: SB 8, 1991 Special Session of the General Assembly
NECESSITY AND FUNCTION: This regulation is necessitated by KRS 117.085 which requires the State Board of Elections to issue administrative regulations to preserve absentee voting rights of residents of Kentucky who are military and related personnel serving on active duty outside the United States.

Section 1. Electronic transmission of absentee ballots for military and related personnel serving on active duty outside the United States shall be permitted in the May 28, 1991 Primary Election.

Section 2. (1) Electronic transmission of an absentee ballot and application to persons authorized by Section 1 of this regulation shall include transmission of the:
(a) Federal post card application to the county clerk from the voter; and
(b) Absentee ballot from the county clerk to the voter.
(2) The voter shall return the absentee ballot by mailing it to the county clerk in an official federal write-in absentee ballot security envelope, which contains an inner envelope.
(3) If security envelopes are not available, the absentee ballot may be returned in two (2) plain envelopes which contain all of the information on the official federal write-in absentee security envelope.

Section 3. The transmission of the absentee ballots by the county clerk shall be accomplished by using the facsimile number provided to the State Board of Elections by the presidential designee pursuant to the Uniform and Overseas Absentee Voting Act 42 USC 1973ff.

This is to certify that I have reviewed this administrative regulation and concur in its promulgation.

FREDERIC J. COWAN, Attorney General

BREMER EHRLER, Chairman
APPROVED BY AGENCY: March 14, 1991
FILED WITH LRC: March 14, 1991 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 22, 1991 at 10 a.m. in Room 105 of the Capitol Annex, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 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: 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 and State Board of Elections.
(a) Direct and indirect costs or savings to those affected: Because of the ability to use the Fax machine the county clerks will not have to spend money on postage for mailing absentee ballots.
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 as a result of this regulation. Transmission of absentee ballots to eligible persons shall be accomplished by an 800 number provided by the Department of Defense.
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: The county clerk will process all absentee ballots in the same manner. However, a facsimile transmittal sheet will accompany the ballot.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Electronic transmission is the most feasible way that the ballot can be received and returned given the length of time presently required to send or receive regular mail to the Middle East.
(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 statute applies uniformly to all military and related personnel serving on active duty outside the United States.

KENTUCKY AGRICULTURAL FINANCE CORPORATION

200 KAR 18:010. Guidelines for FmHA loan program.

RELATES TO: KRS 247.940 through 247.994
STATUTORY AUTHORITY: KRS Chapter 13A, 247.946
NECESSITY AND FUNCTION: KRS 247.946 authorizes the Kentucky Agricultural Finance Corporation to promulgate regulations in accordance with KRS Chapter 13A, to govern the application for and provision of financial assistance to qualified

applicants for the purpose of financing agricultural loans from the Kentucky Agricultural Finance Corporation FmHA Loan Program.

Section 1. Definitions. For the purposes of this regulation the words and terms used shall have the same meaning as in KRS 247.942, with the following additions:

(1) "Act" means the Kentucky Agricultural Finance Corporation KRS Chapter 247.940 to 247,994, as amended.

(2) "Applicant" for purposes of this program shall have the same meaning given pursuant to KRS 247.942(2)(b) of the Act.

(3) "Application certification" means the certification attached to the FmHA guaranteed loan stating the applicant meets all Kentucky Agricultural Finance Corporation (hereinafter "KAFC") qualifications.

(4) "Assignment of guarantee" means FmHA's document outlining the terms, conditions, and obligations of the lender, purchaser and FmHA.

(5) "Commitment letter" means letter issued by the corporation to the lending institution stating the corporation's intent to purchase a portion of the FmHA guaranteed loan by a qualified applicant. The commitment letter is subject to FmHA final approval.

(6) "Conditional commitment letter" means FmHA's analysis of the application giving preliminary approval of the guarantee.

(7) "Corporation staff" means the staff of the Office of Financial Management and Economic Analysis.

(8) "FmHA" means the Farmers Home Administration and any successors or assigns. FmHA guarantee means the unconditional obligation of the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture as guarantor of the payment of principal of and interest on the guaranteed portion of the qualified loan purchased through the program as evidenced by the loan note guarantee.

(9) "Guaranteed portion" means as to any qualified loan, the portion of principal and interest payments which are guaranteed by the FmHA.

(10) "Interest rates" mean the corporation shall establish interest rates based on the prevailing market conditions. The rate of interest shall be set forth in the commitment letter.

(11) "Lender's agreement" means FmHA's agreement between the lending institution and the borrower.

(12) "Lender certification" means certification attached to the FmHA guaranteed loan stating the applicant and lending institution meet the KAFC qualifications.

(13) "Loan note guarantee" means FmHA's ninety (90) percent guarantee on the qualified loan.

(14) "Participation" means an undivided ownership interest in the guaranteed portion of a qualified loan as evidenced by a loan note guarantee.

(15) "Program" means the corporation's FmHA loan program for applicants defined above.

(16) "Qualified loan" means a loan made on or after February 1, 1991, by a lending institution to an applicant, which loan is the subject of a FmHA guarantee and has a term not in excess of three (3) years, providing for interest on the unpaid principal amount thereof at the fixed rate stipulated in the commitment letter issued with respect to such loan.

(17) "Servicing fee" means a fee payable to the originating lending institution, equal to a maximum of one and one-half (1 1/2) percent per annum of the outstanding principal of the amount of the guaranteed portion of each qualified loan.

(18) "Unguaranteed portion" means the portion of a qualified loan which is not evidenced by participation and which is not the subject of an FmHA guarantee.

Section 2. Eligible Lender. In order to participate as a lending institution in the program, a lending institution must be an eligible lender under applicable FmHA requirements and the definition of lending institution pursuant to KRS 247.942(13). The lender shall comply with the following criteria:

(1) The lender shall sign and return the lender's certification when requested.

(2) The lender must certify that the loan is a new agricultural loan and is not tied to any existing loan.

Section 3. Eligible Applicant. In order to be eligible for a loan under the program, any applicant as defined in KRS 247.942(2)(b) is eligible to apply to receive financial assistance for an FmHA loan under the program. The applicant shall comply with the following criteria:

(1) An applicant must meet the FmHA loan eligibility criteria; and

(2) An applicant must have his principal farming operation in the Commonwealth of Kentucky; and

(3) The applicant shall not have defaulted on any corporation loan or loans under other state or federal loan programs; and

(4) The applicant must sign and return the application certification.

Section 4. Program Participation. (1) Lending institutions will be notified of funds available to purchase participations from time to time as funds become available. A lending institution should submit an application for a FmHA guarantee based on a loan interest rate negotiated between the lending institution and the applicant and permitted by FmHA. If a qualified loan is approved by the corporation, the loan documents must be amended to provide for the program interest rate as provided for the loan.

(2) When a lending institution has received a conditional amendment for guarantee from FmHA and has determined that the proposed applicant and the loan meet the program eligibility standards, then the lending institution shall forward copies of the following documents to the corporation:

(a) An attested copy of a conditional commitment letter for guarantee from FmHA.

(b) A copy of the application from FmHA for a guaranteed loan.

(c) The KAFC FmHA loan program application certification and lender's certification.

(d) The lender's agreement.

(3) Submission of these documents serves as the lending institution's notice to the corporation that the lending institution intends to sell the guarantee portion of the qualified loan to the corporation to comply with their requirements. Any revisions or additions to

documents required for FmHA should be forwarded to the corporation. After receipt of the lending institution's submission of these documents, the corporation will inform the lending institution whether the loan is eligible for inclusion in the program.

Section 5. Loan Closing. The qualified loan must be closed in accordance with the FmHA regulations. The lending institution must completely disburse the qualified loan and the lending institution should notify the corporation immediately if delay is anticipated.

(1) The lending institution should contact the corporation after:

(a) Receipt of loan note guarantee, from FmHA; and

(b) When the loan has been fully funded.

(2) The corporation will issue a written commitment letter. The commitment letter shall be in force for thirty (30) days, during which the interest rate on the loan must be modified to reflect the interest rate set forth in the commitment letter. Upon receipt of the written commitment, the lending institution should notify FmHA in writing if:

(a) The interest rate changed;

(b) There is a conversion to a fixed rate interest; or

(c) There is a conversion to a change in the applicant's payments.

(3) No concurrence by FmHA is necessary when the interest rate set forth in the commitment letter is the same as or lower than the interest rate originally provided by FmHA and the loan has already been approved by FmHA as a fixed rate loan. The applicant and lending institution's execution of a note modification must be in effect within the fifteen (15) day period that the commitment letter is effective.

(4) If the commitment letter expires prior to the execution of the note modification, the lending institution should contact the corporation immediately.

(5) The exception to the above procedure is when the lending institution and FmHA are able to agree on a common interest rate to the applicant within the ten (10) day period. In that case the lending institution should close the loan with the interest rate set forth in the commitment letter, and the lending institution should fund the loan. Modification of the note will not be necessary in this instance.

Section 6. Participation Purchase Procedure. (1) The procedure for purchasing the participations as regulated by FmHA shall be governed by the terms and conditions in the lender's agreement, the loan note guarantee and the assignment of guarantee agreement, which all documents set forth the rights and obligations of the purchaser, the lender and FmHA.

(2) Participants will be purchased at par plus any interest accrued to the date of purchase.

(3) After the loan note guarantee has been modified to reflect the program interest rate, the lending institution will submit to the corporation the following documents:

(a) A copy of the lender's agreement;

(b) A copy of an attested loan note guarantee;

(c) A certified copy of the note and modification to the note, if applicable;

(d) Any other FmHA required documentation.

(4) The corporation will sign and forward to FmHA the original, certified assignment guarantee agreement. Upon FmHA's determination that the assignment guarantee agreement, has been properly completed, FmHA will inform the corporation that the participation is ready for sale. The corporation will then contact the lending institution to arrange a settlement date. Funds will be deposited as agreed between the corporation and the lending institution.

Section 7. Servicing. (1) The lending institution shall hold the qualified loan instruments and shall collect all payments of principal and interest from the applicant. In the capacity of server, the lending institution shall apply its standards of loan servicing as employed by prudent lenders and shall do strictly in accordance with FmHA's requirements.

(2) The lending institution shall forward to the corporation annually photocopies of guarantee loan status reports.

(3) The following procedures apply to qualified loan payments received in the month due:

(a) Each qualified loan payment remittance by the lender of the pro rata share due to the corporation on the participation shall be sent to the corporation within ten (10) days of receipt in the manner required by the assignment guarantee agreement.

(b) The statement of account shall:

1. The total amount received from the applicant under the note;

2. The interest rate paid to date;

3. The date on which such payment was received;

4. The pro rata share of interest due to the corporation with respect to the guaranteed portion (less the lending institution's servicing fee);

5. The pro rata share of principal due to the corporation with respect to the guaranteed portion;

6. The total amount to be remitted to the corporation; and

7. The remaining outstanding principal balance of the guaranteed portion. The lending institution's servicing fee shall be a maximum of one and one-half (1 1/2) percent per annum computed on the unpaid principal balance of the guaranteed portion of the qualified loan for the period of actual services performed by the lending institutions.

(4) All payments received in a month other than the month due and payable prepayments or late payments shall be remitted within ten (10) days of receipt by the lending institution including prepayments which include payment during the month of prepayment. The lender shall provide to the corporation information listed above.

Section 8. Delinquencies. (1) Lending institutions are expected to collect or cause to be collected delinquent loan payments under the program with the same diligence as with respect to other loans in their portfolio in accordance with the lender's agreement.

(2) In the event the qualified loan is past due more than thirty (30) days the lending institution must set up a meeting to include the applicant, FmHA, and the lending institution to determine:

(a) The reason for the default;

(b) Whether the reason is a temporary or permanent condition;

(c) The applicant's attitude relative to the

debt; and

(d) The lending institution and FmHA's actions to be taken. The lending institution must promptly advise the corporation in writing of its and FmHA's recommendations for curing the default.

(3) The lending institution shall provide copies or otherwise inform the corporation in writing of all agreements, written or oral, with the applicant as to repayment agreements or other actions to be taken in connection with a delinquency. The lending institution shall notify the corporation and FmHA in writing upon ascertaining that any agreement cannot be met by the applicant.

Section 9. Repurchase of Defaulted, Qualified Loans. Upon failure of the applicant to prepay principal or interest due for sixty (60) calendar days or more or the lending institution's failure to remit to the corporation its pro rata share of any payment made by the applicant within thirty (30) days receipt thereof, the corporation shall act to protect its investment interest in a matter permitted by the assignment guarantee agreement, as follows:

(1) The corporation will demand in writing the lending institution's repurchase of the participation. The lending institution shall repurchase within thirty (30) days of the corporation's request as set forth in the assignment of guarantee agreement. FmHA demands the lending institution repurchase the participation to facilitate the accounting for funds, resolve the problem, and permit the applicant to cure the default where reasonable. The lending institution will notify the corporation and FmHA of its decision.

(2) If the lending institution does not repurchase the participation, then the corporation will demand repurchase by FmHA.

(3) After participation has been repurchased by either the lender or FmHA, the corporation shall have no further interest in the qualified loan relating thereto.

CHARLES BENNETT, Chairman

APPROVED BY AGENCY: February 14, 1991

FILED WITH LRC: February 22, 1991 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 22, 1991, at 9 a.m. EDT, in Room 105, Capitol Annex Building, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 17, 1991, five days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made at cost to the requesting party. 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: Lisa Payne, Coordinator, Kentucky Agricultural Finance Corporation, Room 318, Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Lisa Payne

(1) Type and number of entities affected: The Kentucky farmers who apply for loans will be affected by this regulation. There should be 25 loans made pursuant to this program.

(a) Direct and indirect costs or savings to those affected: The loans will provide lower interest costs to farmers who qualify under this program.

1. First year: Repayments from loans will create a revolving fund, which will allow the Kentucky Agricultural Finance Corporation to continue to make other loans.

2. Continuing costs or savings: The lower interest costs to the farmers will continue as new loans are created in this program.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The prevailing market conditions may increase or decrease the interest rate that the farmer pays on the loan pursuant to this program.

(b) Reporting and paperwork requirements: The KAFC will have to review application certification, lender certification and other FmHA documentation.

(2) Effects on the promulgating administrative body: The additional loan program through KAFC shall require staff to review documentation from FmHA regarding the loans.

(a) Direct and indirect costs or savings: KAFC will incur direct costs for administrative purposes for such items as trustee fees.

1. First year: Request for proposals will determine trustee fees.

2. Continuing costs or savings: KAFC will yearly pay the costs to the trustee pursuant to this program.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: There is no immediate effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Direct loans by KAFC would be too costly and would require hiring additional personnel to service loans.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy, which is in conflict, overlapping, or duplication of this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The proposed regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The proposed regulation was not in conflict.

(6) Any additional information or comments: There is no additional information or comments regarding this regulation.

TIERING: Was tiering applied? Yes

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

401 KAR 4:220. Water supply plan requirements.

RELATES TO: KRS Chapter 151
STATUTORY AUTHORITY: KRS 151.110, 151.114, 151.116, 151.118, 151.125
NECESSITY AND FUNCTION: This regulation is required to implement the legislative mandate of KRS 151.110, 151.114, 151.116, and 151.118, directing the Natural Resources and Environmental Protection Cabinet to administer a program for developing a long range water supply plan for each county in the Commonwealth. This regulation describes planning procedures, details to be included in a plan, funding criteria, and uniform data base development.

Section 1. Definitions. The following definitions describe terms used in this regulation. Terms not defined below shall have the meanings given to them in KRS 151.100, or if not so defined, the meanings attributed by common use.

(1) "Aquifer" means a saturated, permeable geological unit that can transmit significant quantities of water.

(2) "Available water" means water that may be withdrawn by any one (1) user at a specific site, according to the water withdrawal permitting requirements of KRS 151.140 through KRS 151.170 and 401 KAR 4:010.

(3) "Base year" means the year that is the starting point for planning conducted pursuant to this regulation, usually the year in which planning begins, and from which existing water use information is drawn.

(4) "Contributing watershed" means a watershed delineated in such a way that noncontributing areas, such as areas draining to sinkholes that drain into another watershed, are excluded.

(5) "Discharge" means the volume of water that flows past a given point within a given period of time, usually expressed in cubic feet per second or gallons per minute.

(6) "Historical year" means a year four (4) to six (6) years prior to the base year.

(7) "Hydrologic unit" means watershed boundaries as shown on the U.S. Geological Survey's Hydrologic Unit Map of Kentucky.

(8) "Impoundment" means a water-retaining structure with the ability to retain at least twenty-five (25) acre-feet of water at normal pool.

(9) "Interconnection" means a linkage between two (2) or more water suppliers that can be used to transfer water from one (1) water supplier to the other.

(10) "Local planning fund contributors" means counties, cities, and water suppliers that pay any portion of the expenditures necessary to comply with this regulation.

(11) "Monthly average flow" means the average flow for each month of the year based on the period of record. It is equal to the total volume of water used for the month divided by the number of days in the month.

(12) "Nonpoint source pollution" means pollution caused by diffuse sources, including land runoff, precipitation, atmospheric deposition, or percolation.

(13) "Phase one planning activities" include the activities required by this regulation that relate to data collection and assessment of water supply planning needs. Specifically, these activities include the requirements for initiating the planning process, including notifications and setting planning objectives, and Section 6(1) through (8) of this regulation.

(14) "Phase two planning activities" include the activities required by this regulation that relate to inventorying water resources, protecting water supplier sources, preparing emergency plans, evaluating water supply alternatives, and to all other planning activities not completed as phase one planning activities.

(15) "Planning council" means a group formed for the express purpose of creating a water supply plan in compliance with this regulation.

(16) "Planning grant" means funds awarded by the General Assembly and the cabinet to support water supply planning pursuant to this regulation.

(17) "Planning representative" means a person who is designated by a planning council to perform tasks in compliance with this regulation.

(18) "Planning unit" means a county or group of counties that have agreed to join with other counties to create a water supply plan that encompasses more than one (1) county.

(19) "Recharge area" means that area that captures and supplies water to a spring or an aquifer.

(20) "Regionalization" means the creation of a regional, administrative or infrastructural, water supplier unit by consolidation or expansion.

(21) "Safe yield" means the amount of water a user can withdraw annually from a groundwater basin throughout the year without depleting the well or aquifer and without adversely affecting other users of the aquifer.

(22) "Semipublic water supplier" means any water supply system that serves more than three (3) families, but is not a water supplier or distributor.

(23) "Seven (7) day, ten (10) year low flow" means the lowest mean flow for seven (7) consecutive days having a recurrence interval of ten (10) years, or having a ten (10) percent chance of occurring in any year.

(24) "Seven (7) day, twenty (20) year low flow" means lowest mean flow for seven (7) consecutive days having a recurrence interval of twenty (20) years, or having a five (5) percent chance of occurring in any year.

(25) "Source classification" means the particular type of a water supply site, including surface water intake, well, or spring-fed intake.

(26) "Specific capacity" means yield of a well per unit of drawdown.

(27) "Unaccounted for water" means water that is withdrawn and not used for commercial, residential, industrial, or municipal purposes.

(28) "Water conservation" means methods and technological applications of passive and active water savings and reuse devices, components and processes to reduce demand for water supply.

(29) "Water supplier" means any system that provides water to the public for human consumption, has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year, and withdraws more than fifty (50) percent of the water it

distributes.

(30) "Water supply distributor" means any system that provides water to the public for human consumption, has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year, and depends on a water supplier to provide fifty (50) percent or more of the water it distributes.

(31) "Water supply reservoir" means a water retaining structure with the ability to retain at least thirty (30) days of average water use at normal pool, used by a water supplier.

(32) "Water supply source" means a particular site or classification of site where water is withdrawn.

(33) "Water watch group" means a group registered with the cabinet as part of the water watch program.

(34) "Zone of contribution" means the entire area recharging or contributing to a well or well field.

(35) "Zone of influence" means the spatial area surrounding a well, in which drawdown effects occur from groundwater pumpage.

(36) The following items used in this regulation are defined in KRS 151.100: cabinet; dam; domestic use; groundwater; reservoir; secretary; watershed; and withdrawal of water.

Section 2. Scope and Applicability. Representatives of each county, its municipalities and water suppliers shall decide whether to form a multicounty planning unit and shall form a planning council to oversee the planning process. Under the oversight of the planning council, a planning representative shall assess the need to provide increased or alternative water supplies for the water supplier systems within each county, formulate recommendations to protect water supplies, and prepare a water supply contamination response plan. If increased or alternative water supplies are needed, the planning representative shall develop water shortage response plans and evaluate water supply alternatives. The planning council shall select a water supply alternative. Until July 15, 1996, the cabinet shall award grants, if budgeted by the General Assembly, for water supply planning.

Section 3. Content and Format of the Planning Documents. The planning representative shall prepare no less than two (2) documents which shall include the information as required by this regulation and additional information as considered necessary by the planning council. The cabinet may accept planning documents that were prepared prior to the existence of a planning council in place of specific sections of the planning documents required by this regulation.

(1) Plan formulation document. Documentation of the details of the planning process shall be placed in a publication subtitled "Plan Formulation Document." The plan formulation document shall have sections named and numbered as specified in this subsection.

(a) Phase one planning activities shall be documented in sections named and numbered as follows: I. Formation of the planning unit; II. Planning council and planning representative; III. Notifications; IV. Workplan and process for setting objectives; V. County base map; VI. Water use and water use forecast; VII. Water supplier source assessment; VIII. Supply adequacy assessment; Appendix PFD-A - Paying for the planning process; Appendix PFD-B - Council minutes.

(b) Phase two planning activities shall be documented in sections named and numbered as follows: IX. Supply protection; X. Water resources inventory; XI. Water supply alternatives; XII. Primary water supply alternative; XIII. Emergency plans; XIV. Implementation plan; Appendix PFD-A - Paying for the planning process; Appendix PFD-B - Council minutes. If the current supply source is adequate for forecasted demands, plan formulation document sections X, XI, XII, and XIV shall contain a brief statement of adequacy and the consequent lack of need to assemble information for each of those sections.

(2) Final plan document. Documentation of the water supply plan shall be placed in a publication subtitled "Final Plan Document." The final plan document shall have sections named and numbered as specified in this subsection.

(a) Phase one planning activities shall be documented in sections named and numbered as follows: I. Formation of the planning unit; II. Planning council and planning representative; III. Planning objectives and water supply planning conflicts; IV. County base map; V. Water use, forecast, and infrastructure assessment; VI. Water supplier source assessment; VII. Supply adequacy assessment; Appendix FPD-A - Obstacles to the planning process.

(b) Phase two planning activities shall be documented in sections named and numbered as follows: VIII. Supply protection; IX. Water resources inventory; X. Water supply alternatives; XI. Primary water supply alternative; XII. Emergency plans; XIII. Implementation plan; XIV. Plan approvals; Appendix FPD-A - Obstacles to the planning process. If the current supply source is adequate for forecasted water use, final plan document section X shall contain a brief statement of adequacy and the consequent lack of need to assemble information for that section.

Section 4. Plan Initiation and Cabinet Assistance. (1) Planning unit: geographic area of plan. A county may develop a water supply plan independently or it may enter into a written agreement to join with other counties to form a regional water supply planning unit. A multicounty plan may or may not entail regionalization or interconnection between water supplier systems.

(a) If a county has fewer than seven (7) cities, then the decision to join with other counties shall be supported by a two-thirds (2/3) majority of representatives of water suppliers in the county and each city in the county that is not a water supplier.

(b) If a county has at least seven (7) but no more than ten (10) cities, then the decision to join with other counties shall be supported by a two-thirds (2/3) majority of representatives of water suppliers in the county and representatives of the first, second, third, and fourth class cities in the county that are not water suppliers.

(c) If a county has more than ten (10) cities, then the decision to join with other counties must be supported by a two-thirds (2/3) majority of representatives of water suppliers in the

county and representatives of the first, second, and third class cities in the county that are not water suppliers.

(2) Planning council. A planning council shall be formed to oversee the planning process.

(a) Membership requirements. The planning council shall consist, at least, of representatives from the following categories in the planning unit:

1. Each county judge-executive or mayor of an urban-county government, or his or her authorized representative;

2. One (1) representative of each water supplier that provides water to persons in the planning unit;

3. One (1) representative of each water supply distributor serving persons in the planning unit, unless that water supply distributor enters a written agreement with a water supplier from which the water supply distributor purchases water to be represented by that water supplier;

4. One (1) representative of semipublic water suppliers, appointed by the county judge-executive or mayor of an urban-county government, or one (1) representative from a local health department in the planning unit; and

5. One (1) representative of each first, second, or third class city that is not a water supplier or distributor, unless that city enters a written agreement to be represented by another planning council member.

(b) Other city representation on the planning council.

1. If any county in the planning unit has fewer than ten (10) cities, the planning council shall include a representative from each fourth class city that is not a water supplier or water supply distributor, and the county judge-executive shall appoint one (1) representative of fifth and sixth class cities that are not water suppliers or water supply distributors.

2. If any county in the planning unit has ten (10) or more cities, the county judge-executive shall appoint one (1) representative of fourth class cities and one (1) representative of fifth and sixth class cities.

(c) Membership options. At any planning council meeting, a majority of the required members of the planning council, listed in paragraph (a) of this subsection, may also choose to appoint other planning council members. The cabinet may require additional planning council members so that the planning council fully represents the planning unit or if the planning unit has unique social or economic characteristics.

(d) Planning council chair. The planning council chair shall be elected by a majority of the planning council members.

(e) Quorum. The planning council shall determine what constitutes a quorum at the first meeting of a majority of its members.

(3) Optional water supply advisory group. A planning council may create one (1) or more water supply advisory groups to assist in the planning process.

(4) Planning representative. The planning council shall select a planning representative who shall be responsible for conducting the water supply planning process and creating water supply plan documents.

(5) Cabinet assistance. At the request of one (1) or more counties on a planning council, the cabinet may award water supply planning grants to a county or planning representative. The cabinet shall provide access to records and data collected by the cabinet, in accordance with the Kentucky Open Records Act. The cabinet shall also make every reasonable effort, as resources allow, to provide special data reports and make staff available for consultation and technical support to planning councils and planning representatives.

(6) Documentation of plan initiation.

(a) Section I of the plan formulation document shall describe how the county (or counties), cities, and water suppliers reached agreement as to the composition of the planning unit and shall include copies of any agreements written between water supply distributors and water suppliers. Section II of the plan formulation document shall describe how a planning representative was selected.

(b) Section I of the final plan document shall include a description of the planning unit and a planning unit map that shows planning unit boundaries, county boundaries, hydrologic unit boundaries of watersheds, county seats, and first through fourth class cities. Section II of the final plan document shall include a list of planning council members and shall identify the planning representative and the individuals who will prepare the plan under the direction of the planning representative. If a county advisory group has been formed, section II of the final plan document shall also list the members of that group.

Section 5. Planning Council Duties and Procedures. After a planning representative has been designated, the planning council shall continue to oversee the planning process. This process shall use principles of hydrologic science, effective environmental protection, efficient water management and conservation, and democratic governance.

(1) Public notice and public participation. The planning council shall solicit public input for planning decisions.

(a) Council meetings. Each meeting of a planning council shall allow time to discuss progress of the planning process and obtain public input. The planning council shall notify local broadcast and print media of the meetings and request that the media make a public announcement of the time, place and purpose of the meeting. The planning council shall keep minutes of its meetings and a list of attendees and other interested persons. These shall be available to the public on request and shall be included as Appendix PFD-B of the plan formulation document.

(b) Public notice shall include the following:

1. A public notice shall be placed in the newspaper of greatest circulation in the area. The public notice shall be at least three (3) column inches in size, and shall be large enough that all information contained therein is easily readable. A copy of each public notice shall be placed in section III of the plan formulation document.

2. A letter shall be mailed to each water watch group in the planning unit. A sample letter and a list of recipients shall be placed in section III of the plan formulation document.

3. Public notice for a public meeting shall include the date, time, and location of the meeting; the mailing address and deadline for

providing written comment; the purpose of the meeting; a brief statement of the purpose of the plan and planning procedures; and any other information to ensure that the public is aware of the nature of the meeting and the planning process.

(2) Conflict resolution.

(a) Planning council members shall attempt to reach consensus on planning goals, objectives, and preferred supply, emergency, and implementation alternatives. The planning council may select mediation as a method to achieve an acceptable solution. The cabinet may provide mediation assistance if requested by planning council members.

(b) If planning council members are unable to reach consensus concerning any aspect of the planning process, a description of the conflict shall be included in section III of the final plan document. This section shall also describe conflicts or potential conflicts between the water supply plan and existing plans of local units of government, water suppliers, or water supply distributors and conflicts or potential conflicts between the water supply plan and existing or proposed plans of surrounding counties. Each description of a conflict shall identify the units of government or water suppliers or distributors involved in the conflict. Each description shall also identify the provisions or omissions causing the conflict and the nature of the conflict, including objections and the type of authority applicable.

(3) Notification. The planning council shall comply with the requirements in this subsection within fourteen (14) days of the first meeting of the planning council. If phase two planning activities are begun two (2) years or more after the notifications required by this subsection, the planning council shall repeat the notifications required by this subsection before beginning phase two planning activities.

(a) Notification to adjacent counties. The planning council shall send written notification to mayors, county judge-executives, and water suppliers in counties adjacent to the planning unit of the intent to develop a water supply plan.

(b) Notification to the public. The planning council shall give public notice of the intent to develop a water supply plan. Public notice shall describe the planning unit and planning council membership. Public notice shall state that a water supply plan is being developed, that public attendance at council meetings is welcomed, and that a meeting concerning planning goals and a meeting concerning plan alternatives will be publicly announced. Further, it shall announce the date, time, and location of the next council meeting or provide a telephone number at which such information shall be available.

(c) Notification to local governments and water suppliers. The planning council shall send written notification of the intent to develop a water supply plan to the following: all local units of government within the planning unit; water suppliers that provide water for use in the planning unit; and local units of government that use the same source of water as any water supplier in the planning unit. The letter of notification to local governments and water suppliers shall request the following information:

1. A copy of any existing water or related plans;

2. A statement of any current or potential conflicts, problems or opportunities that the local units or water systems want the planning process to examine or address, including water use rights, access and conservation; and

3. A description of expected changes in or around the planning unit that may alter current growth trends, including existing ordinances and planning goals.

(d) Notification to the cabinet. The planning council shall notify the cabinet of the intent to develop a water supply plan. Notification to the cabinet shall include a list of members of the planning council, their affiliation, and a list of counties included in the planning unit. The notification shall identify any designated planning council member who declines to serve on the planning council. The notification shall state whether counties in the planning unit will apply for a planning grant from the cabinet. The cabinet shall notify the planning council of data that is readily available from the cabinet, state universities or other state or federal agencies.

(e) Documentation of notifications. Section III of the plan formulation document shall include a copy of each public notice and notification sent to adjacent counties and to local units of government and water suppliers, a list of persons to whom these documents were sent, and a description of information received in response to notification sent to local governments and water suppliers.

(4) Planning goals and objectives.

(a) The planning council shall consider the following objectives for the planning process:

1. Use of conservation to the maximum extent practical;

2. Choice of supply dependability. In addition to the level of water supply that meets minimum standards described in Section 6(8) of this regulation, a planning council may plan to provide a continuous level of supply under all conditions or plan to rely on consumer cooperation to maintain a supply buffer, allowing a supplier to provide less than a continuous level of supply;

3. Compatibility with existing plans, or to offer recommendations to alter those plans;

4. Preservation and use of natural water storage and retention systems, whenever cost and data constraints permit;

5. Protection and enhancement of the overall quality of the environment;

6. Cost effectiveness; and

7. Social and political acceptability, and community cohesion.

(b) The planning council shall assess existing plans and public input regarding planning objectives and existing and forthcoming issues to be addressed in the planning process. The planning council shall identify any planning objectives specific to the planning unit. The planning council shall conduct at least one (1) public meeting to obtain public input concerning objectives and issues affecting the planning process. The planning council shall conduct the public meeting concerning objectives and issues early in the planning process, prior to determining the objectives of the planning process.

(c) Documentation. Section III of the final plan document shall describe the planning objectives and summarize the process used to

determine these objectives. Section IV of the plan formulation document shall fully describe the objective-setting process.

(5) Water supply alternatives. The planning council shall review water supply plan alternatives and implementation strategies. The planning council shall consider public input, reevaluate goals and objectives, and select alternatives to be included in the final plan document. The planning council shall conduct at least one (1) public meeting as part of the process for selecting a water supply alternative, to obtain public input concerning plan alternatives, implementation strategies, and any reevaluation of goals and objectives.

(6) Water supply plan document approval. Section XIV of the final plan document shall include the signature of each member of the planning council who has participated in the planning process, signifying that the document accurately reflects the planning effort. If any member disagrees with the chosen plan alternative, it is the responsibility of that member to identify objections in a minority report in Section III of the final plan document, as described in subsection (2) of this section. The cabinet may approve a final plan document that is not signed by each planning council member if the planning council justifies the absence of each missing signature.

(7) Plan implementation. Upon completion and acceptance of the plan by the cabinet, the planning council shall act as an oversight or advisory group to plan implementation. The planning council shall reconvene at least annually and update the plan at least every five (5) years. A tentative date and location for reconvening the planning council shall be placed in section XIII of the final plan document.

Section 6. Responsibilities of the Planning Representative. (1) Workplan. The planning representative shall develop a workplan for council approval and submission to the cabinet. Workplans may be separately developed for phase one and phase two planning activities. The workplan shall define objectives and deadlines for the planning process in accordance with the objectives established by the planning council, KRS 151.110 through KRS 151.116, and this regulation. A copy of the workplan shall be placed in section IV of the plan formulation document. The workplan shall identify the following:

(a) The planning representative;

(b) Overall goals, proposed procedures, and quarterly objectives;

(c) A planning budget;

(d) Sources of funds for the planning effort, including in-kind services, if any; and

(e) Any proposed deviations from the standard procedures required in this section and Sections 3 and 5 of this regulation. Deviations from the standard procedures in this regulation are allowed only with prior approval from the cabinet.

(2) Information review. The planning representative shall assemble and review information collected through the notification process described in subsections (3)(c) and (4) of this section. The planning representative shall review any plans and studies prepared within five (5) years previous to the base year by city, county, regional, state, and federal agencies that are related to water, sewer, waste management, or commercial and industrial growth. Existing water or water-related plans shall be described in section III of the final plan document.

(3) Obstacles to the planning process. The planning representative shall describe obstacles to the planning process that affect the potential accuracy, effectiveness, or implementation of the planning effort. These obstacles may include lack of equipment; insufficient legal, fiscal or other resources necessary to implement data collection; inadequate authority or responsibility at any governmental or organizational level; or lack of available information. Appendix FPD-A of the final plan document shall identify and describe obstacles to the planning process, state the relevance of the incomplete or unavailable information to the planning process, and make recommendations to remove the obstacle for future planning efforts.

(4) County base map.

(a) The following information shall be located and identified on a map of each county in the planning unit: two (2) tick marks on both the right and left margins and two (2) along both the bottom and the top, each showing latitude and longitude; county boundary; state, federal, and significant county roads; hydrologic unit boundaries of watersheds; rivers, creeks, and other tributaries within the county or shared with contiguous counties; county seat; names and jurisdictional boundaries of first through fourth class cities; significant springs; water supply reservoirs; and dams. Maps of counties that have less than ten (10) fifth class cities shall show the name and location of these cities.

(b) County base maps shall be used as a base for each map required in this regulation, with the exception of the planning unit map and maps generated by state or federal agencies. The scale of county base maps and maps created using the county base map shall be between 1:24,000 and 1:90,000. The map document from which county base maps are compiled shall originally be a map at a scale of 1:90,000 or larger. Scales for county base maps in a planning unit shall be identical. Maps required in this regulation may be created as overlays to county base maps. The plan formulation document and the final plan document may include reduced copies of maps in addition to the maps created at the scale required in this paragraph.

(c) The county base map shall be placed in section V of the plan formulation document and section IV of the final plan document.

(5) Water use assessment. The planning representative shall assess water use for the base year. The planning representative shall use sources of data specified in this subsection unless the planning representative establishes that other information is more accurate or that the required information is not available. If a comprehensive water supply study has been completed within five (5) years of the base year by the U.S. Army Corps of Engineers for any area of the planning unit, the planning representative shall use the information developed in those studies, with corrections if data varies significantly from the latest U.S. census. Information developed in other water supply studies that have been completed within five (5) years of the base year may also be used, with corrections based on the latest U.S. census data, with the approval of the cabinet.

(a) Water suppliers and distributors.

1. Amounts of water used by water suppliers and distributors shall be determined for the base year. Usage shall be entered into a computerized database, using software described in subsection (7)(a) of this section. Water supplier and distributor usage shall also be determined for a historical year, four (4) to six (6) years prior to the base year. This information shall be used to calibrate the forecasting software output. Usage data shall be disaggregated by usage sector.

2. Amounts of water used by water suppliers shall be determined from reports of metered water withdrawals, unless the planning representative justifies to the cabinet the use of other figures.

3. Amounts of water used by water supply distributors shall be determined from meter readings.

4. Water losses shall be calculated from the difference between metered readings of water purchased or withdrawn and water sold or otherwise accounted for.

5. Population figures used shall be based on the latest U.S. census and projections made by the Urban Studies Center at the University of Louisville. These figures may be adjusted for the planning unit, with cabinet approval, if the planning representative justifies the need to do so.

(b) Water use for withdrawal permittees other than water suppliers or distributors shall be determined from water withdrawal permit records available from the cabinet. Water withdrawals in violation of the water withdrawal permitting program shall also be determined.

(c) Agricultural water use from each water source shall be estimated.

(d) Other permit-exempt water withdrawals, including water used for fire protection at rates less than 10,000 gallons per day and for domestic uses, shall be estimated. Permit-exempt water withdrawals shall be described by source classification and usage.

(e) Documentation of water use assessment. Written records shall be kept regarding the sources of any water use data. The sources of data and water use information compiled pursuant to this subsection shall be fully described in section VI of the plan formulation document and summarized in section V of the final plan document, unless otherwise specified.

1. The planning representative shall create a water use map of each county in the planning unit. The water use map shall identify water supplier intakes, water supplier wells, and permitted water withdrawal intakes or wells that do not serve water suppliers. The map shall identify the source type and use category of each permitted site. The map shall also show water withdrawal sites for entities that withdraw more than 10,000 gallons of water per day and are exempt from or in violation of the water withdrawal permitting requirements of KRS 151.140 through 151.170 and 401 KAR 4:010, and identify the source classification and use category of each permit-exempt user.

2. The planning representative shall create one (1) or more diagrams showing disaggregated use of water that was withdrawn by each water supplier, including the categories of domestic, industrial, commercial, municipal, and lost or unaccounted for water use during the base year. Disaggregated demand figures shall be listed with respect to the source of supply, unless these sources are interconnected.

3. The planning representative shall describe water use conflicts or potential conflicts, including those caused by groundwater pumping that affects other wells or surface water or by other existing or potential competing users.

(6) Water supplier source assessment.

(a) Data collection constraints. The planning representative shall forecast the amount of available water, under normal and drought conditions, from each source being used by water suppliers in the planning unit during the base year. Methods for measuring water supply yield shall be preapproved or specified by the cabinet. The cabinet may approve deviations from the requirements in this subsection, if the planning representative demonstrates significant fiscal or other constraints. If a measure of available water is not accessible to each water supplier on a monthly basis, the planning representative shall estimate the cost of attaining those measurements. Data collection constraints shall be described in Appendix FPD-A of the final plan document.

(b) The planning representative shall summarize the soils and geologic characteristics of the planning unit. The planning representative shall obtain one (1) or more maps showing general characteristics of soils in the planning unit. These shall be included, as attachments if necessary, in section X of the plan formulation document.

(c) The planning representative shall calculate the amount of available water at the site of any water supplier intake on a stream. To determine water availability under normal conditions, the planning representative shall apply water withdrawal permitting program criteria to calculated average flow during the month of lowest flow and the seven (7) day, ten (10) year low flow. To simulate drought conditions, the planning representative shall calculate the seven (7) day, twenty (20) year low flow during the month of lowest flow. Data from the U.S. Geological Survey shall be used to make flow calculations unless the planning representative shows the cabinet that other data will provide more accurate information. If the watershed of the intake site extends beyond contiguous counties, the planning representative shall delineate an area as a recommended area appropriate for watershed protection.

(d) The planning representative shall calculate the available amount of water at the site of any water supplier intake in a water supply reservoir during normal and drought conditions. The planning representative shall also calculate streamflow into each water supply reservoir that stores runoff from a contributing watershed that drains more than thirty (30) square miles. Streamflow calculations shall be made as described in paragraph (c) of this subsection. If the watershed of the intake site extends beyond contiguous counties, the planning representative shall delineate an area as a recommended area appropriate for watershed protection.

(e) The planning representative shall calculate safe yield, specific capacity, zone of contribution and zone of influence for each water supplier well. The planning representative shall delineate an area as a recommended area appropriate for wellhead protection.

(f) The planning representative shall

calculate available amount of water at the site of any water supplier intake at or below a spring. Flow calculations shall be made as described in paragraph (c) of this subsection. The planning representative shall delineate a recharge protection area that includes the recharge area of the spring.

(g) Documentation of source assessment. The planning representative shall prepare a water supplier source map of each county in the planning unit. The source map shall show contributing watersheds and known recharge areas for each water supplier's source of water, such as known zone of influence for a well and recharge area for a spring. The water supplier source map shall also show recommended protection areas. Section VII of the plan formulation document shall show all calculations made pursuant to this subsection. Section VI of the final plan document shall include a chart showing the available yield of streams, reservoirs, springs, and water wells used by water suppliers. If the planning representative identifies constraints on water use related to quality or quantity, these shall be discussed in section VI of the final plan document.

(7) Water use forecast and assessment of treatment and total distribution capacity. Water supply demands shall be forecast for dates five (5), ten (10), fifteen (15) and twenty (20) years after the base year. The planning representative may develop as many as three (3) water use forecasts, each one related to variations in usage rates created by regulatory and nonregulatory measures to reduce the amount of water created by specific water uses.

(a) Water suppliers.

1. Demand for water from water suppliers shall be forecast using computerized software that enable water use projections that are disaggregated according to type of usage, including type of residential unit. Planning representatives may use IWR-MAIN Water Use Forecasting System computer software produced by the U.S. Army Corps of Engineers Institute for Water Resources or similar software. Section VI of the plan formulation document shall include a listing of assumptions, data sources, and extrapolations used in forecasting water demand.

2. The planning representative shall identify and contact any single user that purchases twenty (20) percent or more of the water produced by any water supplier and review all available plans such users have that would affect future water use. These users, their plans and the impact of these plans on forecasted water use shall be summarized in section V of the final plan document.

(b) The planning representative shall forecast average daily water use for each type of water use described in subsection (5) of this section. Diagrams showing disaggregated, forecasted use of water shall be placed in section V of the final plan document.

(c) Assessment of treatment and total distribution capacity. Information related to assessment of treatment and total distribution capacity shall be placed in section V of the final plan document.

1. The planning representative shall determine existing treatment and total distribution capacity of the water supplier. The planning representative shall create one (1) or more graphs comparing treatment and total distribution capacity, any planned expansion of treatment or total distribution capacity, and forecasted water use.

2. The planning representative shall determine if vertical elevation of an intake or capacity of a pump limits access to available water and describe access limitations.

3. For water suppliers whose water losses are greater than fifteen (15) percent, the planning representative shall estimate the cost of finding and repairing leaks. If water use is not metered, the planning representative shall estimate the cost of meter installation.

4. The planning representative shall prepare a service area map of each county in the planning unit showing the existing jurisdictional and service area boundaries of water suppliers and distributors.

5. The planning representative shall create a service area expansion map for each county in the planning unit showing existing expansion plans of water suppliers and distributors, including the proposed access sites of new sources of water. The service area expansion map shall be accompanied by an explanation that identifies projected dates of the expansions.

(8) Supply adequacy assessment. In order to determine water supply adequacy, the planning representative shall compare water source availability and water demands for the base year and forecasted demand for dates five (5), ten (10), fifteen (15), and twenty (20) years afterward, for each water supplier or source. By applying adequacy standards described in this subsection to each five (5) year increment, the planning representative shall identify the apparent date at which the current supply will no longer be adequate. Criteria described in this subsection shall be adjusted if a water supplier withdraws water from more than one (1) source of water. The cabinet may approve equivalent adequacy standards if the planning representative demonstrates the necessity to do so. Calculations for determining supply adequacy and a description of supply adequacy shall be documented in section VIII of the plan formulation document and summarized in section VII of the final plan document. If the existing source of supply is not adequate to meet forecasted needs for twenty (20) years after the base year, the planning representative shall inventory the water resources of the planning unit according to subsection (10) of this section. If the existing source of supply is adequate to meet forecasted needs for twenty (20) years from the base year, the planning representative shall evaluate and describe the security of access to supply for that period and in section IX of the final plan document. Whether existing supply is adequate for twenty (20) years from the base year or not, the planning representative shall identify potential sources of water to use in case of contamination or similar emergency as described in subsection (13)(b) of this section.

(a) A stream shall be considered an inadequate source of water supply if the seven (7) day, ten (10) year low flow equals zero or if average rate of water use is more than eighty-five (85) percent of the available water under normal conditions.

(b) A water supply reservoir that stores runoff from a contributing watershed area of ten (10) square miles or less shall be considered an inadequate source of supply if the available volume at normal pool provides less than 200

days of supply at the average rate of water use.

(c) A water supply reservoir that stores runoff from a contributing watershed that drains between ten (10) and thirty (30) square miles shall be considered inadequate if the available volume at normal pool provides less than 100 days of supply at the average rate of water use.

(d) The following chart shall be used to determine the adequacy of a water supply reservoir that stores runoff from a contributing watershed that drains more than thirty (30) square miles.

	Percent of Water Used[1]		
Days[2]	0 - 70	71 - 85	86 - 100
<45	inadequate	inadequate	inadequate
45 - 60		inadequate	inadequate
61 - 100			inadequate

[1]"Percent of water used" means average rate of water use divided by the amount of available water in the inflowing stream under normal conditions, times 100.

[2]"Days" means days of supply at the average rate of water use, stored in the water supply reservoir.

(e) A water supply well or well field shall be considered inadequate if the average rate of water use requires water withdrawal at a rate greater than the safe yield of the aquifer.

(f) A water supply spring shall be considered inadequate if the average rate of water use is more than eighty-five (85) percent of the available water under normal conditions.

(g) In addition to the minimum standards in this subsection, the assessment of supply adequacy shall consider the following:

1. Instream uses such as recreation and maintenance of both game and nongame aquatic life;

2. Water conservation and demand management practices for resolving any adequacy deficits;

3. The quantity impacts of significant water withdrawals in the watershed or recharge area of the water supplier source;

4. The downstream or down-gradient impacts of water supplier withdrawals on other users; and

5. Competing uses of the surface waters or aquifers from which each water supplier's water is being taken.

(9) Supply protection. The planning representative shall identify and evaluate the risk of water supply degradation, contamination, or depletion resulting from activities in the watershed or recharge area in the planning unit. The risk of water supply degradation, contamination, or depletion shall be documented in section IX of the plan formulation document and summarized in section VIII of the final plan document.

(a) The planning representative shall identify any potential source of contamination within the watershed of a surface water supplier source or within the recharge area of a water supplier spring, or the wellhead protection area of a water supplier well or well field. The planning representative shall develop a tabular display of the degree of hazard posed by potential contaminants of a water supplier source. The planning representative shall create a map of potential sources of contamination. The map and the tabular display shall be placed in section VIII of the final plan document. Sources of potential contamination shall include, at a minimum:

1. Areas possessing known or potential sources of nonpoint source pollution;

2. Discharges permitted under 401 KAR 5:050 through 401 KAR 5:080, the Kentucky Pollutant Discharge Elimination System;

3. Landfills, hazardous waste sites, and large, unpermitted garbage dumps;

4. Active or inactive underground storage tank facilities that are registered with the Division of Waste Management;

5. Wells used for underground injection;

6. Facilities that utilize or produce hazardous materials; and

7. Lagoon or surface impoundments or stock piles used to store or produce materials which could potentially contaminate water.

(b) The planning representative shall relate soils and geologic characteristics of the planning unit to the risks of water supply contamination, degradation, or depletion in section VIII of the final plan document.

(c) The planning representative shall describe local, existing regulatory and nonregulatory measures that protect the quality and quantity of the water supplier's sources in the planning unit in section VIII of the final plan document. Copies of local, existing regulatory measures shall be included in section IX of the plan formulation document.

(d) The planning representative shall formulate recommendations for local regulatory and nonregulatory measures to protect the quality and quantity of the water supplier's sources through watershed, recharge area, or wellhead protection programs. Local regulations and recommendations shall be described in section VIII of the final plan document.

(10) Water resources inventory. If the existing source of supply is not adequate to meet forecasted needs for twenty (20) years after the base year, the planning representative shall inventory the water resources of the planning unit.

(a) The planning representative shall prepare one (1) or more water resources maps of each county in the planning unit. Water resources maps shall be placed in section IX of the final plan document. Maps produced by federal or state agencies may be substituted for one (1) or more features and appended to section IX of the final plan document. Water resources maps shall show the following features:

1. The location of federally authorized or other significant rain and streamflow gauges;

2. Wetlands delineated by the U.S. Fish and Wildlife Service, under the National Wetlands Inventory program, and hydric soils delineated by the U.S. Soil Conservation Service;

3. Outstanding resource waters and coldwater aquatic habitat, as designated under 401 KAR 5:026 through 401 KAR 5:031, Kentucky water quality standards;

4. Generalized land use;

5. Active and abandoned mine works in which water is stored or from which water is discharged, if map information is available;

6. Geologic conditions, such as karst areas, that may cause unique water quantity or quality problems, if this information is available;

7. Areas of cultural and/or archeological significance that may affect water resources of the planning unit;

8. Aquifers and groundwater recharge and discharge areas, if maps are available; and

9. Significant water-oriented recreational resources.

(b) The following information, if available, shall be compiled in paragraph or chart form, and placed in section X of the plan formulation document:

1. Historical streamflow data;

2. Average monthly precipitation from historical data;

3. State and federal requirements and policies affecting water availability;

4. Construction data, usage data and average monthly static water levels, where readily available, of wells used at average rates of more than 10,000 gallons per day;

5. Generalized quality of water;

6. Description of groundwater aquifers, including confining layers, flow characteristics, and predicted maximum yield; and

7. Ownership of dams or water body access rights to any reservoirs or impoundments.

(c) The planning representative shall acquire current U.S. Geological Survey topographic maps of the planning unit, scale 1:24,000, and append these to section IX of the final plan document.

(d) The planning representative shall assemble or identify all readily available printed information related to water resources in the planning unit and describe this information in section X of the plan formulation document.

(e) The planning representative shall place a summary of the available information that relates to the quality of water in the county in section IX of the final plan document.

(11) Water supply alternatives. The planning representative shall evaluate water supply alternatives related to each water supplier. These evaluations shall be fully documented in section XI of the plan formulation document, summarized in section X of the final plan document, and presented to the planning council. Maps shall be used if their existence will clarify alternatives.

(a) The planning representative shall examine each alternative that could potentially provide adequate water for normal supply provisions. The planning representative shall clarify these alternatives for the planning council and the public, shall fully explain each alternative in the plan formulation document, and shall summarize each alternative in the final plan document. The planning representative shall clarify why other alternatives were deemed inadequate. Documentation and presentations to the planning council and the public shall clarify at least the factors listed below:

1. The degree to which the alternative contributes to the planning objectives;

2. Use of conservation and demand options, including legal, motivational, and technological water use efficiency measures;

3. The level of supply dependability;

4. Consistency with existing plans;

5. Environmental impacts;

6. The feasibility of providing adequate pumpage and pressure to supply water from the alternative sources;

7. Costs associated with developing the alternative source;

8. Social, political, and economic impacts;

9. Potential sources of contamination of new sources of water;

10. Variations of water quality treatment capabilities or techniques required due to the characteristics of new sources of water;

11. The impacts and potential for conflicts with water uses that are not dependent on water suppliers, including private drinking water wells;

12. Supply protection; and

13. Changes in wastewater treatment and disposal systems required as a result of water supplier system expansion.

(b) If regionalization is considered a feasible alternative, the planning representative shall identify and evaluate the factors related to supply dependability, contamination and other risks, a recommended management structure for the regional unit, and economic cost to individuals, water suppliers, and governments.

(c) If interconnection between existing water suppliers is a specified alternative, the plan shall provide reasonable assurance that the resulting demand for water is included in any water use forecast performed in conjunction with water supply planning for the proposed interconnected water supply system.

(d) If capital improvement projects are proposed to implement the plan, the projects shall be described in the plan, including: design components; storage capacity; location alternatives; proposed construction schedule; expected federal, state and local costs; types of financing; and sources of local financing (subcounty, countywide, or multicounty).

(12) Primary alternative. One (1) or more specific alternative shall be further evaluated if the planning grant or other funds allow. Section XI of the final plan document shall include a detailed description of the selected alternative. A map shall be created if it will clarify the primary alternative.

(13) Emergency plans. Water shortage response and supply contamination plans created pursuant to this subsection shall be documented in section XIII of the plan formulation document and summarized in section XII of the final plan document.

(a) Water shortage response plans. If the water supply availability inventory indicates that water availability for any supplier will be less than adequate during drought conditions, the planning representative shall outline contingency plans for managing water demands and accessing alternate sources of water.

1. Water shortage response plans shall be based on the water shortage response plan available from the cabinet, and shall include: identification of various levels of response; triggers that shall initiate these responses; actions and responses applicable to local government and the public for each response level; and penalties as necessary to ensure that the required actions are implemented.

2. Water shortage response plans shall describe the methods to be used by any affected water supplier to notify the public of the emergency and to provide the public with the information needed to understand the seriousness of the situation and to know what shall be done to properly respond to the situation.

3. Water shortage response plans shall identify sources of water for use during water supply emergencies and shall describe plans for receiving prior approvals, achieving access to the water, and adequately treating and distributing the water.

4. Water shortage response plans shall include a description of provisions made for activities

to be performed by the Department for Military Affairs or the cabinet, if the emergency plan calls for any actions on the part of either agency. The discussion of such provisions shall include the types of activities to be performed by the Department of Military Affairs or the cabinet, at what level of water shortage these actions are to take place, approximately what it will cost the local community to reimburse the Department of Military Affairs' or the cabinet's expense, and documentation of agreement and approval from the appropriate agency.

5. Water shortage response plans shall describe any legal arrangements that are recommended or would be required to implement or enforce the emergency plans, including at least Public Service Commission approval when applicable.

6. Water shortage response plans shall identify who within the local government shall enforce the emergency provisions in the plan. The plan shall demonstrate that the local government has the authority to enforce these provisions.

(b) Supply contamination response plans. The planning representative shall develop contingency plans to be implemented if a water supply is contaminated or is threatened by contamination.

1. Supply contamination response plans shall describe methods of notifying state and federal agencies of the emergency.

2. Supply contamination response plans shall describe methods to be used by any affected water supplier to notify the public of the emergency and to provide the public with the information needed to understand the seriousness of the situation and to know what shall be done to properly respond to the situation.

3. Supply contamination response plans shall recommend sources of water for use during both short-term and long-term emergencies due to supply contamination and describe plans for receiving prior approvals, achieving access to the water, and adequately treating and distributing the water. Alternate sources of water for short-term use shall not be required to meet the adequacy standards described in subsection (8) of this section.

4. The planning representative shall assess water supplier distribution system capability to cope with contamination.

5. For water supply wells, the planning representative shall evaluate the effectiveness of existing monitoring wells.

(14) Implementation plan. The planning representative shall determine the steps necessary to implement the water supply plan and describe these in section XIII of the final plan document.

(a) Plans for implementation shall include methods for updating and amending the plan document and addressing current or future potential conflicts.

(b) Implementation plans shall contain a timetable for initiation and completion of tasks and shall identify parties responsible for completing tasks.

(c) The planning representative shall create a chart showing the anticipated costs of implementation and describe proposed methods of financing, including reasonable estimates of the interest rates on loans and the per capita cost to water users.

(d) The planning representative shall recommend procedures to coordinate actions of local government, and other agencies that impact development decisions within the planning unit, with the water supply plan.

(e) The implementation plan shall describe existing authority to implement the plan and identify any legal changes or agreements that are necessary to implement the plan. If the planning council makes any written agreement towards the implementation of the plan or a portion of the plan, section XIII of the final plan document shall describe the nature of the agreement, the parties involved, and when the implementation will happen. Copies of any written agreement or resolution, including agreements to expand treatment facilities or use new water sources, shall be included in section XIV of the plan formulation document.

Section 7. Grant Provisions and Plan Approval. Water supply planning grants provided by the cabinet shall be used only to create water supply plans, and shall not be used for implementing water supply plans or to construct water supply facilities or distribution systems. Planning grants may be provided separately or jointly for phase one and phase two planning activities.

(1) Funding application.

(a) A county or planning representative may apply for a planning grant by submitting a form entitled "Water Supply Planning Financial Assistance Application," dated March, 1991 and hereby incorporated by reference. Copies of this form may be reviewed or obtained from cabinet offices at 18 Reilly Road, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m. from Monday through Friday, except holidays.

(b) The application period for requesting a planning grant for state fiscal year 1991 and 1992 funds shall be from the effective date of this regulation until ninety (90) days thereafter. The application deadline for subsequent state fiscal years shall be May 1.

(c) The cabinet shall review the application and may require the workplan to be revised if the cost of the water supply plan is unreasonable.

(2) Funding priorities. Water supply planning grants from available funds shall be distributed annually, as available. Unfunded applications from one (1) fiscal year may be carried over to the next fiscal year in their priority order. The cabinet shall prioritize grant applications according to water supply needs and budget constraints, within the following categories of priority:

(a) First priority shall be given to grant applicants from either counties within which lie a water supplier that serves thirty-five (35) percent of the county population and has demonstrated drought vulnerability or significant conflicts related to shared sources of water supply or source degradation, or counties in which thirty-five (35) percent of the county population is solely dependent on groundwater and are not located adjacent to a stream with average flow of at least 15,000 cubic feet per second or an impoundment of at least 300,000 acre-feet. The cabinet may provide from eighty (80) to 100 percent of planning costs for these planning units if they are multicounty units, and eighty (80) to eighty-five (85) percent if they are single-county units.

(b) Second priority shall be given for phase one planning activities only, and shall be given to grant applicants from multicounty planning units that include a water supplier with demonstrated drought vulnerability or significant conflicts related to water supply planning. The cabinet may provide these grant applicants eighty (80) to 100 percent of phase one planning costs.

(c) Third priority shall be given for phase one planning activities only, and shall be given to grant applications from counties within multicounty planning units without demonstrated drought vulnerability or water supply conflicts. The cabinet may provide these grant applicants eighty (80) to 100 percent of planning costs.

(d) Fourth priority shall be given for phase one planning activities only, and shall be given to grant applicants from single-county planning units without demonstrated drought vulnerability or water supply conflicts. The cabinet may provide these grant applicants eighty (80) percent of planning costs.

(e) Fifth priority shall be given to grant applicants from multicounty planning units without demonstrated drought vulnerability or water supply conflicts. The cabinet may provide these grant applicants eighty (80) to 100 percent of planning costs.

(f) Sixth priority shall be given to grant applicants from single-county planning units without demonstrated drought vulnerability or water supply conflicts. The cabinet may provide these grant applicants eighty (80) percent of planning costs.

(3) Local funding contributions.

(a) In-kind services. Local planning fund contributions may include up to fifty (50) percent of costs incurred during planning activities. Written records of these services shall be submitted to the cabinet for approval before matching funds will be released and documented in Appendix PFD-A of the plan formulation document.

1. Activities that shall not be considered as in-kind services include those associated with advertising for, selecting, or administering contractual agreements and those associated with expenses incurred prior to notification to the cabinet.

2. Records shall be maintained to document expenditures of any in-kind services where cost-share financial assistance has been requested for plan development. These records shall be included in Appendix PFD-A of the plan formulation document and available for review when any financial assistance request is made for a partial reimbursement prior to final plan approval.

(b) Expenses incurred prior to grant approval. The cabinet may approve planning expenditures that have been incurred after notification to the cabinet of the intent to develop a water supply plan and prior to grant approval. If approved, these expenses shall be reimbursed at a rate of forty-five (45) percent. No more than seventy (70) percent of total reimbursed expenses shall have been performed prior to grant approval.

(4) Plan approval. The planning council shall submit one (1) copy of the plan formulation document and three (3) copies of the final plan document to the cabinet.

(a) No plan shall be approved by the cabinet unless it meets all the provisions of this regulation and is consistent with state laws and regulations.

(b) The cabinet shall examine the plan for consistency with other water supply plans that have been approved by the cabinet pursuant to this regulation. The cabinet shall notify planning councils of inconsistencies between water supply plans.

(c) The cabinet shall notify the planning council within ninety (90) days if any portion of the plan document is not consistent with statutes or regulations and shall identify any portion of the plan document requiring revision. The planning council shall subsequently submit a revision within 120 days after receiving notice of disapproval. The cabinet may extend the time period allowed to revise a plan document if a planning council submits written justification to postpone the deadline.

(d) Payments. No payments shall be made to a grant recipient for work that does not conform to the approved plan. As part of the grant contractual agreement, the cabinet may specify a schedule for payment based on submittal and approval of work elements. No more than eighty (80) percent of any total grant allotment shall be paid until grant conditions have been met and work completed under the planning grant has been approved by the cabinet.

CARL H. BRADLEY, Secretary
FRANK DICKERSON, Commissioner
APPROVED BY AGENCY: March 15, 1991
FILED WITH LRC: March 15, 1991 at noon

PUBLIC HEARING: A hearing on this administrative regulation shall be held on April 22, 1991 at 1 p.m. local prevailing time at the Capital Plaza Tower, Room G2, in Frankfort, Kentucky. This regulation contains standards for water supply planning. Individuals interested in attending this hearing shall notify this agency in writing by April 17, 1991, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Jack A. Wilson, Division of Water, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Jack Wilson

(1) Type and number of entities affected: 550 public water systems; 276 water withdrawal permit holders in addition to public water systems; all 120 counties; and 435 municipalities.

(a) Direct and indirect costs to those affected: Development of a water supply plan will require direct cost-share financial contribution from each county, its municipalities and public water systems. Each county, its municipalities and public water systems which form a planning unit will be

liable for up to 20 percent of a water supply plan cost. In-kind services can amount to 50 percent of any cost-share financial responsibilities. The cabinet will pay from 80 to 100 percent of the plan development cost. Indirect costs associated with this regulation would be limited to any county, municipal or public water system representative whose salary is enhanced due to his or her inclusion in the planning process beyond his or her normal job duties. This would be subject to local government control.

1.First year: Plan development costs associated with the first year will be incurred by any county, its municipalities and public water systems that initiate the planning process during the initial year. Those costs would include any financial contribution or indirect salary enhancements due to participation in planning council activities. Cost-share responsibility of the cabinet will depend on the number of requests for financial assistance the cabinet receives. The 1990 General Assembly budgeted $500,000 for water supply plan cost-sharing during the 1990-1992 biennium.

2. Continuing years: If a county, its municipalities and public water systems initiate the planning process in subsequent years, cost-share financial contributions will be required to be provided by the cabinet to meet the 80 to 100 percent cost-share of plan development. If after July 15, 1996, a county, its municipalities and public water systems do not have an approved water supply plan, cost for plan development will be the sole responsibility of the county, its municipalities and the public water systems. All financial responsibilities of the Commonwealth required by this regulation are for water supply plan development only. Implementation of water supply plans is not required by the regulation or its authorizing statute.

(b) Reporting and paperwork requirements: Reporting and paperwork are required as part of the costs of plan development and shall not add expenditures to the cost of developing the plan.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs: At present, the program administering this regulation includes 2 full-time employees, 1/2 full-time supervision, and 1/2 full-time clerical/administrative employee. One full-time employee position was created by altering job responsibilities of an existing employee, and one full-time employee position was funded by the General Assembly as part of the 1990 Departmental Management Plan, for water shortage response planning. An additional employee will be needed to assist in the program's future activities. It is anticipated that several additional employee positions may be necessary as this program develops. This will be reviewed on a basis of need and employee workload, and will be incorporated into the Departmental Management Planning process. Continuing funds to provide state cost-share of planning expense will also be required.

1. First year: Including direct and indirect costs, $124,800 has been budgeted to administer this regulation during the current fiscal year. This supports: 2 full-time employees to coordinate the water supply planning program; 1/2 full-time supervision of the program; 1/2 full-time employee to handle clerical and administrative program issues. In addition, the program will require one computer, at an estimated cost of $3,100, so that the cabinet can provide technical assistance and training for water use forecasting. In addition to these employee cost projections, the first year of the current biennium has allocated $250,000 for the state cost-share of water supply plan development expenses.

2. Continuing cost: In addition to currently budgeted costs of $124,800, $41,600 per year will be required to add a third full-time staff position. These funds will be necessary if the cabinet is to provide adequate assistance during the planning process. Continuing allocations for the state cost-share of planning expense will be required, and are estimated to be a total of one and one-half million dollars from 1992-1996.

(3) Anticipated effect on state and local revenues:

(a) Funding will be required in the next two bienniums to continue staffing of 3 full-time employees needed to oversee the program. Direct and indirect costs would be $332,800 per biennium until the statutory date of July 15, 1996.

(b) Additional employee time is anticipated as this program develops. This will be reviewed on a basis of need and employee workload.

(c) No fees are required by this regulation that would generate revenue for state or local governments. When a final water supply plan is approved for any county, its municipalities, and public water systems, revenue-producing activities for local governments could be included in the water supply plan but are not required or specifically authorized by this regulation. Local cost for implementing plan proposals is estimated during the planning process; however, implementation of the plan is not required by the regulation.

(d) The General Assembly allocated $500,000 during the current biennium to pay for the state cost-share responsibilities of this regulation. This amount is divided in 2 allocations of $250,000 for each year of the biennium. It is anticipated that an additional 1 and 1/2 million dollars will be required for cost-share responsibilities to be met by the Commonwealth for plan development cost assistance.

(4) Assessment of alternative methods: No alternative methods were considered. KRS 151.116, as amended by the 1990 General Assembly, mandated the Natural Resources and Environmental Protection Cabinet to promulgate regulations to assist and instruct any county, its municipalities and public water systems for the water supply planning process.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict was discovered to exist involving current statutes, regulations or government policies.

(6) Any additional information or comments: No

TIERING: Was tiering applied: Yes. Tiering was used in this administrative regulation in the initiation of the planning process. Tiering was used to avoid an unwieldy process for a county to decide whether it joins with other counties to form a multicounty plan. Representatives that participate in voting on this decision are from specific classes of municipalities, depending on the total number of municipalities in the county. There is no other tiering in this

administrative regulation. Each county, its municipalities and public water suppliers are responsible for complying with the regulation. Reduction, modification, or exemption from regulatory requirements is specifically allowed in certain parts of the regulation, with prior approval of the cabinet. Such alterations are normally specific to lack of data concerning natural conditions and the feasibility of attaining such data within a reasonable time frame or for a reasonable cost. For example, in some circumstances streamflow gage data may be meaningless until recorded for at least ten years; or well drawdown data may be attained only by cutting off a public water supply system. The cabinet would approve alternative calculations in either case.

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

2. State what unit, part of division of local government this administrative regulation will affect. This administrative regulation will primarily affect any public water supply which is owned or operated by a local government. Private public water systems will also be affected by this regulation. Any local government in-house planning staff will most likely be used in the coordination and information assimilation aspect of plan development. This activity would be either as the planning representative for the planning council or as an in-house support role to assist a planning representative.

3. State the aspect or service of local government to which this administrative regulation relates. Future water supply planning is the focus of this regulation. Determination of future water supply source availability and need are major aspects of the regulations intent. KRS 151.110 requires each county, its municipalities and public water systems to develop a water supply plan. This may be accomplished by a single county forming an individual planning unit or by two (2) or more counties forming a planning unit and developing a multicounty plan.

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 purpose of this administrative regulation is for the adoption of standards and guidelines for the use by each county, its municipalities and public water systems in the development of water supply plan. This regulation will not in itself cause the increase or decrease in number of persons for whom a local government provides services. This regulation does provide a means by which local governments may appropriately plan for future water use. This could include expansion of public water supply service areas affecting additional citizens. Local government revenue could be affected in 2 areas: plan development cost, and plan implementation. Local governments will be liable for up to 20 percent of plan development cost. A rough estimate of ($20,000) has been quoted by experienced planning individuals who have reviewed drafts of this regulation. Using this monetary figure applying this regulation to the sum of ($20,000), a local government would be liable for up to ($4,000) of plan development cost. Then depending on what avenues are chosen and incorporated in the water supply plan, cost will be incurred to implement future water supply expansion or new construction projects. This determination of future cost liability will depend on water supply issues incorporated into the local governments approvable water supply plan. State expenditure increases will parallel those of local governments. The Commonwealth will be paying for 80 to 100 percent of the development cost of approved water supply plans. Future requests for monetary assistance for capital construction projects through the community development block grant (CDBG) program will be reviewed against a local government's approved water supply plan. Possible future state expenditures could be based on an approved water supply plan. Incurred cost, those other than plan development cost, will be determined by local governments. The desire of local governments to address future water supply needs for their community will be the determining factor in any future endorsements of projects that impact water through the Kentucky intergovernmental review process.

TRANSPORTATION CABINET
Department of Highways
Division of Planning

603 KAR 5:250. Selection of National Truck Network highways.

RELATES TO: KRS 189.221, 189.222, 23 CFR Part 658

STATUTORY AUTHORITY: KRS 189.222, 23 CFR Part 658

NECESSITY AND FUNCTION: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable size limits for motor vehicles using the State Primary Road System. 23 CFR Part 658 requires the states to establish access review procedures certified by the Federal Highway Administration (FHWA) for purposes of allowing the operation of specified vehicles beyond the original limits of the National Truck Network as authorized by the Surface Transportation Appropriations Act of 1982. This administrative regulation is promulgated in order to provide for the access review procedures to be administered by the Department of Highways.

Section 1. Definitions. (1) "STAA vehicle" shall mean a vehicle which exceeds the dimension limits set forth in 603 KAR 5:070, Section 1, but which does not exceed the dimensions prescribed by 603 KAR 5:070, Section 2(2).

(2) "National Truck Network (NTN)" shall mean the system of highway routes in Kentucky described in 603 KAR 5:070, Section 3, and Appendix A to 23 CFR Part 658.

(3) "Reasonable access" shall mean the right for an STAA vehicle to access a terminal or service facility under the provisions of 23 CFR Part 658.19.

(4) "Service facility" shall mean any

commercial facility that provides repair, fuel, food, or rest to an STAA vehicle or its operator.

(5) "Terminal" shall mean any location where freight either originates, terminates, or is handled in the transportation process, or where commercial motor carriers maintain operating facilities.

Section 2. 23 CFR Part 658. Selection of the National Truck Network highways and access to terminals and services by STAA vehicles shall be governed by 23 CFR Part 658.

Section 3. Right of Access Without Review. Access to terminal and service facilities shall be allowed for STAA vehicles up to five (5) driving miles from the National Truck Network on state-maintained routes and up to one (1) mile on any nonstate-maintained route except where STAA vehicles are prohibited from using a route following the provisions set forth in Section 4 of this regulation.

Section 4. Use of Route Prohibited. Any route within the one (1) mile or five (5) mile automatic access allowance set forth in Section 2 of this regulation that has significant, clearly-evident safety problems may by Transportation Cabinet official order or local ordinance which has been reviewed and approved by the Transportation Cabinet be closed to use by STAA vehicles provided there is compliance with the following:

(1) If the prohibition of use is on a state-maintained route, an official order for that purpose shall be issued by the Transportation Secretary with the approval of the State Highway Engineer.

(2) If the prohibition is the result of action by a local jurisdiction, that jurisdiction shall provide the State Highway Engineer with copies of the appropriate ordinance for review by the Department of Highways in order to ensure consistency of the local ordinance with 23 CFR Part 658. The Transportation Cabinet shall either approve, disapprove or offer changes to the local ordinance within thirty (30) days of receipt of the ordinance. If the Transportation Cabinet fails to act within the thirty (30) days, the local ordinance shall become effective on the 31st day.

(3) Any route normally falling within the five (5) mile or one (1) mile automatic access which is prohibited for use by STAA vehicles under the provisions of this section shall be identified by the placement of a traffic sign by either the Department of Highways or the local government unit having jurisdiction over the route.

(4) Any route normally falling within the five (5) mile or one (1) mile automatic access which is prohibited for use by STAA vehicles under the provisions of this section shall be identified in 603 KAR 5:070.

Section 5. Request for Access Review. Any owner or operator of an STAA vehicle who cannot reach a terminal facility through the access provisions of Section 3 of this regulation and the highway segments set forth in 603 KAR 5:070 may request review of a specific route by the following procedures:

(1) The applicant shall file a written request addressed to the Division of Planning, 419 Ann Street, Frankfort, Kentucky 40622, in an envelope plainly marked "STAA Route Review";

(2) The applicant shall mark on a state highway map the routes the applicant travels within Kentucky. The applicant shall also provide a written description of these routes;

(3) The applicant shall mark on the same map used in subsection (2) of this section the proposed route to be reviewed and mark the terminal facility proposed to be used by STAA vehicles. The applicant shall also provide a written description of the route desired to be traveled in Kentucky and furnish any other appropriate proof of need to use the route;

(4) The applicant shall describe the STAA motor vehicle proposed to be operated by the applicant over the route, including kingpin distance of trailers as measured to the center of the rear axle and the amount of rear overhang as measured from the center of the rear axle to the rear of the trailer. These dimensions shall not exceed a forty-one (41) foot kingpin distance nor a rear overhang of five (5) feet; and

(5) The applicant shall agree to supply a STAA vehicle and driver for use in demonstrating vehicle performances on the route requested to be reviewed if needed by the Transportation Cabinet.

Section 6. Access Review Procedure. After receipt of a "Request for Access Review" which meets the requirements of Section 5 of this regulation, the Transportation Cabinet shall have ninety (90) days in which to inspect the route, make a recommendation as to whether the route should be approved as an access route, obtain the approval of the State Highway Engineer, and obtain the secretary's approval of an official order designating the route as part of the NTN system, if so warranted. Otherwise, it shall notify the applicant that the request has been refused. In making its findings, the Transportation Cabinet shall consider all of the factors set forth in Section 7 of this regulation. Failure to meet any one (1) of the application requirements set forth in Section 5 of this regulation or the tests set forth in Sections 7 and 8 of this regulation shall be grounds for denial of a request for access review. Failure by the Transportation Cabinet to either approve or reject the request within the ninety (90) day period shall constitute automatic approval of this request.

Section 7. Engineering and Safety Criteria. All requests for access review shall be subjected to an engineering and safety analysis. Any one (1) of the following design deficiencies shall disqualify a route from further consideration for inclusion in the National Truck Network:

(1) A two (2) lane, two (2) directional route which has a lane width of ten (10) feet or less;

(2) A route which has a gross weight limit of less than 80,000 pounds;

(3) A route which has a structure on which the bridge weight allowance, as determined by the bridge weight formula set forth in 603 KAR 5:066, Section 3(3), is less than 80,000 pounds for use by a tractor semitrailer combination with five (5) or more axles;

(4) A route which has an underpass that has a vertical clearance of less than thirteen (13) feet six (6) inches);

(5) A route which has a bridge structure with a width, measured curb to curb, of twenty-two

(22) feet or less;
(6) A route greater than one (1) mile in length where the sight passing distance over fifty (50) percent of any segment of the route is restricted to lengths less than 1,500 feet;
(7) A route where a combination of two (2) or more of the following conditions on any segment of the route is of a magnitude to constitute a clearly evident safety hazard;
(a) There exists high degrees of horizontal or vertical curvature;
(b) The roadway shoulders are less than four (4) feet in width; or
(c) There is a narrow bridge on the road segment;
(8) A route on which the turning radii of urban intersections are insufficient, as measured by template or on-site observation, to permit safe turning maneuvers by an STAA vehicle or a route on which the operation of an STAA vehicle constitute a safety hazard to other vehicle operators or public or private property by reason of vehicle off-tracking or opposing lane encroachment; or
(9) A route on which the incidence of traffic accidents is of a magnitude to indicate that any portion of the route is unsafe, particularly for use by STAA vehicles.

Section 8. Provision for Over-the road or Template Tests. If a route is not rejected for inclusion in the National Truck Network due to design deficiencies, a test drive of the route may be required. Where as-built planimetric plan drawings are available at a sufficient scale for use of template measures, the template measures may be substituted for an STAA vehicle test drive over the route. Where no suitable as-built plans exist, the applicant-furnished STAA dimension test vehicle shall be driven over the route and the vehicle's performance recorded so as to provide a permanent record demonstrating the adequacy or inadequacy of its performance. The result of the test drive shall be considered in the engineering and safety analysis of the route by the Transportation Cabinet.

O. GILBERT NEWMAN, State Highway Engineer
MILO D. BRYANT, Secretary
APPROVED BY AGENCY: March 11, 1991
FILED WITH LRC: March 13, 1991 at 8 a.m.
PUBLIC HEARING: A public comment hearing will be held on this administrative regulation on April 22, 1991 at 10 a.m., local prevailing time in the Fourth Floor Hearing Room of the State Office Building located at the corner of High and Clinton Streets, Frankfort, Kentucky. Any person who intends to attend this hearing must in writing by April 17, 1991 so notify this agency. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is cancelled, written comments will only be accepted until April 17, 1991. Send written notification of intent to attend the public hearing or written comments on the administrative regulation to: Sandra G. Pullen, Executive's Staff Advisor, Transportation Cabinet, 10th Floor State Office Building, Frankfort, Kentucky 40622.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra G. Pullen
(1) Type and number of entities affected: Owners and operators of all larger motor vehicles operating in Kentucky which meet the definition of an STAA vehicle.
(a) Direct and indirect costs or savings to those affected: There will be an incalculable savings to the operators of the STAA vehicles because until this administrative regulation is adopted, they had no access on locally-maintained roads. Now, because of the federal mandate, they can legally operate up to one mile off of the National Truck Network of Highways while on local roads. While there was minimal enforcement of the prohibition each truck attempting to reach service facilities or terminals ran the risk of being issued a citation for operating illegally. On the cost side, any company wishing a road segment to be added to the national network may have to supply an STAA vehicle for a road test of the safety of the highway segment. The expected cost of this test is about $100. However, if the road segment is deemed safe for use by STAA vehicles, the vehicle operator may save thousands of dollars a year by using a better or shorter route.
1. First year: Incalculable and will vary from company to company.
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: If the company wishes an additional road segment to be added to the National Truck Network of Highways, they must submit a formal application to the Transportation Cabinet complete with maps, purpose and vehicle description.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None, this basic procedure has been in place for many years, but the Federal Highway Administration with their regulation required that the procedure be formalized. Approximately, one-half of one person's time is spent in administering this program and evaluating road segments.
1. First year: $15,000 each year.
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Not only must the applications be reviewed and this administrative regulation kept current, but its sister regulation 603 KAR 5:070 which lists all of the highway segments in Kentucky which are part of the National Truck Network of Highways must be kept current.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None - it was federally mandated.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 189.221 specifically limits the size and weight of trucks operating on local highways. These limits are less than the one-mile access allowed

by this administrative regulation.
(a) Necessity of proposed regulation if in conflict: The federal mandate specifically stated that it preempted state law in allowing this access.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No, because federal law preempts state law.
(6) Any additional information or comments:
TIERING: Was tiering applied? Yes. The entire administrative regulation deals with the tiering of highways for the use of different sized vehicles.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 23 CFR Part 658, Truck Size and Weight; Reasonable Access requires each state to establish access provisions to the National Truck Network of Highways which meet the criteria set forth in the federal regulation and to get federal approval of the criteria.
2. State compliance standards. The state compliance standards set forth in this administrative regulation meet the federal requirements, but do not exceed them. Specifically, five-mile access on state-maintained highways and one-mile access on locally-maintained highways are allowed from the National Truck Network of Highways. However, if there are reasonable safety grounds for excluding a road segment from the access provisions, the Transportation Cabinet may do so. In addition, as required by the federal regulation, the state retained final control over the one-mile access on local highways, but the local government is given the ability to act first. The access review procedures are grounded in sound engineering principles.
3. Minimum or uniform standards contained in the federal mandate. Same as adopted in the state administrative regulation.
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.

KENTUCKY STATE UNIVERSITY
Board of Regents

745 KAR 1:015. Fund acquisition and disbursement.

RELATES TO: KRS 164A.560, 164A.565
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits the governing board of each public institution of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provisions of KRS 164A.560 and 164A.565 at Kentucky State University. The scheduled implementation date of this regulation is July 1, 1991.

Section 1. The Board of Regents of Kentucky State University elects to perform the financial management functions set forth in KRS 164A.560(2), related to the receipt, deposit, collection, retention, investment, disbursement, and accounting of all funds, and set forth in KRS 164A.565 related to the installation of an accrual basis accounting system, other records, and annual reports.

Section 2. The Board of Regents of Kentucky State University elects to comply with KRS 164A.560(2)(b), to limit disbursements to the accounts and for the purposes for which the state appropriations, or other monies have been received for through the enacting resolution of the institution's annual operating budget.

Section 3. The Board of Regents of Kentucky State University shall install an accrual basis accounting system and fund structure in conformance with generally accepted accounting principles and procedures established for colleges and universities by the National Association of College and University Business Officers and the American Institute of Certified Public Accountants, and shall act to ensure further compliance with KRS 164A.565(2), (3), (6), (7), and (8).

Section 4. 745 KAR 1:010, Acquisition and disbursement of funds, is hereby repealed.

LOUIE B. NUNN, Chairman
ADOPTED BY AGENCY: February 15, 1991
FILED WITH LRC: February 15, 1991 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on April 22, 1991 at 10 a.m. in the Board Room in the Academic Services Building, Kentucky State University. Individuals interested in attending this hearing shall notify this agency in writing by April 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: Reginald L. Thomas, General Counsel, Hume Hall, Suite 102, Kentucky State University, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Gus Ridgel
(1) Type and number of entities affected: Kentucky State University, Treasury Department, Division of Accountants, State Computer Services.
(a) Direct and indirect costs or savings to those affected:
1. First year: $80,000 initial year savings only.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $3,000 initial year savings

only.
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: Management need for integrated systems including interactive entries between student records, financial aid and student billings, payroll (students) and accounting.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering was not applied because the university is establishing uniform standards.

KENTUCKY STATE UNIVERSITY
Board of Regents

745 KAR 1:025. Institutional audit.

RELATES TO: KRS 164A.570
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits the governing board of each public institution of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provision of KRS 164A.570 at Kentucky State University. The scheduled implementation date of this regulation is July 1, 1991.

Section 1. The Board of Regents of Kentucky State University shall engage a qualified firm of certified public accountants for the purpose of submitting an independent opinion and preparing a report of findings and recommendations concerning internal accounting controls and procedures on the compliance with KRS 164A.555 to 164A.630. The engagement of the accounting firm, scope of the audit, and report of findings shall be in accordance with the provisions of KRS 164A.570.

Section 2. 745 KAR 1:020, Annual audit, is hereby repealed.

LOUIE B. NUNN, Chairman
ADOPTED BY AGENCY: February 15, 1991
FILED WITH LRC: February 15, 1991 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on April 22, 1991 at 10 a.m. in the Board Room in the Academic Services Building, Kentucky State University. Individuals interested in attending this hearing shall notify this agency in writing by April 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: Reginald L. Thomas, General Counsel, Hume Hall, Suite 102, Kentucky State University, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Gus Ridgel
(1) Type and number of entities affected: Finance and Administration Cabinet, Auditor of Public Accounts.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Filing copies of audit report.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Filing copies of audit reports.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Audit required by outstanding bond issues.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: Annual audit currently being performed by CPA firm.
TIERING: Was tiering applied? No. Tiering was not applied because the university is establishing uniform standards.

KENTUCKY STATE UNIVERSITY
Board of Regents

745 KAR 1:035. Procurement procedures.

RELATES TO: KRS 164A.575
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits the governing board of each public institution of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provision of KRS 164A.575 at Kentucky State University. The scheduled implementation date of this regulation is July 1, 1991.

Section 1. The Board of Regents of Kentucky State University, under the provisions of KRS

164A.560, elects to purchase interests in real property, contractual services, rentals of all types, supplies, materials, equipment, printing, and services in accordance with KRS 164A.575(1) through (12).

Section 2. 745 KAR 1:030, Purchasing, inventory, sales of surplus property, bidding procedures, is hereby repealed.

LOUIE B. NUNN, Chairman
ADOPTED BY AGENCY: February 15, 1991
FILED WITH LRC: February 15, 1991 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on April 22, 1991 at 10 a.m. in the Board Room in the Academic Services Building, Kentucky State University. Individuals interested in attending this hearing shall notify this agency in writing by April 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: Reginald L. Thomas, General Counsel, Hume Hall, Suite 102, Kentucky State University, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Gus Ridgel
(1) Type and number of entities affected: State purchasing office.
(a) Direct and indirect costs or savings to those affected:
1. First year: $20,000 initial year savings only.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $55,000 initial year savings only.
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: NA
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering was not applied because the university is establishing uniform standards.

KENTUCKY STATE UNIVERSITY
Board of Regents

745 KAR 1:045. Bond issue.

RELATES TO: KRS 164A.605
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits the governing board of each public institution of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provision of KRS 164A.605 at Kentucky State University. The scheduled implementation date of this regulation is July 1, 1991.

Section 1. The Board of Regents of Kentucky State University, under the provisions of KRS 164A.560, elects the authority to issue bonds subject to the conditions as set forth in KRS 164A.605.

Section 2. 745 KAR 1:050, Issuance of bonds, is hereby repealed.

LOUIE B. NUNN, Chairman
ADOPTED BY AGENCY: February 15, 1991
FILED WITH LRC: February 15, 1991 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on April 22, 1991 at 10 a.m. in the Board Room in the Academic Services Building, Kentucky State University. Individuals interested in attending this hearing shall notify this agency in writing by April 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: Reginald L. Thomas, General Counsel, Hume Hall, Suite 102, Kentucky State University, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Gus Ridgel
(1) Type and number of entities affected: State Property and Building Commission, Finance and Administration Cabinet.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None

2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: Approval of State Property and Building Commission and Board of Regents.
(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:
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: NA
(6) Any additional information or comments: No plans to issue new bonds in the immediate future.
TIERING: Was tiering applied? No. Tiering was not applied because the university is establishing uniform standards.

KENTUCKY STATE UNIVERSITY
Board of Regents

745 KAR 1:055. Fund for excellence.

RELATES TO: KRS 164.410, 164A.620
STATUTORY AUTHORITY: KRS 164A.560
NECESSITY AND FUNCTION: KRS 164A.560 permits the governing board of each public institution of higher education to elect to perform financial management functions per KRS 164A.555 to 164A.630 by issuing regulations to do so. This regulation implements the provision of KRS 164A.620 at Kentucky State University. The scheduled implementation date of this regulation is July 1, 1991.

Section 1. The Board of Regents of Kentucky State University, under the provisions of KRS 164A.560, elects and authorizes the establishment of a fund for excellence under the conditions and for the purposes set forth in KRS 164A.620.

Section 2. 745 KAR 1:040, Disposal of property, proceeds; title, is hereby repealed.

LOUIE B. NUNN, Chairman
ADOPTED BY AGENCY: February 15, 1991
FILED WITH LRC: February 15, 1991 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on April 22, 1991 at 10 a.m. in the Board Room in the Academic Services Building, Kentucky State University. Individuals interested in attending this hearing shall notify this agency in writing by April 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: Reginald L. Thomas, General Counsel, Hume Hall, Suite 102, Kentucky State University, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dr. Gus Ridgel
(1) Type and number of entities affected: Surplus property.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict: None
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: NA
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering was not applied because the university is establishing uniform standards.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission

807 KAR 5:014. Management and operation audits.

RELATES TO: KRS Chapter 278
STATUTORY AUTHORITY: KRS 278.255
NECESSITY AND FUNCTION: KRS 278.255(4) provides that the Public Service Commission (hereinafter referred to as "commission") shall adopt rules and regulations setting forth the scope and application of audits, and procedures for the conduct of management and operations audits of regulated utilities.

Section 1. Definitions. (1) "Audit" means an examination, inspection, evaluation and investigation of records, regulations, policies, objectives, goals, plans, practices, methods or other criteria utilized by management of a utility to conduct its business, and may include appropriate recommendations for improved management and operation techniques.
(2) "Bidders list" means a list of independent firms who have notified the commission of interest in performing audits.
(3) "Staff" means commission staff.
(4) "Utility" means a utility as defined in KRS 278.010(3).

Section 2. Affiliated Entities. An audit of a utility may include entities which are affiliated with the utility. The scope of audits of affiliated entities shall be limited to the affiliates' management or operations which affect the utility.

Section 3. Procedures for Audits Performed by an Independent Firm. (1) Upon a commission decision to audit a utility by independent firm, the commission shall issue a request for proposal to all firms on the bidders list.

(2) The request for proposal shall include the objective and scope of the audit, the role of the commission and staff in the audit, contractual arrangement, selection criteria, and other requirements of the proposal, including testimony, reports, and work papers.

(3) The commission shall evaluate all proposals received, select one (1) respondent (bidder) to perform the audit, and enter into a contractual relationship with the successful bidder and the utility to ensure performance of the audit. The commission may reject all proposals and reissue its request for proposal.

(4) The auditing firm shall forward all invoices for payment to staff. After review of the invoices, staff shall forward the invoice to the utility for payment.

(5) If an audit is to be conducted concurrently on more than one (1) utility, the auditing firm shall account for the costs directly assignable to each utility. Each utility shall pay the costs directly assignable to it and a proportionate amount of the common, joint or indirect costs equally divided among the audited utilities. At the conclusion of the audit, the auditing firm shall submit a final invoice showing the total amount of directly assignable costs charged to each utility, and allocating the common, joint or indirect costs to each utility based upon the respective proportion of direct costs charged to each utility. The amounts previously paid by each utility shall be accounted for in order to true-up the final amount due from each utility.

Section 4. Minimum Requirements of Audits. Audits, whether performed by any independent firm or by staff, shall include submission of the following:

(1) Detailed work plans describing the technical plan for accomplishing the work.

(2) Draft reports describing preliminary findings and conclusions.

(3) A final draft report comprised of a management summary and recommendations.

(4) A final report evolving from the draft report.

(5) An action plan for each recommendation detailing steps necessary to successfully implement each recommendation, and estimating monetary savings, if any, or other benefits to be realized from implementation of those recommendations, along with an estimate of costs of implementation.

(6) Work papers identifying the source of information for each finding.

(7) Any other documented information the commission finds necessary.

Section 5. Opportunity for Comment. The utility shall have opportunity for comment at the following times:

(1) The utility shall be provided a copy of the commission's draft request for proposal and shall have fifteen (15) working days to provide written comments to staff.

(2) Upon receipt of bidders' proposals, staff shall provide the utility at least one (1) copy of each bidder's proposal. The utility shall have fifteen (15) working days to provide written comments on each proposal, including the initial work plan, to staff.

(3) The utility shall be provided a copy of the preliminary draft report and shall provide written comments on the draft report to staff within twenty (20) working days.

(4) The utility shall be provided a copy of the final draft report and shall provide written comments on the final draft to staff within ten (10) working days.

Section 6. Public Inspection. The final report shall be kept on file with the commission and open to public inspection.

Section 7. Implementation of Audit Recommendations. (1) The utility shall prepare responses to all action plans. The utility's response shall include a statement addressing each recommendation which either adopts the recommendation, adopts it with exception, or rejects the recommendation. The response shall detail steps necessary to implement each recommendation adopted or adopted with exception by the utility. For any recommendation rejected by the utility, a detailed basis for rejection shall be provided.

(2) Except for recommendations which staff has identified as completed or placed in an agree-to-disagree status, progress reports shall be filed by the utility for each recommendation every six (6) months for the first two (2) years after issuance of the final audit report. Thereafter, progress reports shall be filed annually for each recommendation.

Section 8. Deviations from Rules. In special cases, for good cause shown, the commission may permit deviations from these rules.

GEORGE EDWARD OVERBEY, JR., Chairman
THEODORE T. COLLEY, Secretary
APPROVED BY AGENCY: March 11, 1991
FILED WITH LRC: March 13, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on April 26, 1991 at 9 a.m. in Hearing Room 1 of the Commission's Offices at 730 Schenkel Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by April 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 all utilities under the Public Service Commission jurisdiction. There are currently 471 jurisdictional utilities.

(a) Direct and indirect costs or savings to those affected:

1. First year: This regulation merely codifies the procedure currently followed by the commission in conducting management and operation audits performed pursuant to KRS 278.255. The procedure established in the regulation has no direct or indirect cost or savings.

2. Continuing costs or savings: The procedure established in the regulation has no direct or indirect continuing cost or savings.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The procedure established in the regulation has no additional factors increasing or decreasing cost.

(b) Reporting and paperwork requirements: Section 5(1) and (2) allow the utility the opportunity to provide written comments on the draft request for proposal and each bidder's proposal. Section 5(3) and (4) require the utility to provide written comments on the preliminary draft report and final draft report. Section 7 requires the utility to prepare responses to all action plans as a result of a complete management and operation audit. Section 7(2) requires the utility to file progress reports for each recommendation every six months for the first two years after issuance of a final audit report and thereafter progress reports filed annually until the recommendations have been identified as completed or placed in an agree-to-disagree status.

(2) Effects on the promulgating administrative body: The regulation merely codifies the procedure currently used by the commission in implementing management and operation audits.

(a) Direct and indirect costs or savings:

1. First year: The regulation will have no direct or indirect cost or savings on the agency.

2. Continuing costs or savings: The regulation will not have any direct or indirect continuing cost or savings.

3. Additional factors increasing or decreasing costs: The regulation does not have any additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There will be no increase or decrease in the current overall reporting requirements.

(3) Assessment of anticipated effect on state and local revenues: There will be no impact on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The regulation merely codifies the current procedures used by the commission, no alternative method has been proposed.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There has not been any conflict, overlapping or duplication identified.

(a) Necessity of proposed regulation if in conflict: No conflict has been identified.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(6) Any additional information or comments: No additional comments.

TIERING: Was tiering applied? No. This regulation merely codifies the procedure to be used for all management and operation audits performed. Therefore, tiering is not applicable.

CABINET FOR HUMAN RESOURCES
Commission for Health Economics Control in Kentucky

902 KAR 20:136. Certificate of need expenditure minimums.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(2)

STATUTORY AUTHORITY: KRS 216B.040, 216B.130

NECESSITY AND FUNCTION: KRS 216B.040 authorizes the Commission for Health Economics Control in Kentucky to promulgate administrative regulations. KRS 216B.130 requires the commission to annually adjust expenditure minimums provided in KRS Chapter 216B. This regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment for the period beginning July 15, 1991 and ending July 14, 1992.

Section 1. (1) Expenditure minimums or limits provided in KRS Chapter 216B and regulations promulgated pursuant thereto shall be adjusted for the twelve (12) month period beginning July 15, 1991 and ending July 14, 1992 to reflect the changes in the preceding twelve (12) month period.

(2) The Department of Commerce Composite Fixed Weighted Price Index shall be used in making these adjustments. The changes in the Index for the twelve (12) month period ending October, 1990 represent a three (3) percent increase, subsequently rounded upward to the nearest thousand.

Section 2. The expenditure minimums provided in KRS Chapter 216B shall be increased for the twelve (12) month period from July 15, 1991 to July 14, 1992 as follows:

(1) The expenditure minimum of $1,500,000 for capital expenditures shall be increased to $1,545,000.

(2) The expenditure minimum of $1,500,000 for major medical equipment shall be increased to $1,545,000.

W. HOURIGAN, Ph.D., Chairman
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: February 22, 1991

FILED WITH LRC: March 14, 1991 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for April 22, 1991, at 9 a.m. in the Department for Employment Services Conference Room, 2nd Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by April 17, 1991 of their desire to appear and testify at the hearing: Kim Moore, Acting General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: W. Hourigan
(1) Type and number of entities affected: Applicants for certificates of need.
(a) Direct and indirect costs or savings to those affected: None. However, there will be some savings for applicants who become exempt from having to apply for a certificate of need as a result of the increases of the expenditure minimums in KRS Chapter 216B.
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: Applications will continue to be filed according to the requirements of KRS Chapter 216B.
(2) Effects on the promulgating administrative body: There will be slightly less agency funds received due to fewer applications being processed as a result of the increase of the expenditure minimums in KRS Chapter 216B. However, an exact dollar loss or workload reduction cannot be determined since the number of applications varies between fiscal years.
(a) Direct and indirect costs or savings: An accurate estimate of savings is not possible since the number of proposals varies between fiscal years.
1. First year: The loss in agency funds will be experienced the first year of implementation of this regulation and thereafter.
2. Continuing costs or savings: The agency fund loss will be continuing.
3. Additional factors increasing or decreasing costs: None noted.
(b) Reporting and paperwork requirements: If fewer applications are processed because of revisions of KRS Chapter 216B, there will be reduced paperwork.
(3) Assessment of anticipated effect on state and local revenues: An accurate assessment of effect on state revenues is not possible since the number of proposals varies between fiscal years.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(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. A certificate of need is required for all proposals which exceed the expenditure minimums which are not exempted pursuant to KRS 216B.020.

CABINET FOR HUMAN RESOURCES
Department for Social Services

905 KAR 5:060. Compensation for guardianship program services.

RELATES TO: KRS 210.290, 386.180, 387.760(2)
STATUTORY AUTHORITY: KRS 194.050, 210.290, 386.180
NECESSITY AND FUNCTION: Pursuant to KRS 210.290 and 387.760(2) the Cabinet for Human Resources shall be entitled to reasonable compensation for services rendered and for reasonable and necessary expenses incurred in the exercise of its assigned guardianship or conservatorship duties and powers. This regulation sets forth the policies which shall be employed by the Cabinet for Human Resources when charging for services administered by the guardianship program.

Section 1. Compensation. (1) The Cabinet for Human Resources shall collect compensation for services rendered by the guardianship program, pursuant to KRS 386.180.
(2) For those wards whose income and resources are limited to the extent that they are eligible for benefits under the Medical Assistance Program, the annual compensation charged shall not exceed:
(a) $120 for those wards whose cash resources are $1,000 or more.
(b) Sixty (60) dollars for those wards whose cash resources are less than $1,000.
(3) Notwithstanding a provision of this regulation, the Cabinet for Human Resources may waive its charge for compensation for a ward if the charge would deprive the ward of the necessities of life including, but not limited to, necessary food, clothing, shelter, or medical care.

LARRY MICHALCZYK, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: March 4, 1991
FILED WITH LRC: March 14, 1991 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on April 22, 1991 at 9 a.m. in the Employment Services Conference Room, 2nd Floor, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing the following office by April 17, 1991: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: J.R. Nash
(1) Type and number of entities affected: The type and number of entities affected is 2,500 guardianship clients for which the Cabinet for Human Resources provides fiduciary services.
(a) Direct and indirect costs or savings to those affected: Direct costs to the guardianship clients are the fees implemented pursuant to KRS 386.180 6% of monthly income, .3% on total resources or 6% when resources are distributed and 6% on interest earned on resources. For those clients eligible for medical assistance the annual fee shall not exceed $120 for those with monthly cash resources of $1,000 or more and $60 for those with monthly cash resources less than $1,000.
1. First year: The anticipated first year cost to the affected entities range from $25,000 to $25,400.
2. Continuing costs or savings: The number of guardianship clients is increasing at a rate of 200 per year therefore, continuing costs to the affected entities may increase in a range of $300 to $400 per year.
3. Additional factors increasing or decreasing

costs (note any effects upon competition): There are no effects on competition, but additional factors increasing or decreasing the cost include changes in the medical assistance eligibility criteria and fees, general economic condition, cost of health care and the shift from elderly nursing home clients to mentally ill and mentally retarded clients.

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements for the affected entities.

(2) Effects on the promulgating administrative body: The effect on the administrative body is that the fees collected for fiduciary services may be utilized to offset the cost of additional staffing needs in the guardianship program.

(a) Direct and indirect costs or savings: Savings for the administrative body will result from the collected fiduciary fees that will offset increased personnel costs in the guardianship program. Indirect costs for the administrative body will be incurred in the establishment of a mechanism to monitor and collect the fiduciary fee.

1. First year: First year savings for the administrative body will range from $25,000 to $25,400 which are the collected fees reduced by the administrative cost of implementing a collection and monitoring mechanism.

2. Continuing costs or savings: Continued savings may increase in an amount of $300 to $400 per year with the current guardianship caseload increasing at a rate of 200 per year.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing the costs to the administrative body.

(b) Reporting and paperwork requirements: Additional paperwork will be required of guardianship staff to monitor and maintain the fiduciary accounts.

(3) Assessment of anticipated effect on state and local revenues: State revenues will increase as a result of the collection of the fiduciary fee which shall be utilized to offset the cost of additional staffing needs of the guardianship program.

(4) Assessment of alternative methods; reasons why alternatives were rejected: No other alternate methods were considered as KRS 386.180 provides the statutory authority to collect the fiduciary fee.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy is in conflict.

(a) Necessity of proposed regulation if in conflict: No conflict with the proposed regulation exists.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict with proposed regulation exists.

(6) Any additional information or comments: Changes in the medical assistance criteria, and fee structure may decrease the savings anticipated from the collection of fiduciary fees.

TIERING: Was tiering applied? Yes. For those guardianship clients eligible for benefits under the Medical Assistance Program there is a maximum fee of $120 for those with monthly cash resources of $1,000 or more and $60 for those with monthly cash resources of less than $1,000. For guardianship clients not eligible for medical assistance benefits the fees are assessed pursuant to KRS 386.180. The cabinet may waive the fee for any ward if it would deprive the client of the necessities of life (i.e., food, clothing, shelter or medical care).

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the March 5 & 6, 1991 Meeting

The March meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, March 5, 1991 at 2 p.m. in Room 327 of the Capitol and on Wednesday, March 6, 1991 at 10 a.m. in Room 327 of the Capitol. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the February 7 and 8, 1991 meeting were approved.

Present on March 5, 1991 were:

Members: Representative Tom Kerr, Chairman; Senators Pat McCuiston and Bill Quinlan; Representatives Woody Allen, Jim Bruce and James Yates.

Guests: Ken Walker, Debbie McGuffey, Council on Higher Education; George Russell, Rosemary F. Center, Carla Arnold, Agnes Valentine, State Board of Elections; Stuart Reagan, Billy Hunt, Teachers' Retirement System; Richard Ross, Board of Pharmacy; Avery G. Hill, Ada Towles, Bob Kellerman, Darlene Ekain, Board of Optometric Examiners; Thomas A. Young, Tom Edwards, Department of Fish and Wildlife Resources; Sam Crawford, Kentucky Farm Bureau.

LRC Staff: Susan Wunderlich, Joe Hood, Gregory Karambellas, Peggy Jones, Donna Pierce, and Susan Eastman.

Present on March 6, 1991 were:

Members: Representative Tom Kerr, Chairman; Senators Gene Huff, Pat McCuiston and Bill Quinlan; Representatives Woody Allen, Jim Bruce and James Yates.

Guests: Billy Hunt, Teachers' Retirement System; Christopher Johnson, Justice Cabinet; Sandra G. Pullen, Transportation; Patrick Watts, Department of Insurance; Catherine Staib, Alcoholic Beverage Control Board; Kathleen Dorman, Wayne Bates, Public Service Commission; Marcia Burklow, Robert Calhoun, Pat Bishop, Ked Fitzpatrick, Anita Moore, Janice Kline, Constance C. DeBurger, Cathy G. Mobley, Ralph Von Deran, David Crane, Staci Searcy, Barbara Coleman, Eric Friedlander, Gary Hammons, Cabinet for Human Resources; Jeffrey Eastham, Jefferson County Emergency Medical Service; Anne B. Rouse, Mack J. Morgan, Jr., Katherine Gannoe, Ombudsman Program; Jim Judy, John Vinson, Kentucky Association of Health Care Facilities; John Barnett, South Central Bell; Daniel T. Yates, Kentucky Association of Electrical Cooperatives; Michael Duffy, City of Louisville.

LRC Staff: Susan Wunderlich, Joe Hood, Gregory Karambellas, Peggy Jones, Donna Pierce, Susan Eastman, and Ruth Billings.

The Subcommittee determined that the following administrative regulations did not comply with KRS Chapter 13A:

Justice Cabinet: Asset Forfeiture

500 KAR 9:015 (Model policy for forfeiture of assets by law enforcement agencies.) This regulation was technically amended to change the word "must" to the word "shall" in compliance with the drafting requirements of KRS Chapter 13A. The Subcommittee pointed out that Section 3 is largely a restatement of KRS 218.410, and portions of this Section should be rewritten or deleted. Agency personnel stated that he had already written the regulation four times, and did not particularly care to write it again. The Subcommittee was also concerned that Section 3 listed some items, which can be seized pursuant to the regulation, that are not included in the statute. Representative Bruce moved that this regulation was not in compliance with KRS Chapter 13A since it both restated and expanded the statute, and should be found deficient. The motion was seconded and passed.

Public Protection and Regulation Cabinet: Department of Insurance: Trade Practices and Frauds: Group and Blanket Health Insurance

806 KAR 18:040 (Health insurance for students of institutions of higher education.) This administrative regulation was amended to comply with the drafting requirements of KRS 13A.222. In addition, Sections 6 and 7 was deleted. It provided for severability and contained a reference to an effective date. The agency was informed that a legislative subcommittee was not authorized by KRS Chapter 13A to partially approve or disapprove an administrative regulation; that a court would make an independent judgement relating to severability; and that the effective date of an administrative regulation is governed by KRS 13A.330.

Representatives Bruce and Allen objected to the requirement that students attending institutions of higher education have health insurance. Both members pointed out that this would impose a financial hardship on a great number of students. Agency personnel stated that the statutes required health insurance coverage. Both members felt that the General Assembly may not have understood the implications of the legislation. Representative Bruce stated that the General Assembly should review the legislation in light of its adverse effect on students. The Subcommittee passed a motion made by Representative Bruce that this regulation did not conform to legislative intent. Motion passed.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Council on Higher Education: Public Educational Institutions

13 KAR 2:045 (Classification of Residency for admission and tuition assessment purposes.) This administrative regulation was technically amended to place the definitions in alphabetical order. Section 1(2) was reworded to state that the criteria is "set out in Section 2" of this regulation.

Teachers' Retirement System: General Rules

102 KAR 1:050 (Out-of-state service interest rates.) Section 4, which sets out a 1983 effective date, was deleted.

102 KAR 1:125 (Omitted contributions.) Section 4, which sets out a 1983 effective date, was deleted.

102 KAR 1:160 (Annuity tables.) This regulation was amended to incorporate the Annuity Table by reference.

102 KAR 1:165 (Surviving children's benefits.) This regulation was amended to incorporate the Student's Statement Regarding School Attendance Form by reference.

102 KAR 1:180 (Kentucky industrial development finance authority.) Section 1(6) was amended to specify that it apply only to teachers' retirement system investments.

General Government Cabinet: Board of Optometric Examiners

The following seven administrative regulations were amended to correct statutory citations; to comply with the drafting requirements of KRS 13A.222; to rewrite various sections for clarity.

201 KAR 5:010 (Application for examination; reciprocity.) Chairman Kerr asked what authority existed for the $30 fee in Section 3 for the issuance of a license certificate and its printing. Agency personnel were unclear as to the authority. Chairman Kerr instructed Subcommittee staff to request information from LRC Budget Review staff and to report back to the Subcommittee.

201 KAR 5:030 (Annual courses of study required.)

201 KAR 5:037 (Advertising.)

201 KAR 5:040 (Unprofessional conduct.)

201 KAR 5:050 (Office locations and equipment.)

201 KAR 5:060 (Licenses in inactive status.)

201 KAR 5:080 (Trade names.)

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:250 (Seasons and limits for upland game birds, furbearers and small game.) Section 2(3) was amended to specify the grouse hunting area by county rather than by relationship to highways.

Justice Cabinet: Asset Forfeiture

500 KAR 9:040 (Grants.) This regulation was amended to delete existing Section 3g, relating to career criminal prosecution programs, including the development of model drug control legislation, for funding preference.

Transportation Cabinet: Department of Vehicle Regulation: Commercial Driver's License

601 KAR 11:040 (Medical waivers for intrastate operators of commercial motor vehicles.) This regulation was amended to set forth the titles of the forms being incorporated by reference.

601 KAR 11:060 (Commercial driver's license mandate date.) The regulation was amended to clarify that commercial drivers' license applications can be made beginning January 1, 1991, and such licenses may be issued. However, they will not be required until April 1, 1992. This was a simplification of the regulation to avoid explaining certain provisions of the applicable federal regulations since the appropriate federal regulations are cited in compliance with KRS Chapter 13A.

Public Protection and Regulation Cabinet: Department of Insurance: Trade Practices and Frauds

806 KAR 12:131 (Requirements for disclosure for life insurance and annuity contracts.) This administrative regulation was amended to comply with the drafting requirements of KRS 13A.222. In addition, Section 3 was deleted. It provided for severability and contained a reference to an effective date. The agency was informed that a legislative subcommittee was not authorized by KRS Chapter 13A to partially approve or disapprove an administrative regulation; that a court would make an independent judgement relating to severability; and that the effective date of an administrative regulation is governed by KRS 13A.330.

Cabinet for Human Resources: Department for Health Services: Emergency Medical Technicians

Chairman Kerr stated that there were a number of deficiencies in many of the Cabinet regulations relating to the Statements of Consideration; and citation and use of federal law and regulation. He added that the Cabinet responses to public comments on regulations were insufficient and did not explain either the substance of the comments, or the reason for the Cabinet's decisions on comments and recommendations. Chairman Kerr said that a statement that "the Cabinet disagrees" or "the item is a Cabinet responsibility" is insufficient. Finally, federal statutes were improperly adopted; federal regulations were improperly cited or adopted; and the state regulation did not contain requirements and standards mandated by federal law or regulation. Chairman Kerr stated that a mere reference to a federal law or regulation was insufficient. He advised Cabinet personnel that Subcommittee staff would meet with them and make recommendations for amendment of a number of the regulations considered at this month's meeting.

902 KAR 13:120 (Emergency medical technician automatic and semiautomatic defibrillation training program.) This regulation was amended as follows: In the Necessity and Function, and in Sections 5 and 9, the words "within the same geographic service area" were added.

Department for Social Insurance: Public Assistance

904 KAR 2:116 (Low income home energy assistance program.) This administrative regulation was amended to correct statutory and case citations. In addition, Section 4 was amended to comply with the judgment in U.S. District Court Civil Action No. 9-71, 1/28/91, with regard to payments to subsidized households. The amendments made clear that payments to residents of subsidized housing shall not be reduced by consideration of other subsidies; and that such households will be compensated for the amounts withheld by the Cabinet prior to final judgment.

Department for Medicaid Services

At the public hearing relating to the following two administrative regulations, participants had opposed the requirement for 100% Medicare participation by nonwaivered facilities. (See Statement of Consideration attached to these regulations.) Mr. James Judy proposed that these regulations be amended to provide that each facility would be required to have participatory status in Medicare in at least 10 percent of its beds, but not less than 10 beds, in order for the conditions of participation for Medicaid be met. The Subcommittee and the agency agreed to this proposal. The Subcommittee approved a motion that Sections 1 and 2 of each regulation be amended as proposed.

907 KAR 1:022 (Nursing facility and intermediate care facility for the mentally retarded services.)

907 KAR 1:025 (Payments for nursing facility and intermediate care facility for the mentally retarded services.)

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

State Board of Elections: Forms and Procedures
31 KAR 4:020 (Election costs, county clerk reimbursement and form.)

Teachers' Retirement System: General Rules
102 KAR 1:035 (Employment by retired members.)
102 KAR 1:057 Credit for military service.)
102 KAR 1:060 (Refunds.)
102 KAR 1:100 (Insurance.)
102 KAR 1:130 (Additional contributions.)
102 KAR 1:135 (Interest credited to accounts.)
102 KAR 1:140 (Disability.)
102 KAR 1:154 (Repeal of 102 KAR 1:154 and 102 KAR 1:190.)
102 KAR 1:185 (Reciprocal program between County Employee Retirement System, Kentucky Employee Retirement System, State Police Retirement System and Teachers' Retirement System.)
102 KAR 1:195 (Payroll reports.)
102 KAR 1:210 (Submission of employer data.)

General Government Cabinet: Board of Pharmacy
201 KAR 2:116 (Drug products with bioinequivalence problems.)
Board of Optometric Examiners
201 KAR 5:070 (Board members compensation.)
201 KAR 5:090 (Annual renewal fees.)

Tourism Cabinet: Department of Fish and Wildlife Resources: Game
301 KAR 2:047 (Specific areas; seasons, limits for upland game birds, furbearers and small game.)

Justice Cabinet: Asset Forfeiture
500 KAR 9:010 (Definitions.) KRS 15.310(3) defines "law enforcement office". However, "law enforcement agency" is not defined. The Subcommittee passed a motion requesting the Legislative Research Commission to present to the General Assembly the issue of whether or not airport police, university police, and similar agencies are bona fide law enforcement agencies. This issue comes up regularly and the Subcommittee recommends that the General Assembly consider a solution to this question.

Transportation Cabinet: Department of Vehicle Regulation: Commercial Driver's License
601 KAR 11:010 (Fees relating to commercial driver's licenses.)
601 KAR 11:020 (Commercial driving history record.)
601 KAR 11:030 (Restrictions and endorsements on commercial driver's licenses.)
601 KAR 11:050 (Adoption of 49 CFR Part 383.)

Public Service Commission: Utilities
807 KAR 5:041 (Electric.)
807 KAR 5:061 (Telephone.)

Cabinet for Human Resources: Department for Health Services: Emergency Medical Technicians
902 KAR 13:080 (Authorized procedures.)
Department for Social Insurance: Public Assistance
904 KAR 2:006 (Technical requirements; AFDC.)
904 KAR 2:015 (Supplemental programs for the aged, blind, and disabled.)
Department for Medicaid Services
907 KAR 1:011 (Technical eligibility requirements.)
907 KAR 1:095 (Payments for nurse-midwife services.)

The following regulations were deferred at the promulgating agency's request:

Cabinet for Human Resources: Department for Health Services: Health Services and Facilities
Ms. Barbara Dermody, Executive Director of the Kentucky Nurses Association, and Ms. Kathleen Gannoe, District Ombudsman for the Bluegrass Long-Term Care Ombudsman Program, submitted statements to the Subcommittee. Ms. Gannoe, Mr. Mack Morgan, and Mr. James Judy were present for the consideration of the following two regulations. Ms. Gannoe addressed the Subcommittee on what she believed was the Cabinet's failure to: comply with federal law and regulation; respond in detail to comments received at the public hearing as required by KRS Chapter 13A; protect the rights of patients through the use of the category "responsible person", which was not authorized by federal law; define "restraints", "assistive devices", and other terms which would result in a lack of standards and protection for patients; inadequate standards for the review of nursing waivers; restrictions on the use of restraints; the use of "interpretative guidelines" which is contrary to KRS Chapter 13A since such guidelines are not a part of these administrative regulations; list items that may not be charged to residents; include appropriate cross-references to other applicable regulations; include space and shelf requirements mandated by federal law; involve residents in policymaking process, required by applicable statutes; and to post menus.
Agency personnel stated that some of the suggested requirements would be more stringent than federal law, and implied that the state may receive less financial support from the federal government. It was pointed out to agency personnel that such federal penalization could be appealed by the state agency. Chairman Kerr commented upon the implication of the alleged federal action, that a state would be penalized for insuring rights of its citizens in facilities. At the recommendation of the Subcommittee, the Cabinet and those appearing before the Subcommittee agreed to meet to resolve the issues raised, and to meet with Subcommittee staff prior to the next meeting.
902 KAR 20:300 (Operation and services: nursing facilities.)
902 KAR 20:310 (Facility specifications; nursing facility.)
Department of Medicaid Services
The following three administrative regulations were deferred in order that Cabinet personnel could review Subcommittee staff recommendations for the amendment of these regulations. Agency personnel stated that it appeared the Cabinet would be prepared to amend the regulations as suggested in Subcommittee staff material.
907 KAR 1:102 (Advanced registered nurse practitioner services.)
907 KAR 1:104 (Payments for advanced registered nurses practitioner services.)
907 KAR 1:150 (Payments for alternative home and community based services for the mentally retarded.)

The following regulation was withdrawn at the promulgating agency's request:

Teachers' Retirement System: General Rules
102 KAR 1:162 (Early retirement actuarial

discounts applicable to annuities.) This regulation was withdrawn and will be repealed by the promulgating agency because it describes the same or similar procedure set out in statute, which is prohibited in KRS Chapter 13A.

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.)

At the January 4, 1991 meeting, the Subcommittee approved a motion that this regulation, which is in effect, be reconsidered at the February meeting with regard to the question of whether minors under 18 years of age are permitted to enter and remain in certain licensed premises with pool tables where alcoholic beverages are served or sold.

On February 8, 1991, Catherine Staib, Counsel for the Department, appeared to answer questions raised by the Subcommittee. Michael Duffy, city of Louisville, testified that allowing minors over 18 but under 21 in bars subjected those minors to all kinds of negative influences. He also stated it caused a tremendous enforcement problem for police officers. Representative Kerr requested that this regulation be deferred to the March meeting, and requested that material relevant to local ordinances and lawsuits relating to the subject of this regulation be submitted prior to the meeting. Agency personnel agreed to the deferral. Catherine Staib questioned the Subcommittee as to which portions of the regulation were under consideration. Subcommittee members responded that the entire regulation was being considered.

On March 6, 1991, Catherine Staib and Michael Duffy again appeared to testify before the Subcommittee. Catherine Staib stated that the only thing the statute prohibited was a person between the ages of 18 and 21 from entering a licensed establishment for the purpose of purchasing or receiving any alcoholic beverages. Mr. Duffy reiterated the position of the City of Louisville which is basically that it is difficult to administer the previous regulation, and will be more difficult to enforce the relaxed provisions of the current version (allowing minors under 18 in certain licensed premises).

The Subcommittee approved a motion that this administrative regulation did not comply with statutory authority.

The Subcommittee adjourned at 11:15 a.m. until April 1, 1991 at 2 p.m. in Room 327 of the Capitol

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE
Meeting of February 19 & 20, 1991

The House and Senate Appropriations and Revenue Committees, meeting in separate sessions on February 19th and February 20th, respectively, approved two of three administrative regulations referred in the February 7-8, 1991 meeting of the Legislative Research Commission. The two approved regulations, promulgated by the Revenue Cabinet, were: 103 KAR 17:081 and 103 KAR 30:020. The third regulation, 103 KAR 18:100, also promulgated by the Revenue Cabinet, was disapproved by both Committees. This is to advise you of the Committees' action.

103 KAR 18:100 was rejected because of a provision that allowed employers, who had invoked the job assessment fee under the Kentucky Rural Development Act, to reduce the income tax withheld from their employees' wages without notification to or action by the employee. Not only was there no statutory authority for such a provision, but the provision ran counter to the tradition of Kentucky's, and for that matter the federal government's, laws governing withholding of taxes. In all present instances, the employee affirmatively acts to direct the amount of income tax to be withheld, the philosophy being that the employee is ultimately responsible for his tax liability and thus should be responsible for determining the amount of prepaid tax.

INTERIM JOINT COMMITTEE ON BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of March 8, 1991

The Interim Joint Committee on Business Organizations and Professions met on Friday, March 8, 1991, and submits this report:

The Committee determined that the following regulations complied with KRS Chapter 13A:

Real Estate Commission

201 KAR 11:011	201 KAR 11:210
201 KAR 11:095	201 KAR 11:230
201 KAR 11:105	201 KAR 11:245
201 KAR 11:170	201 KAR 11:250
201 KAR 11:175	201 KAR 11:300

The Committee deferred the following regulation until the next committee meeting, at the request of the promulgating agency:

Real Estate Commission
201 KAR 11:121

The following regulation was also deferred until the next meeting because a representative of the promulgating agency was not able to attend the meeting:

Board of Pharmacy
201 KAR 2:111 & E

The meeting of March 8, 1991 at 9:00 a.m., in Ashland, Ky. adjourned at 11:45 a.m.

CUMULATIVE SUPPLEMENT

LOCATOR INDEX -- EFFECTIVE DATES

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

VOLUME 16

Emergency Regulation	16 Ky.R. Page No.	Effective Date
902 KAR 17:020E	2646	4-17-90
Replaced		9-13-90

Regulation	16 Ky.R. Page No.	Effective Date
201 KAR 2:074	1713	
Amended	2150	(See 17 Ky.R.)
201 KAR 22:052		
Amended	2440	8-17-90
201 KAR 22:053	2616	(See 17 Ky.R.)
201 KAR 22:101		
Amended	2441	8-17-90
201 KAR 22:110		
Amended	2443	8-17-90
808 KAR 12:020	2811	10-14-90
810 KAR 1:003		
Amended	2744	8-17-90
810 KAR 1:006		
Amended	2748	8-17-90

VOLUME 17

Emergency Regulation	17 Ky.R. Page No.	Effective Date
1 KAR 6:010E	2599	2-7-91
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
31 KAR 4:060E	2600	2-6-91
31 KAR 5:010E	2931	3-14-91
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
200 KAR 18:010E	2932	2-22-91
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
Replaced	2428	2-7-91
301 KAR 2:044E	1322	8-23-90
Replaced	1531	11-15-90
301 KAR 2:220E	1955	10-18-90
Replaced	1800	12-19-90
302 KAR 1:055E	894	7-27-90
Replaced	157	8-22-90
302 KAR 1:070E	896	7-27-90
Replaced	1060	8-22-90
302 KAR 20:220E	2145	11-21-90
Replaced	2087	2-7-91
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

Emergency Regulation	17 Ky.R. Page No.	Effective Date
401 KAR 8:020E	902	7-19-90
Replaced	1425	11-15-90
401 KAR 8:030E	906	7-19-90
Replaced	1428	11-15-90
401 KAR 8:040E	909	7-19-90
Replaced	1432	11-15-90
401 KAR 8:050E	911	7-19-90
Replaced	599	11-15-90
401 KAR 8:060E	912	7-19-90
Replaced	601	11-15-90
401 KAR 8:070E	914	7-19-90
Replaced	1433	11-15-90
401 KAR 8:100E	918	7-19-90
Replaced	1977	11-15-90
401 KAR 8:150E	920	7-19-90
Replaced	1717	11-15-90
401 KAR 8:200E	921	7-19-90
Replaced	1440	11-15-90
401 KAR 8:250E	924	7-19-90
Replaced	619	11-15-90
401 KAR 8:300E	926	7-19-90
Replaced	622	11-15-90
401 KAR 8:350E	928	7-19-90
Replaced	1443	11-15-90
401 KAR 8:400E	929	7-19-90
Replaced	626	11-15-90
401 KAR 8:420E	930	7-19-90
Replaced	628	11-15-90
401 KAR 8:440E	934	7-19-90
Replaced	633	11-15-90
401 KAR 8:500E	935	7-19-90
Replaced	635	11-15-90
401 KAR 8:550E	938	7-19-90
Replaced	639	11-15-90
401 KAR 8:600E	939	7-19-90
Replaced	641	11-15-90
401 KAR 8:650E	940	7-19-90
Replaced	643	11-15-90
401 KAR 8:700E	941	7-19-90
Replaced	645	11-15-90
401 KAR 47:132E	1960	10-19-90
Expired		3-31-91
401 KAR 47:134E	1962	10-19-90
Expired		2-27-91
401 KAR 47:136E	1963	10-19-90
Replaced	2448	3-13-91
405 KAR 7:020E	2600	1-29-91
405 KAR 8:010E	2609	1-29-91
405 KAR 8:030E	2623	1-29-91
405 KAR 8:040E	2636	1-29-91
405 KAR 10:040E	2649	1-22-91
405 KAR 12:020E	2651	1-29-91
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
Replaced	2221	3-13-91

Emergency Regulation	17 Ky.R. Page No.	Effective Date
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
Replaced	417	10-14-90
501 KAR 6:130E	2379	12-18-90
Withdrawn		2-14-91
Resubmitted	2934	2-20-91
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
Replaced	2095	2-7-91
501 KAR 11:010E	954	7-19-90
Replaced	690	10-14-90
502 KAR 45:050E	1965	11-8-90
Replaced	2441	2-7-91
601 KAR 1:005E	2655	1-24-91
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 11:010E	2657	1-24-91
601 KAR 11:040E	2658	1-24-91
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
Replaced	2203	2-7-91
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
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704 KAR 3:304E	996	7-19-90
Replaced	458	10-14-90
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750 KAR 1:010E	2935	2-15-91
781 KAR 1:010E	186	7-3-90
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781 KAR 1:020E	188	7-3-90
Expired		12-1-90
781 KAR 1:030E	192	7-3-90
Expired		12-1-90
781 KAR 1:040E	194	7-3-90
Replaced	789	10-14-90
781 KAR 1:050E	195	7-3-90
Replaced	791	10-14-90
781 KAR 1:060E	198	7-3-90
Replaced	794	10-14-90
781 KAR 1:070E	199	7-3-90
Replaced	796	10-14-90
781 KAR 2:010E	200	7-3-90
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Expired		12-1-90
806 KAR 11:020E	2149	11-21-90
Replaced	2311	3-13-91

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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
Replaced		7-18-90
902 KAR 10:030E	29	5-16-90
Replaced		7-18-90
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902 KAR 10:060E	30	5-16-90
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902 KAR 10:121E	30	5-16-90
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902 KAR 10:130E	30	5-16-90
Replaced		7-18-90
902 KAR 11:010E	204	6-21-90
Replaced	129	9-13-90
902 KAR 15:010E	1021	7-19-90
Replaced	1392	9-19-90
902 KAR 15:020E	1024	7-19-90
Replaced	500	9-19-90
902 KAR 17:010E	1670	10-4-90
Expired*		12-6-90
Resubmitted	2382	12-18-90
Replaced	2278	3-12-91
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
Expired*		12-6-90
Resubmitted	2394	12-18-90
902 KAR 20:320E	2150	11-19-90
Replaced	2452	3-12-91
902 KAR 20:330E	2163	11-19-90
Replaced	2123	3-12-91
902 KAR 45:005E	207	7-11-90
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902 KAR 45:110E	31	5-16-90
Replaced	222	7-11-90
Resubmitted	222	7-11-90
Replaced	526	9-19-90
902 KAR 45:120E	32	5-16-90
Replaced	222	7-11-90
Resubmitted	222	7-11-90
Replaced	528	9-19-90
902 KAR 55:010E	32	5-30-90
Replaced	136	9-13-90
903 KAR 1:010E	223	6-21-90
Replaced	137	9-13-90
903 KAR 5:270E	224	6-21-90
Replaced	138	9-13-90
904 KAR 2:006E	1325	9-14-90
Replaced	1608	12-9-90
Resubmitted	2401	1-2-91
Replaced	2520	3-12-91
904 KAR 2:015E	1035	8-2-90
Replaced	1731	12-7-90
Resubmitted	2408	1-4-91
Replaced	2527	3-12-91
904 KAR 2:016E	1331	9-14-90
Replaced	1616	12-9-90
Resubmitted	2661	2-11-91
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
Replaced	2955	3-12-91
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
Resubmitted	2670	1-17-91
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
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Resubmitted	2681	1-17-91
Replaced	2543	3-12-91
907 KAR 1:013E	234	7-11-90
Replaced	1520	12-7-90
Resubmitted	2686	2-6-91
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
Expired*		12-6-90
Resubmitted	2414	12-17-90
Replaced	2958	3-12-91
907 KAR 1:025E	1701	10-5-90
Expired*		12-6-90
Resubmitted	2418	12-17-90
Replaced	2963	3-12-91
907 KAR 1:027E	239	7-11-90
Replaced	561	9-19-90
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
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907 KAR 1:061E	1708	10-5-90
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907 KAR 1:102E	1710	10-9-90
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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
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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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11 KAR 5:030		
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11 KAR 7:020		
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13 KAR 1:020	2552	
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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
31 KAR 4:040	1231	12-7-90
31 KAR 4:050	1232	12-7-90
31 KAR 4:060	2917	
31 KAR 5:010	3050	
40 KAR 4:010	2917	
101 KAR 1:325		
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101 KAR 1:365		
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101 KAR 1:375		
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101 KAR 1:400	156	9-12-90
101 KAR 2:030		
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101 KAR 2:035	1233	
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101 KAR 2:040		
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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 2:060		
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101 KAR 2:065	1243	12-6-90
101 KAR 2:070		
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101 KAR 2:075	1245	12-6-90
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101 KAR 2:100		
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101 KAR 3:045	1248	
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102 KAR 1:035		
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102 KAR 1:154	2562	
102 KAR 1:160		
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102 KAR 1:162		
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102 KAR 1:165		
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102 KAR 1:180		
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102 KAR 1:185		
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102 KAR 1:195		
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102 KAR 1:210		
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103 KAR 1:010		
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103 KAR 5:010		
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103 KAR 5:015		
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103 KAR 5:020		
Repealed	2081	2-7-91
103 KAR 5:021	2081	2-7-91
103 KAR 5:050		
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103 KAR 5:070		
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103 KAR 5:080		
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103 KAR 5:090		
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103 KAR 5:110		
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103 KAR 5:130		
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103 KAR 8:020		
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103 KAR 16:050		
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103 KAR 16:070		
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103 KAR 16:080		
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103 KAR 16:090		
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103 KAR 17:030		
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103 KAR 17:040		
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103 KAR 17:041	1250	11-21-90
103 KAR 17:070		
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103 KAR 17:080		
Amended	2012	
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103 KAR 17:081	2293	2-20-91
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 25:020		
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103 KAR 25:040		
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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		
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103 KAR 26:040		
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103 KAR 27:010		
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103 KAR 27:090		
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103 KAR 27:100		
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103 KAR 28:051		
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103 KAR 28:070		
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103 KAR 28:110		
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103 KAR 28:120		
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103 KAR 30:020		
Amended	2201	
103 KAR 30:090		
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103 KAR 30:091	1254	
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103 KAR 30:095	581	9-27-90
103 KAR 30:130		
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103 KAR 30:140	1134	11-21-90
103 KAR 30:200		
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103 KAR 30:225		
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103 KAR 31:010		
Expired		7-13-90
103 KAR 31:011	1256	11-21-90
103 KAR 31:060		
Expired		7-13-90
103 KAR 31:080		
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103 KAR 31:100		
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103 KAR 31:110		
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103 KAR 31:111	1257	11-21-90
103 KAR 31:120		
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103 KAR 43:070		
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103 KAR 43:080		
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103 KAR 43:130		
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103 KAR 43:270		
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103 KAR 44:010		
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103 KAR 44:040	1632	11-21-90
105 KAR 1:010		
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105 KAR 1:040		
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200 KAR 18:010	3050	
201 KAR 1:068		
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201 KAR 1:100		
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201 KAR 8:140		
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201 KAR 11:115		
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201 KAR 11:121	2295	
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201 KAR 11:175	2296	
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201 KAR 11:210		
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201 KAR 19:040		
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201 KAR 19:060		
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201 KAR 19:095		
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301 KAR 1:056	1884	12-19-90
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301 KAR 1:122		
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301 KAR 1:150		
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301 KAR 1:200		
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301 KAR 2:047		
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301 KAR 2:110		
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301 KAR 2:140		
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302 KAR 1:080	2084	2-7-91
302 KAR 15:010		
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302 KAR 16:070	2302	3-13-91
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401 KAR 6:320	581	
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401 KAR 8:020	588	
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