ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 19, NUMBER 4
THURSDAY, OCTOBER 1, 1992

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MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is **tentatively** scheduled on October 5 and 6, 1992. See **tentative** agenda on pages 855-857 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
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Room 131, State Capitol Annex

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40 KAR 2:030. Application for permit to use automated calling equipment in the Commonwealth of Kentucky. (Deferred from September)
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40 KAR 2:050. Procedures for a hearing. (Deferred from September)
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200 KAR 14:081 & E. Repurchase agreement. (Deferred from September)
200 KAR 14:091 & E. Guidelines for money market instruments. (Deferred from September)

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201 KAR 2:050. Licenses and permits; fees. (Not Amended After Hearing)

Board of Examiners and Registration of Landscape Architects

201 KAR 10:050 & E. Fees. (Deferred from June)
201 KAR 10:060. Renewals. (Deferred from June)

Board of Registration for Professional Engineers and Land Surveyors

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201 KAR 18:075. Examination credit for qualified experience. (Deferred from June)

Board of Respiratory Care

201 KAR 29:020. Code of ethics; unprofessional conduct.
201 KAR 29:030. Complaint processing procedures.
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201 KAR 29:050. Continuing education requirements.
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Department of Fish and Wildlife Resources

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301 KAR 2:044 & E. Taking of migratory wildlife.

COMMERCE CABINET
Department of Agriculture

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Air Quality - General Administrative Procedures

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405 KAR 7:030. Applicability. (Not Amended After Hearing)
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Office of Aeronautics

Airport Zoning Commission
602 KAR 50:010. Definitions Relating to 602 KAR 50.
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Department of Highways

Maintenance
603 KAR 3:060 & E. Advertising devices on interstate parkway and federal-aid primary highways. (Repeals 603 KAR 3:010, 603 KAR 3:020, 603 KAR 4:025) (Amended After Hearing)
Traffic
603 KAR 5:110 & E. Permits for moving overdimensional house trailers. (Repeals 603 KAR 5:111) (Amended After Hearing)

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Room 131, State Capitol Annex

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501 KAR 6:020 & E. Corrections policies and procedures.
501 KAR 6:040. Kentucky State Penitentiary.
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EDUCATION AND HUMANITIES
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Office of District Support Services

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Office of Learning Program Development

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704 KAR 7:056. Conditions for administering corporal punishment. (Not Amended After Hearing) (Deferred from September)

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Department of Vocational Rehabilitation

Administration
781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services. (Amended After Hearing)

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Workers' Compensation Board

803 KAR 25:011. Procedure for adjustments of claims.
803 KAR 25:012. Resolution of medical fee disputes.
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803 KAR 25:096. Selection of physicians and treatment plans.

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Division of Mining

805 KAR 5:030. Prohibition against working or traveling under unsupported roof; penalties.

Department of Insurance

Trade Practices and Frauds

806 KAR 12:095. Unfair claims settlement practices for property and casualty insurance. (Amended After Hearing) (Deferred from September)

Department of Housing, Buildings and Construction

Plumbing

815 KAR 20:120. Water supply and distribution.
815 KAR 20:130. House sewers and storm water piping; methods of installation.

Hazardous Materials

815 KAR 30:010. LP gas license; financial responsibility required.
815 KAR 30:041. Repeal of 815 KAR 30:040.

CABINET FOR HUMAN RESOURCES

Department for Health Services

Communicable Diseases

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

Sanitation

902 KAR 10:035 & E. Inactive status registration.

Health Services and Facilities

902 KAR 20:004 & E. Certificate of need process. (Amended After Hearing)

Department for Social Services

Day Care

905 KAR 2:100 & E. Certification of family child-care homes. (Repeals 905 KAR 2:070) (Amended After Hearing)

Department for Medicaid Services

Medicaid Services

907 KAR 1:013 & E. Payments for hospital services. (Amended After Hearing)
907 KAR 1:025 & E. Payments for nursing facility and intermediate care facility for the mentally retarded services.

OTHER BUSINESS:

LABOR CABINET

Occupational Safety and Health

803 KAR 2:320. Adoption of 29 CFR Part 1910.1000 - 1910.1500. (Reviewed by ARRS September 4, 1992; Found deficient)

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 to 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.

U.S. Postal Service

STATEMENT OF OWNERSHIP, MANAGEMENT AND CIRCULATION
(Required by 39 U.S.C. 3685)

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Editor (Name and Complete Mailing Address)
Susan Wunderlich, Compiler, Room 46, Capitol, Frankfort, KY 40601

Managing Editor (Name and Complete Mailing Address)
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7. Owner. (If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding 1 percent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a partnership or other unincorporated firm, its name and address, as well as that of each individual must be given. If the publication is published by a nonprofit organization, its name and address must be stated.) (Item must be completed.)

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Commonwealth of Kentucky	Room 300, State Capitol
Legislative Research Commission	Frankfort, KY 40601

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The purpose, function, and nonprofit status of this organization and the exempt status for Federal income tax purposes (Check one)
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11. I certify that the statements made by me above are correct and complete

Signature and Title of Editor, Publisher, Business Manager, or Owner: Assistant Director

PS Form 3526, Feb 1989 (See instructions on reverse)

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
32 KAR 1:010E

KRS 121.180(1)(a) authorizes a candidate who intends to receive or expend $3,000 or less in an election to sign a request for exemption from certain campaign finance reporting requirements. KRS 121.180(1)(b) authorizes a candidate who intends to receive or expend $250 or less in an election to sign a request for exemption from all campaign finance reporting requirements. These provisions became effective July 14, 1992, but contained no transitional language to provide for enforcement of the provisions as they apply to candidates for the 1992 regular election. Because there is no authorization for the Registry of Election Finance to delay enforcement, it is necessary to promulgate this emergency administrative regulation to establish a procedure to enable the Registry to fairly and efficiently enforce KRS 121.180(1) as enacted. An ordinary administrative regulation will not be filed with the Regulations Compiler because the statutory provisions will apply in a uniform manner to the next primary and regular election cycle.

BRERETON C. JONES, Governor
JOSEPH H. TERRY, Chairman

DEPARTMENT OF STATE
Registry of Election Finance

32 KAR 1:010E. Exemptions from reporting requirements.

RELATES TO: KRS 121.180(1)
STATUTORY AUTHORITY: KRS 121.120(1)(g)
NECESSITY AND FUNCTION: KRS 121.180(1)(a) authorizes a candidate who intends to receive or expend $3,000 or less to sign a request for exemption from certain campaign finance reporting requirements. KRS 121.180(1)(b) authorizes a candidate who intends to receive or expend $250 or less to sign a request for exemption from all campaign finance reporting requirements. A separate form is required for each election. These provisions became effective July 14, 1992, but contained no transitional language to provide for enforcement of the provisions as they apply to candidates for the 1992 regular election. Because there is no authorization for the Registry of Election Finance to delay enforcement, it is necessary to promulgate this emergency administrative regulation to establish a procedure to enable the Registry to fairly and efficiently enforce KRS 121.180(1) as enacted.

Section 1. Scope. This administrative regulation shall apply only to those persons who are candidates in the November, 1992 election.

Section 2. Exemption From Filing Preelection Finance Statements; Filing Requirements. (1) A candidate who intends to receive or expend $3,000 or less may sign form KREF 92-003, Exemption From Filing Pre-Election Finance Statements.

(2) The candidate shall file form KREF 92-003 not later than August 24, 1992. The form shall be filed with the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.

Section 3. Candidate Exemption From Filing Campaign Finance Statements; Filing Requirements. (1) A candidate who intends to receive or expend $250 or less may sign form KREF 92-002, Candidate Exemption From Filing Campaign Finance Statements.

(2) The candidate shall file form KREF 92-002 not later than August 24, 1992. The form shall be filed with the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.

Section 4. Candidate's Right to Rescind Prior Action. A candidate who files either of the forms prescribed in Section 2 or 3 of this administrative regulation shall be bound by its terms unless he rescinds his prior action not later than September 8, 1992, by filing a written statement with the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.

Section 5. Material Incorporated by Reference. Forms KREF 92-002 (Candidate Exemption from Filing Campaign Finance Statements), effective 7/92 and KREF 92-003 (Exemption From Filing Preelection Finance Statements), effective 7/92 are hereby incorporated by reference and may be obtained free of charge from the Registry of Election Finance, 140 Walnut, Frankfort, Kentucky, 40601, Monday through Friday, between the hours of 8 a. m. and 4:30 p.m. local time.

JOSEPH H. TERRY, Chairman
APPROVED BY AGENCY: July 31, 1992
FILED WITH LRC: August 19, 1992 at 9 a.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on October 22, 1992, at 9 a.m. at 140 Walnut Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 17, 1992, 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, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Anita Taylor
(1) Type and number of entities affected: This emergency administrative regulation affects all candidates in the 1992 regular election.
(a) Direct and indirect costs or savings to those affected:
1. First year: If a candidate signs the Exemption From Filing Preelection Finance Statements form (KREF 92-003) and does not rescind that action, he will only be required to file a 30-day postelection report and will be relieved of the costs involved in preparation and filing of preelection reports. If a candidate signs the candidate Exemption From Filing Campaign Finance Statements form (KREF 92-002) and does not rescind that action, he will be relieved of all reporting requirements and will avoid the costs of report preparation and filing.
2. Continuing costs or savings: As this emergency administrative regulation affects candidates for the 1992 regular election only, no continuing costs or savings will result.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: Reporting requirements will be significantly decreased for candidates who request exemptions.
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: The Registry staff will spend less time processing and reviewing reports since fewer reports will be filed. The printing

and distribution of forms and instructions, as well as staff time, will result in some cost to the Registry, but those costs will be offset in part by the decreased staff time necessary for processing reports.

2. Continuing costs or savings: The Registry staff will spend less time in conducting postelection reviews if fewer reports are filed. This is significant for the 1992 regular election as it will include school board candidates, many of whom are likely to spend little money and are expected to request exemptions from reporting requirements.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Registry staff will have fewer reports to process, since a candidate requesting an exemption will file that form in lieu of some or all campaign finance reports.

(3) Assessment of anticipated effect on state and local revenues: It is not anticipated that this administrative regulation will have any affect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Several alternatives were considered, but the provisions contained in this regulation allow the Registry to enforce the statute in the most equitable manner.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 121.180(1)(a) and (b) establishes the procedure for filing for exemptions from reporting requirements. That statutory scheme will be workable for subsequent election cycles, but it is impossible to enforce for the November election without this regulation.

(a) Necessity of proposed regulation if in conflict: In order for the Registry to carry out its enforcement duties, this regulation is necessary to provide for the November election because no authorization for delay in enforcement or transitional provision was made for this election.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes. The regulation provides at least the same amount of time during which a candidate may file for an exemption or rescind that action as provided under the statute.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Tiering is not applied because the regulation applies to a limited situation and applies uniformly to all candidates for the 1992 November election.

STATEMENT OF EMERGENCY
101 KAR 1:325E

This emergency regulation is necessary to establish twelve month probationary periods for certain classifications of employees to be used by the Natural Resources and Environmental Protection Cabinet and the Public Protection and Regulation Cabinet. Phillip J. Shepherd, Secretary, Natural Resources and Environmental Protection Cabinet, and Edward J. Holmes, Secretary, Public Protection and Regulation Cabinet, have advised that the current six-month probationary period for these classes was insufficient to accommodate both training and observation of work performance. Unless this amendment is implemented immediately, their ability to properly evaluate performance in the designated positions will be adversely affected. This emergency regulation shall be replaced by an ordinary administrative regulation which shall be filed with the Regulations Compiler on August 17, 1992.

BRERETON C. JONES, Governor
JAMES M. SHAKE, Chairman

PERSONNEL BOARD

101 KAR 1:325E. Probationary periods.

RELATES TO: KRS 18A.075, 18A.0751, 18A.111
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751
EFFECTIVE: August 18, 1992
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.111 relates specifically to probationary periods.

Section 1. Initial Probationary Period. (1) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth or 12th month, depending upon the length of initial probationary period, except as provided in KRS 18A.111.

(2) The following job classifications shall require an initial probationary period in excess of six (6) months:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
2001	Fish and Wildlife Conservation Officer Trainee	12 months
2112	DES Duty Officer	12 months
2113	DES Duty Officer Senior	12 months
2306	Park Ranger	12 months
2312	Park Ranger Captain	12 months
2408	MVE Trainee	12 months
2435	MVE Inspector Trainee	12 months
2480	Water Patrol Officer	12 months
2493	Mounted Security Office	12 months
2494	Mounted Security Sergeant	12 months
2495	Mounted Security Captain	12 months
2496	Mounted Security Officer Trainer	12 months
3254	Boiler Inspector Trainee	12 months
3416	Financial Institution Examiner Trainee	12 months
3601	Alcoholic Beverage Enforcement Officer	12 months
3734	Assessment Conference Officer	12 months
5141	Education Teacher Rank III	12 months
5142	Education Teacher Rank II	12 months
5143	Education Teacher Rank I	12 months
7203	Forest Guard	12 months
7205	Forest Ranger	12 months
7207	Forest Ranger Unit	12 months
7209	Forest Ranger District	12 months
7213	Forestry District Equipment Supervisor	12 months
7215	Nursery Foreman	12 months
7217	Nursery Superintendent	12 months
7221	Forester	12 months
7222	Forester Senior	12 months
7224	Forester Chief	12 months
7226	Forester District	12 months
7228	Forester Regional	12 months
7231	Rural Fire Suppression Technical Advisor	12 months
7232	Forestry Program Specialist	12 months
7233	Forestry Program Coordinator	12 months
7235	Forestry Program Manager	12 months
9859	Environmental Administrative Hearing Officer	12 months

(3) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall serve the shorter of the initial probationary periods. When the employee is appointed, the employee's appointing authority shall advise the employee of the period of his initial probation.

(4) When an employee is appointed to a position from a competitive register, such appointment shall be considered as an initial

appointment.

(5) [(4)] Effective July 1, 1991, the following job classifications in the Department of Education shall require an initial probationary period in excess of six (6) months:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
5303	Exceptional Children Consultant I	12 months
5304	Exceptional Children Consultant II	12 months
5305	Exceptional Children Program Manager I	12 months
5306	Exceptional Children Program Manager II	12 months
5309	Education Academic Program Consultant I	12 months
5310	Education Academic Program Consultant II	12 months
5311	Education Academic Program Manager I	12 months
5312	Education Academic Program Manager II	12 months
5313	Education Administration Program Consultant I	12 months
5314	Education Administration Program Consultant II	12 months
5315	Education Administration Program Manager I	12 months
5316	Education Administration Program Manager II	12 months
5321	Education Facilities Program Consultant	12 months
5323	Education Facilities Program Manager	12 months
5324	Education Instructional Services Advisor	12 months
5325	School Accreditation Evaluator	12 months
5327	School Accreditation Evaluation Manager	12 months
5329	School Food Services Program Consultant	12 months
5330	School Food Services Program Coordinator	12 months
5331	School Food Services Program Manager	12 months
5337	Education Financial Analyst	12 months
5341	Education Health/P.E. Program Consultant I	12 months
5342	Education Health/P.E. Program Consultant II	12 months
5343	Education Reading Program Consultant I	12 months
5344	Education Reading Program Consultant II	12 months
5345	Education Social Studies Program Consultant I	12 months
5346	Education Social Studies Program Consultant II	12 months
5347	Education Science Program Consultant I	12 months
5348	Education Science Program Consultant II	12 months
5349	Education Language Arts Program Consultant I	12 months
5350	Education Language Arts Program Consultant II	12 months
5351	Education Math Program Consultant I	12 months
5352	Education Math Program Consultant II	12 months
5353	Education Primary Program Consultant I	12 months
5354	Education Primary Program Consultant II	12 months
5355	Education Vocational Program Consultant I	12 months
5356	Education Vocational Program Consultant II	12 months

Section 2. Promotional Probationary Period. (1) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(2) An employee who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or to a position in the same job classification as his former position. If an employee fails to satisfactorily complete a promotional probationary period, he shall be notified in writing at least ten (10) working days prior to the effective date of his reversion. The notification shall advise the employee of the effective date of reversion. When the employee is notified, copies of the notice of reversion shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

(3) The promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the sixth month following promotion, except as provided in KRS 18A.111.

Section 3. Probationary Period Upon Reinstatement. An employee who is reinstated, except an employee ordered reinstated pursuant to KRS 18A.111(3), to a position in the classified service no later than twelve (12) months after the beginning of a break in service shall be reinstated with status. An employee who is reinstated to the classified service more than twelve (12) months after a break in service, except an employee ordered reinstated pursuant to KRS 18A.111(3), shall serve an initial probationary period. [~~serve a promotional probationary period.~~]

JAMES M. SHAKE, Chairman
APPROVED BY AGENCY: August 14, 1992
FILED WITH LRC: August 18, 1992 at 4 p.m.

STATEMENT OF EMERGENCY
201 KAR 2:105E

This regulation has been determined by the present members of the Kentucky Board of Pharmacy to be in need of emergency amendment in order to bring into compliance the drug wholesalers and manufacturers of prescription drugs with the federally mandated Prescription Drug Marketing Act of 1987, 21 USC SS 321 et seq., 21 CFR 205.1 through 205.50, and to allow wholesalers and manufacturers in Kentucky to operate legally in Kentucky after September 15, 1992, the date of compliance of this Act. This emergency regulation shall be replaced by an ordinary administrative regulation. This ordinary administrative regulation was filed with the Regulations Compiler on July 9, 1992.

BRERETON C. JONES, Governor
TOM M. HOUCHENS, President

GENERAL GOVERNMENT CABINET
Board of Pharmacy

201 KAR 2:105E. Licensing and drug distribution requirements for drug manufacturers and wholesalers.

RELATES TO: KRS Chapter 315
STATUTORY AUTHORITY: KRS 315.010, 315.036, 315.191(1)
EFFECTIVE: August 18, 1992
NECESSITY AND FUNCTION: To establish uniform procedures and fees for the registration of all drug manufacturers and wholesalers and to implement the provisions of the Federal Prescription Drug Marketing Act of 1987, 21 USC § 321 et seq., 21 CFR 205.1 through 205.50; and to effect the federal act's requirement to license anyone in the wholesale distribution of prescription drugs. This applies to any person, partnership, corporation or other entity engaging in the wholesale distribution of prescription drugs within the Commonwealth.

Section 1. Definitions. (1) "Wholesale drug distributor" is defined by KRS 315.010(12), and excludes a common carrier or individual retained solely to transport prescription drugs and the lawful distribution of prescription drug samples by manufacturers or their representatives.

(2) "Wholesale drug distribution" means the distribution of legend drugs to persons other than consumers or patients, but shall not include the sale, purchase, or trade of a legend drug, or offer of same:

(a) By a charitable organization as described in Section 501(c)(3) of the U.S. Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent permitted by law;

(b) By hospitals or other health-care entities under common control;

(c) To alleviate emergency medical necessity or temporary shortage between pharmacies;

(d) By a pharmacist dispensing pursuant to a valid prescription order;

(e) By intracompany sales;

(f) By blood banks.

(3) "Manufacturer" means anyone engaged in the commercial production, preparation, propagation, compounding, conversion or processing of a drug, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or both, and includes any packaging or repackaging or a drug or the labeling or relabeling of its container.

(4) "Prescription drug" means any human drug or medicinal gas required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to Section 503(b) [~~(6)~~] of the Federal Food, Drug, and Cosmetic Act.

(5) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(6) "Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

(7) "Blood component" means that part of blood separated by physical or mechanical means.

Section 2. Requirements. (1) License shall be acquired pursuant to KRS 315.036.

(2) A separate license shall be required for each facility within the Commonwealth regardless of whether joint ownership or control exists.

(3) An agent or employee of a licensee need not seek licensure under this section when the agent or employee is acting in the usual course of business or employment.

(4) A license shall not be issued or renewed unless the applicant demonstrates or continues to demonstrate acceptable operational procedures, including, but not limited to:

(a) Adequate maintenance and storage conditions to ensure proper lighting, ventilation, temperature and humidity control, sanitation, space, and security as deemed appropriate by the Kentucky Board of Pharmacy or as per label requirements or official United States Pharmacopeia (USP) compendium requirements. Appropriate manual, electromechanical or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of prescription drugs;

(b) Physical separation and quarantine of deteriorated, damaged, outdated, misbranded, adulterated or otherwise recalled merchandise until they are destroyed or returned;

(c) Providing accurate and precise records of all goods shipped or received including source or recipient, date, quantity, itemized description, and any other information pertinent to the transaction.

(d) All applicants for licensure as controlled substances wholesale drug distributors shall be registered with the state controlled substance authority, and with the U.S. Drug Enforcement Administration and comply with all DEA regulations.

(5) The Kentucky Board of Pharmacy may choose to adopt regulations to include out-of-state distributors or may reciprocally accept in lieu thereof licensure valid by a comparable authority equally recognizing Kentucky's requirements.

Section 3. Qualifications for License. (1) The minimum qualifications shall include:

(a) The Kentucky Board of Pharmacy shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in wholesale distribution of prescription drugs within the Commonwealth:

1. Any convictions of the applicant under any federal, state, or local laws relating to drug samples, wholesale or retail drug distribution of controlled substances;

2. Any felony convictions of the applicant under federal, state, or local laws;

3. The applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;

4. The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution;

5. Suspension or revocation by federal, state, or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances;

6. Compliance with licensing requirements under previously granted licenses, if any;

7. Compliance with requirements to maintain or make available to the Kentucky Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this section; and

8. Any other factors or qualifications the Kentucky Board of Pharmacy considers relevant to and consistent with the public health and safety.

(b) The Kentucky Board of Pharmacy shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be in the public interest based on health and safety considerations.

(2) No license shall be issued pursuant to this regulation unless the applicant has furnished proof satisfactory to the Board of Pharmacy:

(a) That the applicant is in compliance with all applicable federal and state laws and regulations relating to drugs; and

(b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in his application.

(3) A duly licensed manufacturer or wholesaler may sell or distribute federal legend drugs only to the following [~~persons~~]:

(a) A currently licensed manufacturer;

(b) A currently licensed wholesaler;

(c) A currently licensed pharmacy;

(d) A currently licensed practitioner;

(e) A currently licensed hospital, but only for use by or in that hospital;

(f) A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes.

(4) A license issued pursuant to this regulation may be suspended or revoked for cause.

Section 4. License Fees; Renewals. (1) Applications for a license shall be submitted to the Board of Pharmacy on "Application for a License to Operate as a Drug Wholesaler or Manufacturer (KBP W/M 9:92 [2:92])". This form is incorporated by reference. It may be obtained, inspected, or copied at the Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) An application shall be accompanied by the [an] annual fee set forth in 201 KAR 2:050 [of seventy five (75) dollars].

(3) All licenses shall:

(a) Expire on September 30 following date of issuance; and

(b) Be renewable annually thereafter upon proper application accompanied by the renewal fee set forth in 201 KAR 2:050 [of seventy five (75) dollars] and shall be nontransferable.

Section 5. Standards. (1) Facilities. All buildings in which legend drugs are wholesaled, repackaged, stored, held, sold, offered for sale, exposed for sale, or kept for sale shall be of suitable size, construction, and location to facilitate cleaning, maintenance, and proper operations. Buildings shall meet all applicable federal, state, and local standards. The facility shall have a quarantine area for storage of prescription drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed secondary containers that have been opened. A facility shall not be located in a residence.

(2) Security.

(a) All wholesale drug distribution centers shall be equipped with an alarm system to detect entry after hours.

(b) Wholesale drug distributors shall ensure that access from outside their premises is well-controlled and reduced to a minimum. This includes, but is not limited to, the installation of adequate lighting at the outside perimeter of the premises.

(c) Internal security policies shall be developed to provide reasonable protection against theft and diversion by limiting access to areas where legend drugs are held to authorized personnel. These policies shall provide protection against tampering with computers or electronic records [theft and crimes].

(d) Licensees shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in the wholesale distribution of prescription drugs.

(e) Lists of officers, directors, managers and other persons in charge of distribution, storage, and handling of prescription drugs, including a description of their duties and summary of their qualifications, shall be maintained for purpose of review.

(3) Recordkeeping.

(a) Inventories and other records of transactions regarding the receipt and disposition of legend drugs shall be maintained and readily [made] available for inspection or photocopying by authorized law enforcement officials [inspectors] for a period of two (2) years following disposition of the drugs. These records shall include:

1. The source of the drugs, including the name and principal address of the seller or transferor, and the address of the location from which the drugs were shipped;

2. The identity and quantity of the drugs received and distributed or disposed of; and

3. The dates of receipt and distribution or other distribution of the drugs.

(b) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.

(4) Written policies and procedures.

(a) Wholesale drug distributors shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of prescription drugs, including policies and procedures for identifying, recording, and reporting losses or thefts and [There shall be written policies and procedures] to assure that the wholesale drug distributor prepares for, protects against, and handles crisis situations that affect the security or operation of the facility. Such crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency.

(b) There shall be written policies and procedures for managing and correcting all errors or inaccuracies in inventories.

(c) There shall be written policies and procedures to assure that any outdated stock or any stock with an expiration date that, in the wholesale drug distributor's view, does not allow sufficient time for repacking or resale shall be segregated from other stock and shall be prepared for return to the manufacturer or otherwise destroyed, and this shall be documented.

(d) There shall be written policies and procedures by which the wholesaler drug distributor exercises control over the shipping and receiving of all stock within the operation.

(5) Returned, damaged, and outdated prescription drugs [goods]. A wholesale operation shall maintain and follow a written procedure to assure the proper handling and disposal of returned goods. When conditions under which a prescription drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, then the drug shall be destroyed, or returned to the supplier, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, the wholesale drug distributor shall consider, among other things, the conditions under which the drug has been held, stored, or shipped before or during its return and the condition of the drug and its container, carton, or labeling, as a result of storage or shipping.

(6) Handling recalls. A wholesale operation shall maintain and follow written policy for handling recalls and withdrawals of products. The policy shall cover all recalls and withdrawals of drug products due to:

(a) Any voluntary action on the part of the manufacturer;

(b) The direction of the Food and Drug Administration, or any other federal, state, or local government agency; and

(c) Replacement of existing merchandise with an improved product or new package design.

(7)(a) Visual examination of all materials received or shipped to guarantee product identity and to reasonably guard against acceptance or delivery of damaged, contaminated, tampered, or otherwise unfit stock shall be adequately effected.

(b) Procedures for distribution of approved stock shall provide for a rotation whereby the oldest inventory is distributed first.

(c) Wholesale drug distributors shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to prescription drug product salvaging or reprocessing, including Chapter 21, Parts 207, 210, and 211 of the Code of Federal Regulations.

Section 6. Inspection Powers of the Kentucky Board of Pharmacy. The Kentucky Board of Pharmacy shall promulgate regulations as may be necessary to carry out the purpose and enforce the provisions of this regulation. All regulations promulgated shall conform to and not conflict with the wholesaler drug distribution guidelines adopted by the U.S. Food and Drug Administration or any applicable federal, state, or local laws and regulations and shall permit the Kentucky Board of Pharmacy and authorized federal, state, and local law enforcement officials to enter and inspect the premises and delivery vehicles, purporting or appearing to be used by any manufacturer or wholesaler, and audit records and operational procedures at reasonable times, in reasonable fashion, to the extent authorized by law.

Section 7. Violations. (1) A drug manufacturer or wholesaler shall not distribute legend drugs directly to a consumer or a patient or operate in a manner that endangers the public health.

(2) Violation of any of these provisions shall be grounds for the suspension or revocation of the license.

TOM HOUCHENS, President
APPROVED BY AGENCY: July 30, 1992
FILED WITH LRC: August 18, 1992 at 4 p.m.

STATEMENT OF EMERGENCY
301 KAR 2:044E

Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons must do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six (6) weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because insufficient time precludes timely effectiveness of the administrative regulation. This emergency regulation will be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor
DON R. McCORMICK, Commissioner

TOURISM CABINET
Department of Fish and Wildlife Resources

301 KAR 2:044E. Taking of migratory wildlife.

RELATES TO: KRS 150.010, 150.015, 150.025, 150.170, 150.300, 150.305, 150.320, 150.330, 150.340, 150.360, 150.603
STATUTORY AUTHORITY: KRS 13A.350, 150.025
EFFECTIVE: August 18, 1992
NECESSITY AND FUNCTION: In accordance with KRS 150.015, this regulation is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The function of this regulation is to provide for the prudent taking of migratory wildlife within reasonable limits based upon an adequate supply. This amendment is necessary to change season dates where appropriate and add provisions governing use of steel shot.

Section 1. Seasons. (1) Doves: September 1 through September 30; October 10 [5] through November 2 [October 28]; November 28 [30] through December 3 [5].
(2) Woodcock: October 17 [15] through December 20 [18].
(3) Common snipe: September 16 through October 30 and November 26 through January 25, 1993 [October 15 through December 18].
(4) Wood duck and teal (blue-winged, green-winged and cinnamon teal): September 16 [18] through September 20 [22].
(5) Virginia and sora rails, common moorhen and purple gallinule: September 1 through November 9.

[Section 2. Limits.

Species	Bag Limits	Possession Limits
Doves	15	30
Woodcock	5	10
Common snipe	8	16
Wood ducks	2	4

The possession limit is double the daily bag limit.]

Section 2. [3.] Bag and Possession Limits. (1) Doves: bag limit fifteen (15) per day and thirty (30) in possession.
(2) Woodcock: bag limit five (5) per day and ten (10) in possession.
(3) Common snipe: bag limit eight (8) per day and sixteen (16) in possession.
(4) Virginia and sora rails: bag limit twenty-five (25) per day, singly or in aggregate and twenty-five (25) in possession.
(5) Common moorhen and purple gallinules: bag limit fifteen (15) per day singly or in aggregate and thirty (30) in possession.
(6) Wood duck and teal: bag limit four (4) per day of which not more than two (2) may be wood ducks and possession limit of eight (8) of which not more than four (4) may be wood ducks.
(7) [(1)] After two (2) or more days of shooting, possession limits apply to transporting, but do not permit a double bag limit in the field.
(8) [(2)] The above species (except doves) dressed in the field, or being prepared for transportation, shall have one (1) fully feathered wing or head attached to the bird for identification purposes.

Section 3. [4.] Shooting Hours. (1) Doves: from 11 a.m. until sunset during the period September 1 through September 30 and October 10 [5] through November 2 [October 28]; from sunrise to sunset during the period November 28 [30] through December 3 [5].
(2) Common snipe, [and] woodcock, Virginia and sora rails, purple gallinule and common moorhen: from one-half (1/2) hour before sunrise to sunset.
(3) Wood duck and teal: from one-half (1/2) hour before sunrise to sunset.

Section 4. [5.] Falconry Hunting. The wildlife species listed in this regulation may be pursued and taken by a licensed falconer with any legal hunting raptor during the regular hunting dates listed for each species. All bag and possession limits apply to falconry hunting.

Section 5. [6.] Exceptions to Statewide Migratory Bird Seasons on Specified Wildlife Management Areas. Unless excepted below, all sections of this regulation apply to the following areas:
(1) Ballard Wildlife Management Area, located in Ballard County.
(a) Doves: September 1 through September 30; and October 10 [5] through October 13 only. Areas so designated by signs are closed. No firearms permitted on this area except during shooting hours.
(b) Woodcock [and snipe]: seasons closed.
(c) Common snipe: September 16 through October 13.
(d) Virginia and sora rails, purple gallinule and common moorhen: September 1 through October 13.
(e) [(c)] Wood duck and teal: Same as statewide. [September 18 through September 22. Areas designated by signs are closed hunting.]
(f) Areas designated by signs are closed to hunting.
(2) West Kentucky Wildlife Management Area, located in McCracken County.
(a) Doves: September 1 through September 30; and October 10 [5] through October 13 only.
(b) Woodcock and snipe: hunting permitted on tracts 2, 3, 6, and 7 only.
(c) All tracts designated by numbers followed by the letter "A" are closed to hunting.
(3) Central Kentucky Wildlife Management Area, located in Madison County.
(a) Doves: September 1 through September 30; and October 10 [5] through October 13 only.
(b) Woodcock [and snipe]: seasons closed.
(c) Common snipe: September 16 through October 13.
(4) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.
(a) Doves: September 1 through September 30 and December 1 through December 3 [5] only.
(b) Woodcock [and snipe]: December 1 through December 20 [5] only.
(c) Common snipe: September 16 through September 25 and December 1 through January 25, 1993.
(5) Fort Campbell Wildlife Management Area, located in Christian and Trigg Counties.
(a) Doves: postwide from September 1 through September 25

[~~27~~] and November 28 [~~30~~] through December 3 [~~5~~]. On designated areas from September 26 [~~28~~] through September 28 [~~30~~]; October 10 [~~5~~] through November 2 [~~October 28~~].

(b) Woodcock: postwide from November 26 [~~28~~] through December 11 [~~13~~]. On designated areas only from December 12 [~~14~~] through December 20 [~~18~~].

(c) Snipe: postwide from September 16 through September 25, November 26 [~~28~~] through December 11 and January 2, 1993 through January 25, 1993 [~~13~~]. On designated areas only from December 12 [~~14~~] through December 20 [~~18~~].

(d) September wood duck and teal: September 17 [~~18~~] through 20 [~~22~~] only. Hunting permitted during these permits in designated areas only.

(6) Paintsville Lake Wildlife Management Area located in Johnson and Morgan counties and Dewey ~~Lake~~ Wildlife Management Area located in Floyd County.

(a) Doves: September 1 through September 30; and October 10 [~~5~~] through October 13 only.

(b) Wood duck and teal: September 16 [~~18~~] through September 20 [~~22~~].

(7) Grayson Lake Wildlife Management Area. All migratory bird hunters must check in and out daily at designated check stations.

(8) Yatesville Lake Wildlife Management Area. All migratory bird hunters must check in and out daily at designated hunter check stations.

(9) [~~(7)~~] Closed areas.

(a) The hunting of doves, woodcock, [~~and~~] common snipe, purple gallinule and common moorhen is prohibited on Camp Webb Refuge Area, Grayson Lake.

(b) Waterfowl bird hunting is prohibited on the following areas on Grayson Lake: within the no wake zone at the dam site marina, from the shores of Camp Webb and the State Park and on Deer Creek Fork of Grayson Lake. [~~the Camp Webb Refuge Area; the area north of Rosedale Point, Deer Creek Fork, west of Route 1496; within fifty (50) yards of the state park shoreline.~~]

(10) [~~(8)~~] Dove hunter guidelines on wildlife management areas. The department shall establish hunter density guidelines for dove hunting fields on department property. Hunters shall be advised by strategically located signs that these fields may exceed desired hunter densities and anyone entering the field shall do so at their own risk. [~~Upon entry, all hunters shall be advised that density guidelines may be exceeded and that they may be hunting at their own risk. If these densities are reached, hunters shall be so advised and instructed that they may hunt at their own risk, disperse to other fields, or wait until hunter densities subside, when other hunters may be allowed to replace those leaving on a first come, first served basis.~~] Any person behaving in an unsafe or uncooperative manner shall be immediately required to leave the premises.

Section 6. [~~7.~~] Waterfowl Stamp Requirements. Those hunting ducks during the experimental September duck season shall possess appropriate state and federal waterfowl stamps as stipulated in KRS 150.330 and 150.603.

Section 7. [~~8.~~] Use of Steel Shot. Only steel shot may be in possession when taking or attempting to take waterfowl statewide.

(1) Prohibition of lead shot for dove hunting. Lead shot is prohibited for the taking of doves on the Ballard, Swan Lake, Peal, Sloughs, Ohio River Islands, Duck Island, [~~and~~] Kaler Bottoms and Westvaco Wildlife Management Areas.

(2) Possession of lead shot shells.

(a) Persons hunting waterfowl shall not have lead shot shells in their possession.

(b) Persons hunting doves on wildlife management areas listed in subsection (1) of this section shall not have lead shot shells in their possession.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
CRIT LUALLEN, Secretary
APPROVED BY AGENCY: June 12, 1992

FILED WITH LRC: August 18, 1992 at 4 p.m.

REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

PERSONNEL BOARD
(As Amended)

101 KAR 1:365. Appeal and hearing procedures.

RELATES TO: KRS 18A.075, 18A.0751, 18A.095
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations providing for the procedures to be utilized by the board in the conduct of hearings.

Section 1. General Provisions. (1) Appeals shall be filed with the Personnel Board through the office of the executive director.

~~[(2) Appeals shall be filed within thirty (30) calendar days as specified in KRS 18A.095 and 101 KAR 1:375. When the 30th day of the filing period falls on a day when the executive director's office is closed during normal working hours, the appeal may be filed on the next regular working day.]~~

(2)(a) ~~[(3)]~~ All appeals shall be heard in Frankfort, Kentucky.

(b) An appeal shall be filed on "Kentucky Personnel Board Appeal Form".

(3) ~~[(4)]~~ If the appeal form indicates that the appealing employee has retained counsel at the time of filing an appeal, notice of the scheduled hearing and all future notices, correspondence and orders regarding the appeal shall be transmitted to that attorney and all filings and motions on behalf of the appealing employee shall be submitted by that attorney.

(4) ~~[(5)]~~ Unless otherwise directed by the board, the executive director shall assign a hearing officer or officers to each appeal. If more than one (1) hearing officer is assigned, one (1) shall be designated as chief. If the appeal is to be heard by the full board, the chairman shall serve as the chief hearing officer.

Section 2. Continuances. (1) Any party may request a continuance of a scheduled hearing for good cause. The request shall be in writing, shall state the reason for the request and include proposed dates for rescheduling. The request shall be filed with the board, through the office of the executive director, and mailed to all parties at least ten (10) days prior to the scheduled hearing.

(2) Any party objecting to a requested continuance may file a written objection stating the reason. Any objection shall be filed with the board, through the office of the executive director, within five (5) days prior to the scheduled hearing. Copies shall be mailed to all parties.

(3) A continuance may be granted in extraordinary circumstances by the hearing officer.

(4) A request for a continuance based on a bona fide personal emergency shall be granted only upon appropriate justification and may be granted without strict compliance with the requirements of this section.

(5) All requests for continuance shall be ruled on by the hearing officer. At the direction of the hearing officer, the executive director shall execute and transmit to all parties an interim order either granting or denying the continuance. If the continuance is granted, the interim order shall indicate the date on which the hearing has been rescheduled or that the hearing has been continued generally.

Section 3. Prehearing Procedures. (1) All motions, requests or filings shall be in writing, filed with the board through the office of the executive director, and served on all other parties.

(2) Any interim order by the hearing officer shall be executed and transmitted by the executive director to all parties. Interim orders are not reviewable by the board except on final review, unless otherwise provided in the interim order.

(3) If an appealing employee retains counsel subsequent to filing his appeal, the attorney shall file a written entry of appearance. All future notices, correspondence, and orders regarding the appeal shall be transmitted to that attorney and all future filings and motions on behalf of the appealing employee shall be submitted by that attorney.

(4) An appealing employee shall notify all parties and the board in writing of any change of address.

(5) A list of witnesses who may be called to testify shall be filed by each party at least five (5) days prior to the scheduled hearing. Failure of either party to file a witness list within the prescribed time shall restrict that party to rebuttal.

(6) **Kentucky Personnel Board** subpoena forms shall be available in the office of the executive director and shall be issued by the executive director. Preparation and service of the subpoena and compliance with the subpoena are the responsibility of the party requesting the subpoena.

(7) Depositions may be taken only in extraordinary circumstances and upon authorization by the hearing officer. A request to take a deposition shall be filed at least seven (7) days prior to the scheduled hearing. Any objections shall be filed prior to the scheduled hearing.

(8) Upon agreement of all parties and approval by the hearing officer, two (2) or more appeals which involve the same or similar facts may be consolidated. Upon motion of any party, or upon his own motion, the hearing officer may join other parties as necessary to appropriately consider the matter on appeal.

(9)**(a)** The hearing officer may schedule a **prehearing conference** ~~[preliminary hearing]~~ ~~[prehearing conference]~~ to define the issues, determine which facts, if any, can be stipulated, rule on pending motions or requests, and address any other matter which will facilitate **the** ~~[a full evidentiary]~~ ~~[the]~~ hearing. ~~[The hearing officer may, among other motions, or upon his own motion, consider whether to dismiss for lack of jurisdiction or failure to state a claim upon which relief can be granted. If after the hearing officer has considered or heard relevant and material legal or factual presentations, the hearing officer concludes that the Personnel Board lacks jurisdiction to hear the appeal or the appeal fails to state a claim upon which relief can be granted, he shall make findings of fact and enter an appropriate recommendation to the Personnel Board.]~~

(b) At the prehearing conference, the hearing officer shall not rule on a motion to dismiss for lack of jurisdiction.

(10) Any agreed settlements shall be submitted in writing for the full board's review and final action.

(11) The executive director, general counsel, and board staff may participate in ex parte communication concerning pending and impending proceedings before the board relating to:

(a) Procedural questions.

(b) Scheduling of hearings.

Section 4. Conduct of Hearing. (1) Unless the appeal is heard by the full board, the hearing officer assigned shall hear the appeal. The hearing officer shall be empowered to make all decisions and rule on all matters concerning the conduct of the hearing. He shall require an orderly and proper decorum at the hearing, and shall be authorized to require compliance with his rulings.

(2) Failure of any party to appear at the hearing may result in an adverse ruling against that party.

(3) The rules of civil procedure do not apply.

(4) The hearing officer shall direct one of the parties to present its case first, examine witnesses and submit documentation, subject to cross examination. The opposing party shall then present its case, examine witnesses and submit documentation, subject to cross examination.

(5) All parties shall provide three (3) copies of any exhibit which is to be introduced as evidence. Copies shall be prepared prior to the hearing.

(6) The proceedings and evidence presented shall be recorded by a court reporter.

Section 5. Findings and Recommendations; Exceptions. (1)

Following completion of the hearing, the hearing officer shall prepare a recommended order, including findings of fact and recommendations, based on the evidence, facts and information presented at the hearing and contained in the record.

(2) At the direction of the hearing officer, the recommended order shall be entered and transmitted by the executive director to all parties.

(3) Any party may submit written exceptions to the findings of fact and recommendations. Exceptions shall be filed with the board through the office of the executive director within ten (10) days of entry of the recommended order, unless otherwise directed by the hearing officer at the time the recommended order is entered, and served on all parties.

(4) Any party may submit a written response to exceptions filed with the board. The response shall be filed with the board through the office of the executive director within twenty (20) days of entry of the recommended order, unless otherwise directed by the hearing officer at the time the recommended order is entered, and served on all parties.

~~[(5) Exceptions and responses not timely filed shall be noted and made a part of the record, but shall not be considered by the board in making a final determination.]~~

(5) ~~[(6)]~~ In appeals where the recommended order entered by the hearing officer proposes immediate reinstatement, the appointing authority objecting to such a recommendation shall file a written request that reinstatement be stayed until appeals are exhausted. Such objection and request shall completely state the grounds relied upon by the appointing authority and be filed with the board and served upon the appellant or his counsel within fifteen (15) days of date the recommended order is entered.

Section 6. Board Review and Action. ~~[(1) The board may adopt as submitted the findings and recommendations of the hearing officer, amend the findings or recommendations based on evidence or information contained in the record prior to adoption, or order the appeal remanded to the hearing officer for further action as appropriate.~~

~~(2)~~] Following consideration by the full board, a final order shall be entered disposing of the appeal. The order shall be prepared, executed and entered at the direction of the board by the secretary to the board. Copies of the order shall be transmitted to all parties by the executive director.

Section 7. Incorporation by Reference. (1) "Kentucky Personnel Board Appeal Form (3-25-91)", and "Kentucky Personnel Board Subpoena Form (2-90)" are incorporated by reference.

(2) These forms may be inspected, copied or obtained at the Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

JAMES M. SHAKE, Chairman
APPROVED BY AGENCY: May 8, 1992
FILED WITH LRC: May 20, 1992 at 1 p.m.

PERSONNEL BOARD
(As Amended)

101 KAR 1:375. Employee grievances and complaints.

RELATES TO: KRS 18A.075, 18A.0751
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751
NECESSITY AND FUNCTION: KRS 18A.075 and 18A.0751 requires the Personnel Board to adopt comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200.

Section 1. Definitions; Grievance. A grievance is a complaint filed by an employee which concerns some aspect of his conditions of employment over which his cabinet or agency has control and which has occurred or of which the employee has become aware, through the exercise of due diligence, within thirty (30) days prior to filing.

Section 2. General Provisions. (1) Any employee in the classified service who believes that he has been subjected to unfair or unjust treatment concerning his conditions of employment may file a grievance in accordance with this procedure.

(2) Any grievance concerning an action which is appealable directly to the board pursuant to KRS 18A.095 may also be filed with the cabinet or agency. The filing of a grievance with the cabinet or agency does not prohibit the employee from also filing an appeal with the board, however it shall not extend the sixty (60) ~~[thirty (30)]~~ day appeal period.

(3) Employees utilizing this procedure shall be entitled to file grievances without interference, coercion, discrimination, or reprisal.

(4) Appointing authorities shall inform all employees of the provisions of this **administrative** regulation, or any modifications in the levels of review which have been approved by the Personnel Board for the employee's cabinet or agency pursuant to Section 4(7) of this regulation.

(5)(a) The Commissioner of Personnel shall make available to the employees, through the appointing authorities, ~~[a uniform]~~ Grievance Form to be used for the filing a grievance. **This form may be inspected, copied or obtained at the Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.** ~~[The form shall contain a notice in bold print that, if the grievance concerns an action appealable directly to the board pursuant to KRS 18A.095, the employee's right to file an appeal is not extended beyond sixty (60) [thirty (30)] days.]~~

Section 3. Procedures. (1) A grievance shall be filed with the employee's immediate supervisor within thirty (30) days following occurrence or the employee becoming aware, through the exercise of due diligence, of the action which is the subject of the grievance. In the event the action or conduct of the first line supervisor is the basis of the employee's grievance, the grievance **may** ~~[shall]~~ be filed with the second line supervisor.

(2) The employee shall set forth in writing the basis of his grievance or complaint together with the corrective action desired. If the employee wishes to submit additional information or documentation, he may attach it to the grievance.

(3) When a grievance is filed that alleges discrimination on the basis of race, color, religion, national origin, sex, handicap or age forty (40) or over, the recipient shall immediately notify the cabinet or agency EEO coordinator to comply with the affirmative action plan.

(4) Interviews to evaluate or investigate the grievance outside of normal work hours with the grievant or other employees shall entitle those employees to compensatory time.

(5) Interviews to evaluate or investigate the grievance held with the grievant or other employees shall not require the use of leave time.

(6) Both parties may have a representative present at each step of the grievance procedure.

Section 4. Grievance Levels. (1) The immediate supervisor except as set forth in Section 3(1) of this administrative regulation shall, upon investigation, issue findings and a decision in writing to the employee within five (5) work days after receipt of the grievance. If the responding ~~[first line]~~ supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance within two (2) work days of receipt of the decision to the next appropriate level.

~~[(2) The next level [second line] supervisor shall, upon investigation, issue findings and a decision in writing to the employee within five (5) work days after receipt of the grievance. If that [the second line] supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance within two (2) work days of receipt of the decision to the next appropriate level.~~

~~(3) The third line supervisor shall, upon investigation, issue findings and a decision in writing to the employee within five (5) work days after receipt of the grievance. If the third line supervisor is~~

~~unable to resolve the grievance to the satisfaction of the employee, the employee may request review of the grievance within two (2) work days of receipt of the decision to the fourth line supervisor.~~

~~(4) The fourth line supervisor shall, upon investigation, issue findings and a decision in writing to the employee within five (5) work days after receipt of the grievance.~~]

(2) [~~(5)~~] If the [~~fourth~~] line **supervisors are** [~~supervisor is~~] unable to resolve the grievance to the satisfaction of the employee, the employee may request review of the grievance within two (2) work days of receipt of the decision **of the final line supervisor** to the appointing authority for a final determination. The appointing authority, upon investigation, shall issue findings and a final determination in writing to the employee within ten (10) work days.

[~~(6)~~] ~~Modification of the procedures set forth in this section necessary to accommodate organizational structure within a cabinet or agency may be made only upon approval of the Personnel Board.~~]

(3) [~~(7)~~] Failure of supervisory or management personnel to respond within prescribed time limits automatically advances the grievance to the next review level, unless the time limits have been extended by agreement of the parties.

(4) [~~(8)~~] Any intermediate grievance level may be waived by written agreement of the parties.

JAMES M. SHAKE, Chairman
APPROVED BY AGENCY: June 12, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(As Amended)

201 KAR 22:070. Requirements for foreign-trained physical therapists.

RELATES TO: KRS 327.060
STATUTORY AUTHORITY: KRS 327.040
NECESSITY AND FUNCTION: This regulation establishes the requirements a foreign-trained physical therapist shall satisfy to become licensed in the state of Kentucky. Because of variances in curriculums of foreign countries, specific requirements are needed to insure that the applicant possesses adequate educational and clinical preparation.

Section 1. [~~In order for~~] A foreign-trained physical therapist **shall be** [~~to become~~] licensed **if he** [~~he shall~~]:

(1) Furnishes the board an original favorable educational credentials evaluation report from:

(a) International Credentialing Associates, Inc.;

(b) International Consultants of Delaware, Inc.; or

(c) International Education Research Foundations, Inc.;

(2) **Has** [~~Have~~] graduated from a recognized physical therapy program in the country in which he was educated. The applicant shall have earned at least 120 U.S. semester credits in a program equivalent to a U.S. bachelors degree in physical therapy, of which at least sixty (60) semester credits must be in professional physical therapy courses.

(3) **Is** [~~For those applicants~~] seeking licensure by examination, speak English as his native language or have submitted the results of [~~a Test of English as a Foreign Language (TOEFL) with a score of at least 550 or~~] the Test of Spoken English (TSE) with a total score of at least 220.

(4) Submits a satisfactorily completed application and appropriate fee.

(5) **Has** [~~Have~~] successfully completed [~~Successful completion of~~] one (1) year, totaling at least 1000 clock hours, of [~~supervised~~] practice under the supervision of a physical therapist licensed under this chapter at a Kentucky facility previously approved by the board[~~, and under a physical therapist licensed under this chapter~~] which satisfies the following requirements:

(a) The supervised practice shall be in a [~~an acute care~~] facility which [~~serves both in and out patients and also~~] is serving as a clinical education site for students enrolled in an APTA accredited program in physical therapist education;

(b) The applicant shall work only with on-site supervision until a minimum score of three and five-tenths (3.5) with no one (1.0) or two (2.0) on a four (4.0) point scale has been achieved utilizing the board provided clinical evaluation form. Evaluations shall be submitted to the board quarterly by the clinical supervisor until the required score denoting clinical competency has been reached;

(c) The supervising physical therapist shall, within the three (3) years prior to serving as a supervisor, have previously acted as clinical supervisor for a physical therapist student as part of an APTA accredited program;

(d) [~~(c)~~] The applicant shall work under the supervision required of a U.S. educated physical therapist candidate issued a temporary permit after achieving the required score of three and five-tenths (3.5) [~~except that when the foreign trained applicant has also passed the physical therapist licensure examination his physical therapy records do not need to be cosigned by the supervising physical therapist~~]. This requirement may be satisfied by one (1) year of supervised practice in a state with licensure requirements at least comparable to those of Kentucky [~~or by the consent of the board~~]. Evidence of that experience in a comparable facility outside Kentucky must be in writing confirming successful completion and satisfactory performance; and

(6) **Successfully completes** [~~Successful completion of~~] the examination as specified in KRS 327.050. The examination, when next offered by the board for other candidates, shall be taken after the applicant becomes a candidate for licensure, unless excused by the board. When the foreign trained physical therapist candidate has passed the licensure examination as well as met the clinical competency requirements in subsection (5)(d) of this section, his physical therapy records do not need to be countersigned by the supervising physical therapist.

Section 2. Temporary Permits for Foreign Trained Physical Therapist Applicants. (1) Following completion of the requirements of Section 1(1) to (4) of this regulation and submission of an approved Supervisory Agreement Statement, an applicant for licensure by examination, and an applicant who has not yet satisfactorily completed a year of supervised practice as a physical therapist may be issued a temporary permit to practice under the supervision of a designated Kentucky licensed therapist.

(2) All requirements for licensure shall be completed within one (1) year from the beginning of the supervised practice. If not completed within that time period, the temporary permit shall be revoked and the applicant shall no longer work in Kentucky as a physical therapist.

GEORGIA KING, Chairman
APPROVED BY AGENCY: May 8, 1992
FILED WITH LRC: June 30, 1992 at 1 p.m.

GENERAL GOVERNMENT CABINET
Board of Physical Therapy
(As Amended)

201 KAR 22:135. Fees.

RELATES TO: KRS 327.040(12), 327.050
STATUTORY AUTHORITY: KRS 327.040
NECESSITY AND FUNCTION: The purpose of this regulation is to establish fees required of applicants for physical therapist (PT) licensure or physical therapist's assistant (PTA) certification by endorsement, examination, reinstatement, renewal or reexamination.

Section 1. **Payment of Fees. (1) A renewal application may be paid by personal check.**

(2) Other application fees shall be:

(a) Paid by:

1. Cashier's check; or

2. Certified check; or
3. Money order; and
(b) Made payable to the Kentucky State Treasurer; and
(3) Application fees shall not be refundable. [~~An application fee, except for reexamination and renewal applicants is prorated according to the time within a biennial licensure term it is received in the office of the board. Fees submitted for applications received in the first year of a biennial licensure term shall be greater by one-half the renewal fee than a fee received in the second year of a biennial licensure term. This fee and application may result in a temporary permit and license or certificate being valid for more than one (1) year. Personal checks may be accepted only for renewal applications. Other application fees shall be paid by cashier's or certified check or money order made payable to the Kentucky State Treasurer, and delivered to the board office. These fees shall not be refundable.~~]

Section 2. **Fees. (1) Except as provided by Section 3 of this administrative regulation, the fee for:**
(a) Physical therapist licensure and for physical therapist's assistant certification by examination shall be $230;
(b) Endorsement application shall be $140;
(c) Reinstatement application shall be $105.
(2) The renewal application fee shall be $80.
(3) The application fee for reexamination shall be $147.50.
(4) If an applicant failed to take or complete an examination for which he registered, he shall pay an additional $147.50 if he notifies the board that he wishes to register for another examination. [~~The application fees for licensure or certification in the first year of the biennial licensure term shall be:~~
~~(1) $140 for endorsement applicants;~~
~~(2) $105 for reinstatement applicants;~~
~~(3) $230 [220] for applicants seeking PT licensure or PTA certification by examination[; or~~
~~(4) $210 for applicants seeking PTA certification by examination].~~]

Section 3. **Prorating of Fees. (1) If an application for licensure or certification by examination is filed on or after January 1, of an odd-numbered year, the application fee for licensure and certification shall be:**
(a) $230 if made in the first year of the biennial licensure period; and
(b) $100 if made in the second year of the biennial licensure.
(2) If an application for endorsement is filed on or before January 1 of an odd-numbered year, the application fee for endorsement shall be:
(a) $140 if made in the first year of the biennial licensure period; and
(b) $100 if made in the second year of the biennial licensure.
(3) If an application for reinstatement is filed on or before January 1 of an odd-numbered year, the application fee for reinstatement shall be:
(a) $105 if made in the first year of the biennial licensure period; and
(b) $65 if made in the second year of the biennial licensure.
[~~The application fees for licensure or certification in the second year of the biennial licensure term shall be:~~
~~(1) $100 for endorsement applicants;~~
~~(2) Sixty-five (65) dollars for reinstatement applicants;~~
~~(3) $190 [180] for applicants seeking PT licensure or PTA certification by examination[; or~~
~~(4) $170 for applicants seeking PTA certification by examination].~~]

[~~Section 4. The renewal application fee shall be eighty (80) dollars.~~]

[~~Section 5. The application fee for reexamination or examination if a person fails to take or complete the examination he registered to take shall be $147.50. [:~~
~~(1) $137.50 for the PT applicant; or~~
~~(2) $127.50 for the PTA applicant.~~]]

GEORGIA KING, Chairman
APPROVED BY AGENCY: May 8, 1992
FILED WITH LRC: May 20, 1992 at 10 a.m.

TRANSPORTATION CABINET
Department of Administrative Services
Division of Transportation Services
(As Amended)

600 KAR 1:070. Motor pool procedure.

RELATES TO: 1984 Acts, c. 344 §1 and c. 406 §6
STATUTORY AUTHORITY: KRS 174.080
NECESSITY AND FUNCTION: To implement the authority for administration of the state motor pool authorized by Executive Order[s] 83-70 confirmed by the 1984 Kentucky Acts, Chapter 406, Section 6 and Executive Order [~~and~~] 82-798 confirmed by the 1984 Kentucky Acts, Chapter 344, Section 1 [~~which were confirmed by the 1984 General Assembly~~]. **These Executive Orders provide that the administration of the state motor pool is the responsibility of the Transportation Cabinet. This administrative regulation sets forth the procedures by which a state employee can use a motor pool vehicle and his resulting responsibility for the motor vehicle.**

Section 1. (1) In order to facilitate the administration and operation of the state motor pool, the "Transportation Services Guidance Manual", as revised through August 28, 1991 [~~May 11, 1987, published by the Transportation Cabinet, a copy of which is open for public inspection during business hours in the office of the Commissioner of Administrative Services in the State Office Building, High Street, Frankfort, Kentucky 40622~~], is incorporated [~~herein~~] by reference [~~and made part hereof as fully as if set forth in length~~]. The manual incorporated by reference contains information on the use and assignment of state motor pool vehicles, the operation and care of those vehicles, and the use of Transportation Cabinet credit cards.
(2) **This** [~~The~~] guidance manual [~~incorporated by reference is published by the Transportation Cabinet. It~~] may be **inspected, copied** [~~viewed at~~] or purchased from the Transportation Cabinet's Division of Management Services, First Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number of the division is (502)564-6927. The office hours of the division are 8 a.m. to 4:30 p.m. Eastern time on [~~these~~] weekdays [~~routinely worked by state government~~].

Section 2. Any employee who fails to adhere to the requirements of this administrative regulation is subject to disciplinary action **pursuant to KRS 18A.095**

MARK SUTER, Commissioner
DON C. KELLY, P.E., Secretary
APPROVED BY AGENCY: May 14, 1992
FILED WITH LRC: May 19, 1992 at 10 a.m.

TRANSPORTATION CABINET
(As Amended)

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 **an individual with a disability** [~~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) **"An individual with a disability" means a person who has a physical or mental impairment that substantially limits one (1) or more major life activities, has a record of an impairment or is regarded as having an impairment.**

(14) "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.

(15) [~~(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 **applicable** [~~any, secured thereby~~].

(16) [~~(15)~~] "Net earnings" means any compensation obtained from the business or farm operation by its owner or the owner's spouse and dependents.

(17) [~~(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.

(18) [~~(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).

(19) [~~(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.

(20) [~~(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.

(21) [~~(20)~~] "Person" means any individual, family, partnership, corporation, or association.

(22) [~~(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.

(23) [~~(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.

(24) [~~(23)~~] "Real property" means land, and generally whatever is erected or growing upon or affixed to land.

(25) [~~(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.

(26) [~~(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.

(27) [~~(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.

(28) [~~(27)~~] "Tenant" means a person who has the temporary use and occupancy of real property owned by another.

(29) [~~(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.

(30) [~~(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.

(31) [~~(30)~~] "Utility costs" means expenses for heat, light, water, and sewer.

Section 2. Applicability. (1) 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.

(2) 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)(a) At the initiation of negotiations the Transportation Cabinet shall give the displaced person a ninety (90) day notice.

(b) The [~~Included in that~~] notice shall be either:

1. A specific date which is the earliest date by which he shall be required to move; or

2. 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)(a) The Transportation Cabinet may issue a notice to a displaced person specifying the date by which he is required to

vacate the acquired property, if:

1. The Transportation Cabinet has gained control of the property to be acquired;

2. Sixty (60) or more days have passed since the issuance of a ninety (90) day notice; and

3. Comparable replacement housing has been made available to the displaced person.

(b) The required vacation date shall be at least thirty (30) days after the notice is issued. [~~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) The Transportation Cabinet may specify an alternative notification procedure to those established in Sections 3 and 4 of this administrative regulation if there are insufficient rental units available for the tenant-occupants of the acquired property.

(2) If the Transportation Cabinet determines that an alternative notification procedures will be used, it shall not be required to make the replacement housing payment offer to the displaced tenants within the seven (7) working days specified in Section 4(3) of this administrative regulation. [~~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.~~]

(3) The alternate notification 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 as specified in Section 4 of this administrative regulation [~~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.

(4) [~~(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.

(5) [~~(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.

(6)(a) When the Transportation Cabinet acquiring property results in a property being landlocked, the occupant of the landlocked property shall be considered displaced. The displaced occupant shall:

1. Be eligible for relocation assistance; and

2. Have one (1) year to obtain an occupied decent, safe and sanitary replacement housing.

(b) The vacation date shall begin to run from either the date the Transportation Cabinet:

1. Makes a payment for damages to the nonresident owner of the property; or

2. Posts payment for damages in court.

[~~(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 **displaced** person is required to move in **case of** an emergency situation **which shall include:** [~~such as~~]

(a) A major disaster as described in Section 102(c) of the National Disaster Relief Act of 1974;

(b) A presidentially declared national emergency;

(c) Highway slides or floods; or

(d) 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).~~]

(d) In the case of an emergency relocation, the date of displacement shall be the date the person moves from the temporarily-occupied dwelling. This date shall be used in:

1. Filing a claim for relocation assistance; and

2. Determining eligibility requirements for a relocation payment.

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 **to:**

1. Determine the person's relocation needs and preferences; [~~and~~]

2. Explain the relocation payments; and

3. Explain 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) **In order that the displaced person is made aware of the amount of the replacement housing payment to which he may be entitled,** inform the displaced person, in writing, of**:**

1. The specific comparable replacement dwelling; [~~and~~]

2. The price and rent used as a basis for establishing the upper limit of the replacement housing payment; and

3. 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) **It shall be the policy of the Transportation Cabinet to provide a minority displaced person an opportunity to elect relocation to a replacement dwelling which is located outside an area of minority concentration if:**

1. It would not require the Transportation Cabinet to pay a larger relocation payment than is required by this administrative regulation; and

2. It is within the financial means of the minority displaced person; [~~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**:**

1. The federal Internal Revenue Code; or

2. [~~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)**(a)** Any claim for relocation assistance payment shall be accompanied by documentation to support expenses incurred.

(b) A displaced person shall be provided reasonable assistance in completing and filing a claim for payment.

(c) The Transportation Cabinet shall review claims in an expeditious manner and promptly notify the claimant if additional documentation is required.

(d) Payment for a relocation assistance claim shall ordinarily be made only after**:**

1. The displaced person has moved or after closing; and

2. As soon as feasible following receipt of sufficient documentation to support the claim.

(e) 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. (1) A displaced person, owner-occupant or tenant of a dwelling who qualifies as a displaced person:

(a) Is entitled to receive payment for the actual, reasonable and necessary moving expenses of his personal property, himself, and his family.

(b) [~~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.

(2) 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.

(3) [~~(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.

(4) [~~(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.

(5) [~~(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.

(6)(a) [~~(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.

(b) The Transportation Cabinet may furnish the displaced person a list of licensed movers in the area.

(c) The displaced person shall select one (1) mover and the Transportation Cabinet shall select one (1) **mover**.

(d) The Transportation Cabinet shall:

1. Obtain from both **of the selected** movers an estimate of the moving costs **including** [~~. The estimates shall include~~] any necessary utility service connections.

2. [~~The Transportation Cabinet shall~~] Base payment on the lower estimate.

(e) [~~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)(a) The Transportation Cabinet shall reimburse the displaced business, farm operation, or nonprofit organization actual and reasonable expenses in searching for a new location.

(b) Payment shall be limited to $1,000.

(c) The items for which an invoice may be submitted include:

1. ~~[are]~~ Transportation;

2. Lodging and meals away from home;

3. Time spent in searching, based on reasonable salary or earnings, of the person conducting the search; and

4. 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.

(d) 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:

1. Persons contacted;

2. Places visited;

3. Activity involved; and

4. 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.

a. The claimant shall make a good faith effort to sell the personal property, unless the Transportation Cabinet determines that the effort is not necessary.

b. 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) 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.

(b) The payment shall not be less than $1,000 nor more than $20,000.

(c) 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.

(d) The amount to be used in determining the payment is the average of two (2) years annual gross revenues less administrative expenses.

(e) Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other fund raising activities.

(f) 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.

(g) 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.

Section 15. Replacement Housing Payments - General. (1) **It shall be the policy of the Transportation Cabinet to consistently apply the provisions of this administrative regulation relating to eligibility for replacement housing payments to housing situations not specifically provided for in this administrative regulation. Displaced persons may include individuals or families displaced from condominiums or cooperative apartments.** [~~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)**(a)** 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.

(b) The claim for payment shall be filed with the cabinet no more than eighteen (18) months after the date of displacement for tenants.

(c) For owners, the claim for payment shall be filed no more than eighteen (18) months after the date of:

1. Displacement; or

2. [~~the date of~~] The final payment for the acquisition of real property, whichever is later.

(d) Before the payment is made to the displaced person, the Transportation Cabinet shall determine that the replacement dwelling is decent, safe and sanitary.

(4)**(a)** If a displaced person [~~otherwise~~] qualifies for a replacement housing payment, **but** [~~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**, the Transportation Cabinet shall provide a written or oral certification**

that the displaced person is eligible for the payment of a specific amount

(b) The Transportation Cabinet shall release this certification only:

1. Upon the request of the displaced person who is purchasing the dwelling;

2. After inspecting the proposed dwelling; and

3. Upon finding that the dwelling is decent, safe and sanitary.

(c) The certification [. 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.

(5)(a) Replacement housing payments may be made directly:

1. To the relocated individual or family; or

2. Upon written instructions from the displaced person:

a. Directly to the lessor for rent; or

b. Directly to the seller for use toward the purchase of a dwelling.

(b) This written instruction from the displaced person shall be submitted with the application for payment.

(c) The Transportation Cabinet shall make the replacement housing payment into an escrow account if:

1. The displaced person has made a specific request in the application; and

2. The applicant otherwise qualifies for a replacement housing 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.]

(6)(a) 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.

(b) Less than three (3) comparable dwellings may only be used for this determination when sufficient comparable dwellings are not available.

(c) 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.

(d) The selected comparable dwellings shall be the most nearly comparable available and equal to or better than the subject property.

(7)(a) 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.

(b) 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.

(8) An adjustment shall be made to the asking price of the selected comparable dwelling only when the market reflects a [substantial] difference of more than five (5) percent 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.

(9)(a) 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.

(b) 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.

(10) 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.

(11) 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.

(12) A [No] person shall not 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) A disaster;

(b) An emergency; or

(c) An imminent threat to the public health or welfare as determined by:

1. The President;

2. The federal agency funding the project; or

3. The Transportation Cabinet; or

(d) A delay in the construction of the replacement dwelling;

(e) Military reserve duty; or

(f) A hospital stay.

(13)(a) 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.

(b) Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment.

(c) 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.

(14)(a) 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.

(b) 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.

(c) 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.

(15) 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)(a) 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.

(b) 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)(a) 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.

(b) 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)(a) 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.

(b) 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.

(c) 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)(a) 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.

(b) 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)1. 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.

2. If the comparable housing is a triplex:

a. The replacement housing payment is based on the value of only one (1) of the three (3) units;

b. [if] A duplex, the payment is based on the value of only one (1) of the two (2) units;

c. [if] A single-family dwelling, the payment is based on the entire value of the dwelling.

3. 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)(a) 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.

(b) 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.

(c) If the replacement dwelling is not decent, safe and sanitary, he may be paid to correct the deficiencies if he maintains documented receipts.

(d) 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)(a) 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.

(b) 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.

(c) 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.

(d) 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)(a) 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.

(b) 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) 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.

(b) 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)(a) 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.

(b) 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.

(c) 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)(a) 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.

(b) 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.

(c) 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.

(5) To document these charges **in subsection (4) of this section**, the Transportation Cabinet shall be provided a copy of the lending agency's closing statement.

(6) [~~(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.

(7) [~~(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.

(8) [~~(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.

(9) [~~(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.

(10) [~~(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 **shall** 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 displace-

ment 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)(a) 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.

(b) Then the cabinet shall multiply that amount by forty-two (42) to determine the actual payment.

(c) [~~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.

(d) In determining the amount necessary to rent a comparable dwelling the Transportation Cabinet shall examine, if available, three (3) comparable rental properties.

(e) 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. (1) Down payment assistance may be given to a tenant-occupant of ninety (90) days or more who purchases a replacement dwelling.

(2)(a) 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.

(b) 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.

(c) 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.

(3) 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)(a) 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.

(b) 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:

1. The sum of the value of the mobile home;
2. The cost of any necessary repairs or modifications; and
3. The estimated cost of moving the mobile home to a replacement site.

(c) 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.

(d) 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)(a) 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.

(b) Displaced individuals or families occupying a mobile home may receive payment for the actual, reasonable expense of moving their personal property.

(c) If an owner-occupied mobile home is considered personal property, the cost of moving the mobile home is reimbursable.

(d) 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.

(e) 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.

(f) Prior to authorizing a move of a mobile home, the Trans-

portation Cabinet shall determine:

1. The items of personal property to be moved, including the mobile home and any items stored in accessory buildings; and

2. Determine that the mobile home mover is a licensed commercial mobile home carrier and obtain from him an estimate of the moving costs.

a. This estimate shall include any necessary utility service connections.

b. 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.

(d) 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) 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.

(b) 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.

(c) 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 administrative regulation.

(d) [~~(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.

(e)[~~(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:

(a) His eligibility; ~~[for,]~~ or

(b) The amount of the payment required under the provisions of this administrative regulation.

(2) The Transportation Cabinet shall consider a written appeal regardless of form.

(3) 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.

(4) ~~[(2)]~~ A person may be represented by legal counsel or other representative in connection with his appeal, but solely at his own expense.

(5)(a) ~~[(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.

(b) ~~[At the hearing,]~~ Technical rules of evidence shall not apply;

(c) ~~[. 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;

(d) A record of all evidence introduced at the hearing shall be made by the Transportation Cabinet.

(6)(a) ~~[(4)]~~ The hearing officer shall make findings of facts, conclusions of law and a recommended decision on the disposition of the appeal.

(b) 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.

(c) 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.

(7) ~~[(5)]~~ The Transportation Secretary or his representative, who shall not have been directly involved in the action appealed, shall consider:

(a) ~~[not only]~~ The hearing officer's recommended decision; and

(b) ~~[but also]~~ any written comments received from the involved parties in making his final ruling.

(8) ~~[(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.

DON C. KELLY, Secretary/Commissioner
BOB G. BODNER, Executive Director
GLEN KELLY, Acting State Highway Engineer
APPROVED BY AGENCY: June 4, 1992
FILED WITH LRC: June 8, 1992 at 9 a.m.

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

601 KAR 1:005. Safety regulations.

RELATES TO: KRS Chapters 138, 281, Title 49, Code of Federal Regulations, Part 390-397

STATUTORY AUTHORITY: KRS 138.665, 281.600, 281.726, 281.730, 281.750, Title 49, Code of Federal Regulations, Part 390-397

NECESSITY AND FUNCTION: **This administrative regulation is necessary to set forth the safety requirements that KRS 281.600 allows the Transportation Cabinet to establish.** This **administrative** 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 **a** ~~[the]~~ vehicle:

(a) To transport agricultural products from his farm;

(b) ~~[or]~~ To transport farm machinery or farm supplies to his farm; **or**

(c)~~[. It also includes any operation of a motor vehicle by a farmer~~

~~which is~~] Generally thought of as farm machinery; and

(d) Which is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 601 KAR 1:025. [~~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. All commercial motor vehicles operated for-hire or in private carriage, interstate or intrastate, except as set forth in Section 3 of this regulation shall be governed by the following Motor Carrier Safety Regulations adopted and issued by the United States Department of Transportation:

(1) Title 49, Code of Federal Regulations Part 390, General, effective as amended through July 27, 1992 [~~August 30, 1990~~];

(2) Title 49, Code of Federal Regulations, Part 391, Qualifications of Drivers, effective as amended through January 1, 1992 [~~February 1, 1990~~];

(3) Title 49, Code of Federal Regulations, Part 392, Driving of Motor Vehicles, effective as amended through November 15, 1988;

(4) 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) Title 49, Code of Federal Regulations, Part 394, Notification, Recording and Reporting of Accidents, effective as amended through December 21, 1988;

(6) Title 49, Code of Federal Regulations, Part 395, Hours of Service of Drivers, effective as amended through August 13, 1990;

(7) Title 49, Code of Federal Regulations, Part 396, Inspection, Repair and Maintenance, as 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; and

(8) 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. The following exemptions and exceptions to compliance with the provisions of Section 2 of this regulation are adopted:

(1) 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)(a) 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.

(b) In spite of the requirements specified in paragraph (a) of this subsection, [~~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) 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) 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) 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) 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) 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. Buses. (1) Buses shall be maintained in a clean and sanitary condition so that the health of passengers will not be impaired.

(2) Seats shall be comfortable in order that passengers will not be subjected to unreasonable discomfort which might be detrimental to their health and welfare.

(3) 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.

(4) All operators shall take into consideration the health and welfare of their passengers and control their operations in the public interest.

(5) 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. 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 **inspected, copied or obtained** [~~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. 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 by the Commercial Vehicle Safety Alliance. The criteria are incorporated by reference as a part of this administrative regulation.

(2)(a) If a commercial vehicle is being operated 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.

(b) 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.

(c) Refusal of the vehicle operator to grant permission for a law enforcement officer to conduct a safety inspection of the vehicle shall be cause for the officer to place the vehicle out-of-service until the 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 **inspected, copied or obtained** [~~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.

NORRIS BECKLEY for LEWIS H. DOTSON, Commissioner
DON C. KELLY, Secretary
APPROVED BY AGENCY: May 26, 1992
FILED WITH LRC: June 3, 1992 at 11 a.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Department of Highways
Division of Motor Carriers
Division of Maintenance
(As Amended)

601 KAR 1:015. Special overweight or [/] overdimensional permits issued at highway district offices and the Transportation Cabinet in Frankfort.

RELATES TO: KRS 189.270, 189.274
STATUTORY AUTHORITY: KRS 174.080, 189.274
NECESSITY AND FUNCTION: KRS 189.274 allows for certain overweight or [~~and~~] overdimensional permits to be issued at the twelve (12) district offices of the Department of Highways and the Transportation Cabinet in Frankfort. These permits are for the movement of equipment used primarily for soil conservation purposes, residential construction purposes, and public utility purposes, **such as bulldozers**. The permit may only be issued for movement in the base county of the equipment and the adjoining counties. This administrative regulation establishes standards and procedures necessary to issue these permits.

Section 1. Definitions. (1) "Daylight hours" means the period of day from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

(2) "Base fee" means the initial fee of sixty (60) dollars charged for the issuance of an overweight or overdimensional permit to cover the cost of processing the permit application, including:

(a) [~~but not limited to~~] A qualification check of the applicant;

(b) A statutory compliance check; and

(c) An initial bridge and weight analysis.

(3) "Additional fee" means the additional charge for overweight or overdimensional permits imposed by KRS 189.270. Vehicles with six (6) or more axles or with a width of ten (10) or more feet shall be charged the base fee as well as the additional fee as provided for by statute. This additional fee is to cover the additional administrative costs for processing the permit application, including:

(a) Specific bridge computer analysis;

(b) Unique routing needs;

(c) Axle spacing needs; **and**

(d) Additional enforcement and other necessary or incidental Transportation Cabinet costs.

(4) "Overweight" means:

(a) The motor vehicle exceeds the gross weight limit established for a highway segment in 603 KAR 5:300;

(b) The motor vehicle exceeds the axle weight limit established in 603 KAR 5:066;

(c) The motor vehicle is transporting coal or coal by-products under the provisions of KRS 177.9971 and exceeds the gross weight limits established by that statute;

(d) The motor vehicle exceeds the bridge weight limit established by 603 KAR 5:066; or

(e) The motor vehicle exceeds the gross weight limit posted at a bridge or other structure.

(5) "Overdimensional" means the motor vehicle exceeds the dimension limits set forth in 603 KAR 5:070.

Section 2. Permits. (1) In accordance with KRS 189.274 the twelve (12) district offices of the Department of Highways and the Transportation Cabinet in Frankfort may issue special overweight or [~~and~~] overdimensional permits for operators of equipment used for soil conservation purposes, residential construction purposes, and public utility service purposes and other specialized equipment, such as oil well and mine equipment and truck cranes and loaders. Only these overweight or overdimensional permits may be issued by the highway district offices.

(2) **An application for an overweight or overdimensional permit may be completed on forms provided by the Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Carriers, 501 High Street, Frankfort, Kentucky 40622.** The permit application shall contain the following:

(a) A detailed description of the equipment to be moved;

(b) A description and vehicle identification number of the power unit moving the equipment;

(c) Registration weight and license plate number of the power unit;

(d) Equipment operator's name, telephone number and address;

(e) Routes requested for travel; [~~and~~]

(f) County in which the equipment is based or the applicant maintains headquarters [~~and any other information required by the Department of Vehicle Regulation~~]; **and**

(g) Period of time, equal to or less than ten (10) days, needed to complete the movement.

(3) The permit issued for a movement of a specific vehicle, load, machine, or piece of equipment shall clearly identify or describe the load, machine, or piece of special equipment (for example, D-8 dozer).

(4) The base fee for the issuance of a special permit to a vehicle which is both overweight and overdimensional shall be sixty (60)

dollars. The base fee for the issuance of a permit to a vehicle which is either overweight or overdimensional shall be sixty (60) dollars.

(5) An additional fee as set forth in KRS 189.270 shall be assessed:

(a) If the vehicle for which an overweight permit is applied has six (6) or more axles; or

(b) If the vehicle for which an overdimensional permit is applied has a width of ten (10) feet or more.

(6) [~~(5)~~] An issued permit shall be valid for ten (10) days and may be issued for more than one (1) movement.

Section 3. Divisible Loads. Except as allowed by KRS 189.274(6) a permit shall not be issued for a divisible load which when reasonably divided, dismantled, disassembled or rearranged would no longer be overweight or overdimensional.

Section 4. Highway Right-of-way. A permit holder shall not cut, trim, remove or relocate any tree, shrub, guardrail, highway sign or other object on the highway right-of-way without the personal, written approval of the chief district engineer having jurisdiction over the property involved.

Section 5. Height. (1) All vehicles and load with a height in excess of thirteen and one-half (13.5) feet shall obtain a permit prior to movement.

(2) There is no set maximum height limit for the issuance of an overdimensional permit except as determined by underpasses and bridges[~~; however, fifteen (15) feet in most cases is the highest practical for moves over Kentucky highways~~].

Section 6. Weight. (1) [~~No~~] Gross or axle overweight shall not be permitted:

(a) On combination units of less than five (5) axles; [~~nor~~]

(b) On a single unit except off-road equipment such as scraper, mobile cranes or other self-propelled units [~~and in no case shall axle weight exceed the product of 600 pounds times the aggregate width in inches of all of the tires on the axle~~].

(2) Kentucky licensed vehicles shall not be permitted weights exceeding that for which licensed unless licensed for the maximum of 80,000 lbs.

(3) [~~In no event shall~~] The weight on any single axle in any combination shall not exceed the product of 600 pounds times the aggregate width in inches established by the manufacturer's stamped tire measurement of all the tires on the axle, or the following axle or axle group weights, whichever is less:

(a) Single axle - 24,000 pounds;

(b) Tandem axle group if the combination vehicle has only five (5) axles total - 45,000 [~~48,000~~] pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tandem axle group);

(c) Tandem axle group if the combination vehicle has six (6) or more axles total - 48,000 pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tandem axle group);

(d) [~~(c)~~] Tridem axle group - 60,000 pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tridem axle group);

(e) [~~(d)~~] Five (5) axle combination units shall [~~are~~] not [~~to~~] exceed 96,000 pounds gross weight;

(f) [~~(e)~~] Six (6) axle combination units shall [~~are~~] not [~~to~~] exceed 120,000 pounds gross weight.

(4) Since bridge capacity is the weight controlling factor in most instances, these maximum weights shall not be permitted unless all bridges involved are of sufficient capacity to accommodate the load.

(5) No permit shall be issued by a district office of the Department of Highways, if the gross load exceeds 120,000 pounds.

Section 7. Permit Validity. Overdimensional permits shall only be valid during daylight hours from Monday through Saturday noon.

(2) [~~However,~~] On national holidays travel under the provisions of an overdimensional permit shall not be permitted from noon of the day preceding the holiday until daylight of the next permissible day.

(3) If the national holiday occurs on Saturday, Sunday or Monday, the restricted travel period for an overdimensional permit shall extend from noon of the preceding Friday to daylight of the following Tuesday.

Section 8. Width. An application for a single trip permit for a vehicle, equipment, or load which exceed fourteen (14) feet in width or where weight of the vehicle, equipment or load exceeds the limits set forth in this administrative regulation shall be made to the Department of Vehicle Regulation, Division of Motor Carriers, **501 High Street, Frankfort, Kentucky 40622**. These applications shall be **submitted and** considered in accordance with KRS 189.270 and 603 KAR 5:075.

Section 9. **[~~Nothing in~~]** This administrative regulation shall **not** prohibit the permit issuing office from further restricting movements or denying a permit for any movement which may cause damage to property or which may be detrimental to public safety and convenience.

Section 10. The **original or facsimile copy of the** permit shall be carried in the overweight or [~~/~~] overdimensional vehicle or equipment at all times. It shall be presented, upon request, to any law enforcement officer or authorized personnel of the Department of Vehicle Regulation.

Section 11. Escort Vehicles [~~and Flag Requirements~~]. (1) Required escort vehicles shall accompany the permitted vehicle at a distance of 300 feet on open highways.

(2) This interval shall be shortened in cities or congested areas to protect other traffic.

(3) An escort vehicle's headlamps shall be lit at all times. [~~Red flags which are a minimum of twelve (12) inches square shall be displayed on each side of an escort vehicle.~~]

(4) The escort vehicle shall maintain radio contact with the towing vehicle at all times.

(5) [~~(2)~~] On a two (2) lane highway the permit holder shall:

(a) Comply with the escort provisions of KRS 189.274(8); [~~In addition~~]

(b) If the length of the vehicle and load is in excess of seventy-five (75) feet but no more than eighty-five (85) feet, provide [~~it shall have~~] one (1) lead escort;

(c) If the length of the vehicle and load exceed eighty- five (85) feet, provide [~~it shall have~~] one (1) lead and one (1) trail escort;

(d) If [~~(3) On a two (2) lane highway,~~] a vehicle and load traveling at speeds below the average driving speed of traffic on its route, provide [~~shall have~~] one (1) trail escort.

(6) [~~(4)~~] On a four (4) lane or wider highway:

(a) A vehicle and load with a width exceeding twelve (12) feet shall have one (1) trail escort;

(b) [~~(5) On a four (4) lane or wider highway,~~] A vehicle and load with a length of 110 feet or greater shall have one (1) trail escort.

(c) A vehicle and load traveling at a speed less than forty-five (45) miles per hour shall have one (1) trail escort.

(7) Each required escort vehicle shall have one (1) of the following:

(a) An amber strobe or flashing light on the roof of the escort vehicle; or

(b) A warning sign which:

(1) Is clearly-legible;

(2) States "OVERSIZE LOAD" in black letters on a yellow background; and

(3) Shall be placed on the front of a front escort vehicle and on the rear of a trail escort vehicle.

Section 12. Other Safety Requirements. (1)(a) [~~(6)~~] Red or orange fluorescent flags which are a minimum of eighteen (18) [~~twelve (12)~~] inches square shall be displayed on each vehicle and load operating under the auspices of either an overlength or an overwidth permit.

(b) Flags shall be displayed at the outside dimensions of the load

at approximately bumper height.

(c) Additional flags shall be located at a minimum height of nine (9) feet above the pavement, on each of the four (4) top corners of the load.

[~~(7) All toll roads shall be considered four (4) lane for the purpose of determining the need for escort vehicles regardless of the actual number of lanes on the highway.~~]

(2) [~~(8)~~] As a special provision of the permit, the Department of Vehicle Regulation may require additional escort vehicles or red flags.

(3) All special equipment and towing vehicles operated pursuant to this administrative regulation shall be marked and lighted in accordance with the requirements of 601 KAR 1:005.

(4) A warning sign shall be fastened to both the front of the towing unit and the rear of the load if:

(a) The total overdimensional permitted vehicle exceeds ten and one-half (10.5) feet in width; or

(b) Has front or rear overhang of four (4) or more feet.

(5) Each warning sign shall:

(a) State "OVERSIZE LOAD" in black letters on a yellow background;

(b) Not be less than seven (7) feet long and eighteen (18) inches high; and

(c) Have a brush stroke of not less than one and four-tenths (1.4) inches.

(6) If the overdimensional permitted vehicle has front or rear overhang of four (4) or more feet, a flag as described in subsection (1) of this section shall be placed at the outer extremity of the overhang.

Section 13. Liability. Any damage to the highway, signs, guardrail or other public or private property caused by the transportation of the specialized equipment shall be the responsibility of the permit holder. The permit holder shall either repair all damage incurred **or** [~~ef~~] pay for the repair.

NORRIS BECKLEY, Deputy Commissioner
DON C. KELLY, Secretary
GLEN KELLY, Acting State Highway Engineer
APPROVED BY AGENCY: June 12, 1992
FILED WITH LRC: June 15, 1992 at 8 a.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Department of Highways
Division of Motor Carriers
Division of Maintenance
(As Amended)

601 KAR 1:016. Special annual overweight or [~~/~~] overdimensional permits issued for the transportation of specialized equipment.

RELATES TO: KRS 189.270, 189.273
STATUTORY AUTHORITY: KRS 174.080, 189.273
NECESSITY AND FUNCTION: KRS 189.273 allows annual overweight or [~~/~~] overdimensional permits to be issued for the movement of soil conservation equipment and other specialized equipment within the base county of the equipment or an adjacent county. To be eligible for this annual permit, the equipment and towing vehicle shall not exceed thirteen and one-half (13.5) in height, twelve (12) feet in width or ninety (90) feet in length. Certain weight limits are also established by KRS 189.273 and explained by this administrative regulation. This regulation establishes standards and procedures necessary to issue these permits.

Section 1. Definitions. (1) Additional fee" means the additional charge for overwidth or overdimensional permits imposed by KRS 189.270. Vehicles or equipment with six (6) or more axles or with a width of ten (10) or more feet shall be charged the base fee as well as the additional fees as provided for by **KRS 189.270** [~~statute~~]. This additional fee is to cover the additional administrative costs for processing the permit application including:

(a) Specific bridge computer analysis;

(b) Unique routing needs;

(c) Axle spacing needs;

(d) Additional enforcement; and

(e) Other necessary or incidental Transportation Cabinet costs.

(2) "Base fee" means the initial fee of sixty (60) dollars charged for the issuance of an overweight or overdimensional permit to cover the cost of processing the permit application, including:

(a) [~~but not limited to,~~] A qualification check of the applicant;

(b) A statutory compliance check; and

(c) An initial bridge and weight analysis.

(3) [~~(1)~~] "Daylight hours" means the period of a day from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

[~~(2) "Base fee" means the initial fee of sixty (60) dollars charged for the issuance of an overweight or overdimensional permit to cover the cost of processing the permit application, including but not limited to, a qualification check of the applicant, a statutory compliance check, and an initial bridge and weight analysis.~~]

[~~(3) "Additional fee" means the additional charge for overweight or overdimensional permits imposed by KRS 189.270. Vehicles or equipment with six (6) or more axles or with a width of ten (10) or more feet shall be charged the base fee as well as the additional fees as provided for by statute. This additional fee is to cover the additional administrative costs for processing the permit application including specific bridge computer analysis, unique routing needs, axle spacing needs, additional enforcement and other necessary or incidental Transportation Cabinet costs.~~]

(4) "Overdimensional" means the motor vehicle exceeds the dimension limits set forth in 603 KAR 5:070.

(5) "Overweight" means the motor vehicle exceeds:

(a) The gross weight limit established for a highway segment in 603 KAR 5:300;

(b) The axle weight limit established in 603 KAR 5:066;

(c) The gross weight limits established by KRS 177.9771 for a motor vehicle transporting coal or coal by-products;

(d) The bridge weight limit established by 603 KAR 5:066; or

(e) The gross weight limit posted at a bridge or other structure.

Section 2. Permit Applications. (1) All applications for an annual permit to transport soil conservation or other specialized equipment in accordance with the provisions of KRS 189.273 shall be made to the Department of Vehicle Regulation, Division of Motor Carriers. **Application forms for this purpose may be used and are available from the Division of Motor Carriers, 501 High Street, Frankfort, Kentucky 40622.**

(2) The written permit application shall contain the following:

(a) A detailed description of the equipment to be moved;

(b) A description and vehicle identification number of the power unit moving the equipment;

(c) Registration weight and Kentucky license plate number of the power unit;

(d) The equipment operator's name**, telephone number** and address;

(e) Routes requested for travel; and

(f) The county in which the equipment is based or the application maintains headquarters [~~and any other information required by the Department of Vehicle Regulation~~].

(3) The applicant shall certify that the towing unit has sufficient horsepower and braking capacity to handle all loads he transports.

Section 3. Permit Fee. (1) The base fee for the issuance of this annual permit shall be sixty (60) dollars as set forth in KRS 189.270.

(2) The additional fee as set forth in KRS 189.270 shall be assessed if the vehicle or equipment for which an overweight permit is applied:

(a) Has six (6) or more axles; or

(b) [~~if the vehicle or equipment for which an overdimensional permit is applied~~] Has a width of ten (10) feet or more.

Section 4. Divisible Loads. Except as allowed by KRS 189.273(5) a permit shall not be issued for a divisible load which when reasonably divided, dismantled, disassembled or rearranged would no longer be overweight or overdimensional.

Section 5. Highway Right-of-way. A permit holder shall not cut, trim, remove or relocate any tree, shrub, guardrail, highway sign or other object on the highway right-of-way without the personal, written approval of the chief district engineer having jurisdiction over the property involved.

Section 6. Weight. (1) [~~No~~] Gross or axle overweight shall not be permitted:

(a) On combination units of less than five (5) axles;

(b) [~~nor~~] On a single unit except off-road equipment such as scraper, mobile cranes or other self-propelled units.

(2) [~~and in no case shall~~] The axle weight shall not exceed the product of 600 pounds times the aggregate width in inches established from the manufacturer's stamped tire measurement of all of the tires on the axle.

(3) [~~(2)~~] Kentucky licensed vehicles shall not be permitted weights exceeding that for which licensed unless licensed for the maximum of 80,000 lbs.

(4) [~~(3)~~] In no case shall the weight on any single axle in any combination exceed the product of 600 pounds times the aggregate width in inches established from the manufacturer's stamped tire measurement of all the tires on the axle, or the following axle or axle group weights, whichever is less:

(a) Single axle - 24,000 pounds;

(b) Tandem axle group if the combination vehicle has only five (5) axles total - 45,000 [~~- 48,000~~] pounds (minimum forty-two (42) inches spacing shall be required between the center of each of the axles of the tandem axle group);

(c) Tandem axle group if the combination vehicle has six (6) or more axles total - 48,000 pounds (minimum forty-two (42) inches spacing shall be required between the center of each of the axles of the tandem axle group);

(d) [~~(c)~~] Tridem axle group - 60,000 pounds (minimum forty-two (42) inches spacing shall be required between the center of each of the axles of the tridem axle group);

(e) [~~(d)~~] Five (5) axle combination units shall not [~~are not to~~] exceed 96,000 pounds gross weight;

(f) [~~(e)~~] Six (6) axle combination units shall not [~~are not to~~] exceed 120,000 pounds gross weight.

(5) [~~(4)~~] Since bridge capacity is the weight controlling factor in most instances, these maximum weights shall not be permitted unless all bridges involved are of sufficient capacity to accommodate the load.

Section 7. Permit Validity. (1) Overdimensional permits shall only be valid:

(a) During daylight hours; and

(b) From Monday through Saturday noon.

(2) [~~However,~~] On national holidays travel shall not be permitted with an overdimensional permit from noon of the day preceding the holiday until daylight of the next permissible day.

(3) If the national holiday occurs on Saturday, Sunday or Monday, the restricted period shall extend from noon of the preceding Friday to daylight of the following Tuesday.

Section 8. [~~Nothing in~~] This administrative regulation shall **not** prohibit the permit issuing office from further restricting movements or denying a permit for any movement which may cause damage to property or which may be detrimental to public safety or convenience.

Section 9. Permit Availability. (1) The original of the annual permit **or a copy authenticated by the Transportation Cabinet by embossing** shall be carried in the overweight or [~~/~~] overdimensional vehicle at all times.

(2) It shall be presented, upon request, to any law enforcement officer or authorized personnel of the Department of Vehicle Regulation.

(3) **An unauthenticated** photocopy of the annual permit shall not be valid.

Section 10. Escort Vehicles, Safety and Flag Requirements. (1) Required escort vehicles shall accompany the permitted vehicle at a distance of 300 feet on open highways. This interval shall be shortened in cities or congested areas to protect other traffic.

(2) An escort vehicle's headlamps shall be lit at all times. [~~Red flags which are a minimum of twelve (12) inches square shall be displayed on each side of an escort vehicle.~~]

(3) [~~(2)~~] On a two (2) lane highway the permit holder shall:

(a) Comply with the escort provisions of KRS 189.273(7) or (8); [~~or~~]

(b) Supply one (1) lead escort vehicle [~~. In addition,~~] if the length of the vehicle and load exceeds seventy-five (75) feet but no more than eighty-five (85) feet;

(c) [~~Or~~] Supply one (1) lead and one (1) trail escort [~~, it shall have one (1) lead escort.~~] if the length of the vehicle and load exceed eighty-five (85) feet[~~, it shall have one (1) lead and one (1) trail escort~~]**; or** [~~.~~]

(d) If [~~(3) On a two (2) lane highway,~~] a vehicle and load are traveling at speeds below the average driving speed of traffic on its route, provide [~~shall have~~] one (1) trail escort.

(4) On a four (4)-lane highway, one (1) trail escort vehicle shall be provided for a vehicle and load traveling at a speed less than forty-five (45) miles per hour.

(5) The towing unit and its escort vehicles shall maintain radio contact at all times.

(6) Each required escort vehicle shall have one (1) of the following:

(a) An amber strobe or flashing light on the roof of the escort vehicle; or

(b) A warning sign which:

1. Is black letters on a yellow background states "OVERSIZE LOAD";

2. Is clearly-legible; and

3. Is placed on the front of a front escort vehicle and on the rear of a trail escort vehicle.

(7) [~~(4)~~] Red or orange fluorescent flags which are a minimum of eighteen (18) [~~twelve (12)~~] inches square shall be displayed in the following ways:

(a) On each vehicle and load operating under the auspices of an overdimensional [~~either an overlength or an overweight~~] permit.

(b) [~~Flags shall be displayed~~] At the outside dimensions of the load at approximately bumper height; and

(c) [~~. Additional flags shall be located~~] At a minimum height of nine (9) feet above the pavement, on each of the four (4) top corners of the load.

[~~(5) All toll roads shall be considered four (4) lane for the purpose of determining the need for escort vehicles regardless of the actual number of lanes on the highway.~~]

(8) All vehicles exceeding ten and one-half (10.5) feet in width, or having front overhang shall display two (2) warning signs. The warning signs shall:

(a) State in black letter on a yellow background, "OVERSIZE LOAD";

(b) Not be less than seven (7) feet long and eighteen (18) inches high with a brush stroke of one and four-tenths (1.4) inches; and

(c) One (1) sign shall be fastened at the front of the power unit and the other at the rear of the towed unit or at the rear of the load.

(9) [~~(6)~~] As a special provision of the permit, the Department of Vehicle Regulation may require additional escort vehicles, lights or [~~red~~] flags.

Section 11. Liability. Any damage to the highway, signs, guardrail or other public or private property caused by the transportation of this equipment shall be the responsibility of the permit holder. The permit holder shall either repair all damage incurred or pay for the repair.

Section 12. Duplicate Permits. A duplicate permit which is needed

to replace a lost, stolen or destroyed annual permit or to transfer the permit to another towing vehicle may be obtained from the Division of Motor Carriers by a payment of ten (10) dollars. Only one (1) transfer to another towing vehicle shall be allowed for each annual permit during its effective year. Any additional transfer of the annual permit requested shall be subject to the fees set forth in KRS Chapter 189.

NORRIS BECKLEY, Deputy Commissioner
DON C. KELLY, Secretary
GLEN KELLY, Acting State Highway Engineer
APPROVED BY AGENCY: June 12, 1992
FILED WITH LRC: June 15, 1992 at 8 a.m.

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

603 KAR 5:070. Motor vehicle dimension limits.

RELATES TO: KRS 189.222, 23 CFR Part 658
STATUTORY AUTHORITY: KRS 189.222(1), 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. The State Primary Road System consists of those roads maintained by the Department of Highways. Further, 23 CFR Part 658 requires that a five (5) mile access on state-maintained highways and a one (1) mile access on locally controlled highways be included with the list of highways over which motor vehicles with increased dimensions are allowed to operate. The federal regulation also requires that vehicles with increased dimensions which are transporting household goods and truck tractors towing only one (1) semitrailer which does not exceed twenty-eight (28) feet be provided statewide access unless a route is specifically excluded for safety reasons. This regulation is adopted to set the maximum motor vehicle dimensions for all classes of highways. However, bus dimension limits are set forth in 603 KAR 5:071.

Section 1. Except as provided in Section 2 of this regulation, the maximum dimensions for all motor vehicles except buses using all classes of highways shall be as follows:

(1) Height: including body and load, not to exceed thirteen (13) feet and six (6) inches.

(2) Width: including body and load, not to exceed eight (8) feet.

(3) Length.

(a) **The length of a single unit motor vehicle, including any part of the body or load, shall not exceed forty-five (45) feet.**

(b) A single unit motor vehicle transporting utility poles or pipes in which the vehicle and load do not exceed forty-five (45) feet shall not be required to obtain an overdimensional permit.

(c) If the front or rear overhang of a single unit motor vehicle exceeds five (5) feet, an overdimensional permit shall be obtained prior to the operation of the vehicle.

(d) A motor vehicle and trailer or semitrailer combination, including any part of the body or load, shall not exceed sixty-five (65) feet.

(e) If a truck tractor or semitrailer unit is exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot front and four (4) foot rear overhang shall not be included in the measurement of the sixty-five (65) feet limit established in paragraph (d) of this subsection. ~~[Single unit motor vehicle, including any part of the body or load, not to exceed forty five (45) feet. However, if the front or rear overhang exceeds five (5) feet, an overdimensional permit shall be obtained prior to the operation of the vehicle. However, single unit motor vehicles transporting utility poles or pipes in which the vehicle and load do not exceed forty five (45) feet shall not be required to obtain an overdimensional permit.~~

~~(b) Motor vehicle and trailer or semitrailer combinations, including any part of the body or load, not to exceed fifty five (55) feet, except for truck tractor and semitrailer units exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot front and four (4) foot rear overhang of the transported vehicles or boats is excluded in the measurement of the fifty five (55) feet.~~

~~(c) If the front or rear overhang of a motor vehicle and trailer or semitrailer combination exceeds five (5) feet, an overdimensional permit shall be obtained prior to the operation of the vehicle. In truck tractor and semitrailer units exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot front and four (4) foot rear overhang of the transported vehicles or boats shall be excluded from this measurement.~~

~~(d) A tolerance of not more than five (5) percent shall be permitted on overall length before a motor carrier is deemed to be in violation of this section.]~~

Section 2. (1) Motor vehicles except buses with dimensions greater than those specified in Section 1 of this regulation but which do not exceed the dimensions set forth in subsection (2) of this section may be operated without an overdimensional permit only on the highways listed in Section 3(1) of this regulation, on the five (5) mile access authorized in Section 3(2) of this regulation and on the one (1) mile access authorized in Section 3(3) of this regulation.

(2) Motor vehicles shall not exceed, without an overdimensional permit, the following width and length dimensions when operating on those highways listed in Section 3(1) of this administrative regulation:

(a) Width - 102 inches including any part of the body or load.

(b) Length.

1. Semitrailers - fifty-three (53) feet including body and load when operated in tractor semitrailer combination.

2. Trailers - twenty-eight (28) feet including body and load when operated in a tractor-semitrailer-trailer combination, not to exceed two (2) trailers per truck tractor. Twenty-eight (28) feet shall be the maximum length of a trailer including body and load when operated in a truck-trailer combination.

3. If the load overhangs the body of the trailer or semitrailer by more than five (5) feet an overdimensional permit shall be required regardless of the overall length of the unit, except in truck tractor and semitrailer units exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot front and four (4) foot rear overhang of the transported vehicles or boats shall be excluded in the measurement.

4. There shall be no overall length limitation on motor vehicles operating on highways listed in Section 3(1) of this regulation or on the five (5) mile local access authorized in Section 3(2) of this regulation as long as the requirements set forth in this subsection are met.

5. In a tractor semitrailer-trailer combination vehicle in which the two (2) trailing units are connected with a rigid frame extension attached to the rear frame of the first semitrailer which allows for a fifth wheel connection point for the second semitrailer, the length of the extension shall be excluded from the measurement of semitrailer length; however, when there is no second semitrailer mounted to the fifth wheel, the length of the extension shall be included in the length measurement for the semitrailer.

(3) No dimension specified in this section shall be subject to any enforcement tolerances provided in any other section.

Section 3. (1) The following highways are designated to permit the operation of motor vehicles with increased dimensions but which do not exceed the limitations stated in Section 2(2) of this regulation:

The Interstate and National Defense Highway System.

Audubon Parkway - from Pennyrile Parkway at Henderson to US 60 Bypass in Owensboro.

Bluegrass Parkway - from I-65 in Elizabethtown to US 60 near Versailles.

Cumberland Parkway - from I-65 near Smiths Grove to US 27 west of Somerset.

Daniel Boone Parkway - from US 25 north of London to KY 15 north of Hazard.

Green River Parkway - From I-65 in Bowling Green to US 60

Bypass in Owensboro.

Purchase Parkway - from Tennessee state line to I-24 in Marshall County.

Mountain Parkway and Extension - from I-64 at Winchester to US 460 at Salyersville.

Pennyrile Parkway - From US 41A in Hopkinsville to US 41 near Henderson.

Western Kentucky Parkway - from I-24 south of Eddyville to US 31W in Hardin County.

KY 3 - From the junction with US 23 at Auxier to the junction with KY 645 south of Inez.

KY 4 - The entire circle of Lexington.

KY 11 - from the junction with KY 32 in Fleming County to US 62-68 in Maysville.

KY 15 - from US 119 in Whitesburg to the Mountain Parkway at Campton.

KY 18 - from KY 338 at Burlington to KY 1017 in Florence.

KY 21 - from I-75 near Berea to US 25 south in Berea.

US 23 - from **KY 610 at Dorton** [~~KY 1426 south of Pikeville~~] to the Ohio state line.

US 23 - from the Virginia state line to US 119 near Jenkins.

US 23 Spur - from US 23/60 in Ashland to the Ohio state line.

US 25 - from KY 461 in Rockcastle County to I-75 in Rockcastle County.

US 25 - from US 421 south of Richmond to KY 876 in Richmond.

US 25 - from KY 418 southeast of Lexington to KY 4.

US 25 - from US 42 in Florence to **KY 471 near Alexandria** [~~Ohio state line~~].

US 25E - from Virginia state line to I-75 north of Corbin.

US 27 - from Tennessee state line to Ohio state line (via KY 4 in Lexington).

US 31E - from Tennessee state line to KY 90 at Glasgow (via the Scottsville Bypass and the Glasgow Bypass).

US 31E 1150 - From the junction with I-265 in southeast Jefferson County to the junction with I-264 north of West Buchel.

US 31W - from Tennessee state line to KY 73 north of Franklin.

US 31W - from the Green River Parkway to US 68 north of Bowling Green.

US 31W - from US 31W Bypass in Elizabethtown to I-264 in Shively.

US 31W Bypass - from Western Kentucky Parkway to US 31W in Elizabethtown.

KY 32 - from KY 11 in Fleming County to US 60 at Morehead.

KY 35 - from US 127 at Bromley to I-71 north of Sparta.

KY 36 - from I-64 south of Owingsville to US 60 at Owingsville.

KY 36 - from the Kawneer Corporation Plant Road in Carroll County (running concurrently with US 42 in Carrollton) to KY 227.

US 41 - from US 68 (Main Street) in Hopkinsville to US 68 (McLean Avenue) in Hopkinsville.

US 41 - concurrent with Pennyrile Parkway from south of Nortonville to north of Madisonville.

US 41 - from Pennyrile Parkway at Henderson to Indiana state line.

US 41A - from Tennessee state line to Pennyrile Parkway at south city limits of Hopkinsville.

US 41A - from KY 112 in Earlington to KY 281 and KY 1751 in Madisonville.

US 42 - from I-264 northeast of Louisville to Oldham County line.

US 42 - from I-75 in Florence to US 25 in Florence.

US 42 - from KY 36 in Carroll County at milepoint 4.519 (running concurrently with KY 36 for 2.699 miles) north [~~55 at Carrollton~~] to KY 47 at Ghent.

US 45 - from the Jackson Purchase Parkway north of Mayfield to US 60 in Paducah.

US 45 Bypass - concurrent with the Jackson Purchase Parkway from southwest of Mayfield to US 45 north of Mayfield.

US 49 - Concurrent with KY 55 south of Lebanon to north of Lebanon.

US 51 - from Jackson Purchase Parkway in Fulton County to Illinois state line.

KY 52 - from KY 876 in Richmond to KY 499 at Irvine.

KY 55 - from Cumberland Parkway in Columbia to US 150 at Springfield, via US 68 and KY 49.

US 60 - from US 51 in Wickliffe to US 62 east of Paducah.

US 60 - from KY 109 at Sullivan in Union County to KY 425, the Henderson Bypass.

US 60 - from US 60 Bypass west of Owensboro to KY 69 at Hawesville.

US 60 - from KY 144 in Meade County to US 31W at Tip Top.

US 60 - from I-264 east of Louisville to KY 1531 at Eastwood.

US 60 - from US 421/460 at Frankfort to I-75 near Lexington (via Versailles and KY 4 in Lexington).

US 60 - from junction of KY 180 near Cannonsburg to US 23 in Ashland.

US 60 Bypass - from US 60 west of Owensboro to US 60 east of Owensboro.

KY 61 - from Tennessee state line to KY 90 at Burkesville.

KY 61 - from the junction with US 31E in Hodgenville to US 31W in Elizabethtown.

US 62 - from US 60 east of Paducah to Western Kentucky Parkway east of Eddyville.

US 62 - from US 150 at Bardstown to KY 245 at Bardstown.

US 62 - from US 421 west of Midway to US 421 in Scott County, concurrent with US 421.

US 62 - from KY 353 southwest of Cynthiana to US 27 at Cynthiana.

US 62 - from US 68 at Washington to the Ohio state line at Maysville.

US 68 - from US 62 at Reidland to KY 284 in McCracken County.

US 68 - from I-24 in Trigg County to Green River Parkway at Bowling Green via US 41 in Hopkinsville.

US 68 - from KY 55 southwest of Campbellsville to KY 55 in Lebanon.

US 68 - from its east intersection with US 150 in Perryville to its west intersection with US 150 in Perryville.

US 68 - from US 127 south in Harrodsburg to US 127 north in Harrodsburg.

US 68 - from US 27 at Paris to US 62 at Washington (via Paris Bypass).

KY 69 - from US 60 at Hawesville to Indiana state line.

KY 70 - from I-65 west of Cave City to KY 90 southeast of Cave City.

KY 79 - from KY 1051 in Brandenburg to Indiana state line.

KY 80 - from KY 80B at Somerset to US 25 north of London.

KY 80 - from KY 15 at Hazard to US 23 at Watergap.

KY 80B - From US 27 at Somerset to KY 80 east of Somerset.

KY 90 - from KY 70 at Cave City to Cumberland Parkway at Glasgow.

KY 90 - from KY 61 at Burkesville to US 27 at Burnside.

KY 109 - from KY 670 in Webster County to US 60 in Union County.

KY 114 - from US 460 east of Salyersville to US 23/460 at Prestonsburg.

KY 118 - from US 421 and KY 80 northwest of Hyden to the Daniel Boone Parkway.

US 119 - from KY 15 at Whitesburg to US 23 at Jenkins.

US 119 - from US 25E south of Pineville to US 421 at Harlan.

US 119 - from US 23 at Pikeville to KY 1441 northeast of Pikeville.

KY 121 - from the Jackson Purchase Parkway at Mayfield to US 51 in Wickliffe.

US 127 - from KY 90 west to KY 90 east in Clinton County (concurrent with KY 90).

US 127 - from US 127 Bypass north of Danville to **KY 151 north of Lawrenceburg via the Lawrenceburg bypass** [~~US 127 Bypass south of Lawrenceburg~~].

US 127 - from I-64 west of Frankfort to US 421 in Frankfort.

US 127 - from KY 22 in Owenton to KY 35 at Bromley.

US 127 Bypass - from US 127 south of Danville to US 127 north of Danville.

[~~US 127 Bypass - from US 127 south of Lawrenceburg to US 127 north of Lawrenceburg.~~]

KY 144 - from KY 448 south of Brandenburg to US 60.
US 150 - from US 62 at Bardstown to US 27 at north city limits of Stanford (via the US 150 Bypass in Danville).
US 150B - from US 127 south of Danville to US 150 east of Danville.
KY 151 - from US 127 near Lawrenceburg to I-64 near Graefenburg.
KY 180 - from I-64 near Cannonsburg to US 60 at Cannonsburg.
KY 191 - from KY 205 north to KY 205 south in Wolfe County, concurrent with KY 205.
KY 192 - from I-75 south of London to Daniel Boone Parkway east of London.
KY 205 - from Mountain Parkway at Helechawa to US 460 west in Morgan County, concurrent with KY 191.
KY 212 - from KY 20 to Greater Cincinnati Airport (Boone County).
KY 227 - from KY 355 near Worthville to KY 36 at Carrollton.
US 231 - from US 60 Bypass in Owensboro to Indiana state line.
US 231 - from I-65 east of Bowling Green to US 31W in Bowling Green.
KY 236 - from US 25 at Erlanger to KY 212 near the Greater Cincinnati Airport.
KY 237 - from KY 18 east of Burlington to I-275 in Boone County.
KY 245 - from [~~I-65 south of Shepherdsville to~~] US 150 [~~62~~] **east of** [~~at~~] Bardstown **to I-65 south of Shepherdsville**.
KY 259 - from Western Kentucky Parkway to US 62 in Leitchfield.
KY 281 - from US 41A in Madisonville to the Pennyrile Parkway, concurrent with US 41.
KY 338 - from the junction with I-75 west of Richwood to the junction with US 25 in Richwood.
KY 341 - from US 62/421 near Midway north to I-64.
KY 348 - from Jackson Purchase Parkway west of Benton to US 641 in Benton.
KY 418 - from US 25 south of Lexington to I-75.
US 421 - from 0.1 mile south of Harlan Appalachian Regional Hospital.
US 421 [~~& KY 80~~] - from Daniel Boone Parkway to 2nd Street in Manchester.
US 421 - from KY 4 in Lexington to US 62 east in Scott County.
US 421 - from US 460 in Frankfort to US 127 north.
US 421 - from KY 55 **south of Newcastle** in Henry County to I-71 **west of Campbellsburg** [~~in Henry County~~].
KY 425 - from US 60 at Henderson to the Pennyrile Parkway.
US 431 - from US 60 Bypass in Owensboro to US 60 (4th Street) in Owensboro.
KY 446 - from US 31W northeast of Bowling Green to I-65.
KY 448 - from KY 144 to KY 1051 at Brandenburg.
US 460 - from I-64 north of Mt. Sterling to KY 686.
US 460 - from Mountain Parkway Extension to US 23 near Paintsville.
KY 461 - from KY 80 in Pulaski County to US 25 in Rockcastle County.
KY 471 - from US 27 in Campbell County to the I-275/471 junction.
KY 546 - from I-275/KY 9 at Wilder to KY 59 south of Vanceburg.
KY 555 - from US 150 at Springfield to Bluegrass Parkway.
US 641 - from Tennessee state line to US 641A south of Benton.
US 641A - from US 641 south of Benton to the Jackson Purchase Parkway.
KY 645 - from US 23 south of Ulysses to **3 south** [~~KY 40~~] west of Inez.
KY 676 - from US 127 in Frankfort to US 60.
KY 686 - from US 460 north of Mt. Sterling to KY 11 south of Mt. Sterling.
KY 841 - from I-71 in Jefferson County to US 42 northeast of Louisville.
KY 841 - from US 31W (Dixie Highway) in southwestern Jefferson County to I-65.
KY 859/KY 57 - from I-64 east of Lexington to Lexington - Bluegrass Army Depot.
KY 876 - from I-75 at Richmond to KY 52 east of Richmond.
KY 922 - from KY 4 in Lexington north to I-64 and I-75.
KY 1017 - from US 25 in Florence to I-75.
KY 1051 - from KY 79 to KY 448 south of Brandenburg.
KY 1682 - from US 68 west of Hopkinsville to Pennyrile Parkway.
KY 1958 - from KY 627 south of Winchester to I-64 at Winchester.
KY 1998 - from US 27 at Cold Springs to KY 8 at Silver Grove.

(2) Motor vehicles with the increased dimensions specified in Section 2 of this regulation shall be allowed five (5) driving miles on state maintained highways from the highway segments specified in Section 3(1) of this regulation for the purpose of attaining reasonable access to terminals; facilities for food, fuel, repairs and rest.

(3) Motor vehicles with the increased dimensions specified in Section 2 of this regulation shall be allowed one (1) driving mile on nonstate maintained public use highways from the highway segments specified in Section 3(1) for the purpose of attaining reasonable access to terminals, facilities for food, fuel, repairs and rest.

Section 4. (1) Household Goods Transporters. Motor vehicles with the increased dimensions specified in Section 2 of this regulation and which are used to transport household goods by a motor carrier certificated by either the Interstate Commerce Commission or the Kentucky Transportation Cabinet to transport household goods shall have access to any public roadway in the Commonwealth of Kentucky.

(2) Single unit semitrailers. Motor vehicles with the increased dimensions specified in Section 2 of this regulation and which consist of only a truck tractor and single semitrailer which does not exceed twenty-eight (28) feet shall have access to any public roadway in the Commonwealth of Kentucky.

Section 5. Nonstate Maintained Exceptions to One (1) Mile Automatic Access. The following local governments have adopted ordinances which exempt for safety reasons certain locally maintained roadways from the automatic one (1) mile access provision of Section 3(3) of this regulation: The city of Anchorage in Jefferson County - the streets all within the corporate city limits of Anchorage listed in the city ordinance which shall not be used by STAA-dimensioned vehicles are:

(1) Evergreen Road;
(2) Bellewood Road;
(3) Lucas Lane; and
(4) Old Harris Creek Road.

Section 6. State-maintained Exceptions to Automatic Five (5) Mile Access. The Department of Highways has found the following road segments for safety reasons to be exempt from the five (5) mile automatic access on state-maintained highways set forth in Section 3(2) of this regulation. These road segments shall not be used by STAA-dimensioned vehicles without an overdimensional permit: KY 146 - from the west boundary of the city of Anchorage at milepoint 4.258 to the east boundary of the city of Anchorage at milepoint 5.878.

NORRIS BECKLEY for LEWIS H. DOTSON, Commissioner
GLEN KELLY, Acting State Highway Engineer
DON C. KELLY, Secretary
APPROVED BY AGENCY: May 26, 1992
FILED WITH LRC: May 27, 1992 at 11 a.m.

TRANSPORTATION CABINET
Department of Highways
Department of Vehicle Regulation
Division of Motor Carriers
Division of Maintenance
(As Amended)

603 KAR 5:075. Overweight and overdimensional permits.

RELATES TO: KRS 189.222, 189.270
STATUTORY AUTHORITY: KRS 174.080, 189.270
NECESSITY AND FUNCTION: KRS 189.270 authorizes the Secretary of the Transportation Cabinet to issue permits for the movement of motor vehicles with loads exceeding legal weights and dimensions. This **administrative** regulation establishes the procedures and requirements necessary in the interest of highway safety for the issuance of an overweight or overdimensional permit which is not specifically addressed in another administrative regulation.

Section 1. Definitions. (1) "Daylight hours" means the period of a day from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset, but it **shall** [~~does~~] not include any time when atmospheric conditions render visibility lower than is ordinarily the case during this period of the day.

(2) "National holiday" means:

(a) New Year's Day;

(b) Memorial Day (as observed on the last Monday in May);

(c) Independence Day;

(d) Labor Day;

(e) Thanksgiving Day; and

(f) Christmas Day.

(3) "Base fee" means the initial fee of sixty (60) dollars charged for the issuance of an overweight or overdimensional permit to cover the cost of processing the permit application, including:

(a) [~~but not limited to,~~] A qualification check of the applicant;

(b) A statutory compliance check; and

(c) an initial bridge and weight analysis.

(4) "Additional fee" means the additional charge for overweight or overdimensional permits imposed by KRS 189.270. Vehicles with six (6) or more axles or with a width of ten (10) or more feet shall be charged the base fee as well as the additional fee as provided for by **KRS 189.270** [~~statute~~]. This additional fee is to cover the additional administrative costs for processing the permit application, including:

(a) Specific bridge computer analysis;

(b) Unique routing needs;

(c) Axle spacing needs;

(d) Additional enforcement; and

(d) Other necessary and incidental departmental costs.

(5) "Farm implement" means machinery, equipment or vehicle used exclusively in a farm operation and which is not required by KRS Chapter 186 to be registered.

(6) "Fully controlled access highway" means a highway which gives preference to through traffic and which shall have access only at selected public roads or streets and which shall have no highway grade crossing or intersection.

(7) "Toll road" means any turnpike project constructed under the provisions of KRS Chapter 175 or KRS 177.390 through 177.570 on which a toll is collected or was in the past collected by the Transportation Cabinet.

(8) "Overweight" means the motor vehicle exceeds:

(a) The gross weight limit established for a highway segment in 603 KAR 5:300;

(b) The axle weight limit established in 603 KAR 5:066;

(c) The gross weight limits established in KRS 177.9771 for a motor vehicle transporting coal or coal by-products;

(d) The bridge weight limit established by 603 KAR 5:066; or

(e) The gross weight limit posted at a bridge or other structure.

(9) "Overdimensional" means the motor vehicle exceeds the dimension limits set forth in 603 KAR 5:070.

Section 2. Issuance of the Permit. (1) Special permits to allow the movement of motor vehicles with gross weights or gross dimensions in excess of the weights and dimensions specified by statutes and administrative regulations shall be issued by the Department of Vehicle Regulation, Division of Motor Carriers when, in the discretion of the department, this movement is necessary to provide transportation for specified cargo in the interest of the health, welfare and economy of the people.

(2) Each special permit issued shall be limited to designated portions of the state primary road system and stated periods of time.

(3) A separate permit shall be required for each vehicle involved in a movement.

(4) A permit shall not be issued for a divisible load which when reasonably divided, dismantled, disassembled or rearranged would no longer be overweight or overdimensional.

(5) An overweight permit shall not be issued to the following:

(a) A Kentucky licensed vehicle, for a gross weight exceeding that for which the truck is registered, unless registered for 80,000 pounds;

(b) [~~(6) No overweight permit shall be issued to~~] A tractor-trailer combination of less than five (5) axles;

(c) A vehicle not registered in Kentucky which has not met one (1) of the following conditions:

1. Has been apportioned registered by another jurisdiction to operate in Kentucky at 80,000 pounds; or

2. has met the provisions of KRS 281.752;

(d) [~~(7) No overweight permit shall be issued to~~] A vehicle whose axle weight would exceed the product of 600 pounds times the aggregate width in inches established from the manufacturer's stamped tire measurement for all tires on the axle; or

(e) A towing vehicle whose horsepower or braking capacity is not adequate to safely transport the overdimensional or overweight load.

Section 3. Application for Permit. Applications for overweight or overdimensional permits shall be made to the Department of Vehicle Regulation, Division of Motor Carriers, **501 High Street,** Frankfort, Kentucky 40622. The application shall state the following:

(1) The name, telephone number and address of the applicant;

(2) The purpose of the movement for which a permit is requested;

(3) The portion of the state primary road system to be used;

(4) The cargo to be hauled;

(5) The period of time needed to complete the movement; and

(6) The description and the identity of the vehicle to be used [~~and any other information required by the Department of Vehicle Regulation~~].

Section 4. Permit Fee. (1) The base fee for the issuance of a special permit to a vehicle which is both overweight and overdimensional shall be sixty (60) dollars.

(2) The base fee for the issuance of a special permit to a vehicle which is either overweight or overdimensional shall be sixty (60) dollars.

(3) An additional fee shall be assessed if the vehicle for which the overweight permit is applied:

(a) Has [~~is~~] six (6) axles or more; or

(b) [~~if the vehicle for which an overdimensional permit is applied~~] Has a width of ten (10) feet or more.

Section 5. Movement Time Allowed. (1) A single trip permit shall be valid for a period not to exceed ten (10) days. A time extension shall only be granted if the permit holder proves extenuating circumstances.

(2) **Overdimensional** permits shall be [~~are~~] valid:

(a) During daylight hours; and

(b) [~~only~~] From Monday through Saturday noon.

(3) **Overdimensional** permits shall [~~However, permits are~~] not be valid on national holidays and travel shall [~~is~~] not permitted from noon the preceding day until daylight hours of the next permissible day. If the national holiday occurs on Saturday, Sunday or Monday the restricted period shall extend from noon of the preceding Friday to daylight hours of the following Tuesday.

(4) If satisfactory proof of an emergency is furnished the Depart-

ment of Vehicle Regulation, the department may authorize moves during the restricted hours.

(5) The department may further prohibit movements in congested areas within the peak traffic hours. The additional restrictions shall be noted on the permit when issued.

Section 6. Highway Right-of-way. A permit holder shall not cut, trim, remove or relocate any tree, shrub, guardrail, highway sign or other object on the highway right-of-way without the personal, written approval of the chief district engineer having jurisdiction over the property involved.

Section 7. Farm Implements. (1) A [~~No~~] permit shall not be required to transport overdimensional farm implements, unless the movement occurs on an interstate highway, toll road, or fully controlled access highway in the following instances: [~~either self-propelled or by another vehicle regardless of the vehicle owner or operator,~~]

(a) From one (1) farm to another;

(b) From a farm to a repair shop or dealer; or

(c) From a repair shop or dealer to a farm [~~unless the movement occurs on an interstate highway, toll road, or fully controlled access highway. However,~~]

(2) The following movements of farm implements shall only be made under the authority of an overdimensional permit:

(a) Manufacturer to dealer;

(b) Dealer to manufacturer; [~~or~~]

(c) Dealer to dealer; or

(d) Moves on an interstate highway, toll road or fully controlled access highway. [~~moves shall only be made under the authority of an overdimensional permit.~~

~~(2) A permit shall be required to transport an overdimensional farm implement on an interstate highway, toll road or fully controlled access highway. Self-~~]

(3) On an interstate highway, toll road or fully controlled access highway a self-propelled farm implement[~~s~~] shall not be:

(a) Operated; or [~~on an interstate highway, toll road or fully controlled access highway and shall not be~~]

(b) Issued a permit for movement [~~on these highways~~].

Section 8. Denial of Permit Application. The Department of Vehicle Regulation and the Department Highways shall have the right to deny a permit for any movement which may cause damage to public property or may be detrimental to public safety or convenience.

Section 9. Permit Availability. (1) The permit shall be carried in the overweight or [~~/~~] overdimensional vehicle at all times.

(2) It shall be presented, upon request, to any law enforcement officer or authorized personnel of the Department of Vehicle Regulation.

(3) Only the original **or a copy authenticated by embossing with a stamp by the Department of Vehicle Regulation** of an annual permit shall be valid.

Section 10. Escort Vehicle and Flag Requirements. (1) Required escort vehicles shall accompany the permitted vehicle at a distance of 300 feet on open highways.

(2) This interval shall be shortened in cities or congested areas to protect other traffic.

(3) An escort vehicle's headlamps shall be lit at all times.

(4) [~~(2)~~] On a two (2) lane highway, a vehicle and load with a width in excess of ten (10) feet, six (6) inches but [~~less than~~] twelve (12) feet or less shall have one (1) lead escort.

(5) [~~(3)~~] On a two (2) lane highway, a vehicle and load with a width exceeding twelve (12) feet shall have one (1) lead escort and one (1) trail escort.

(6) [~~(4)~~] On a two (2) lane highway, a vehicle and load traveling at speeds below the average driving speed of traffic on its route shall have one (1) trail escort.

(7) [~~(5)~~] On a four (4) lane or wider highway, a vehicle and load [~~with a width exceeding twelve (12) feet~~] shall have one (1) trail escort if:

(a) its width exceeds twelve (12) feet; or

(b) it does not maintain a speed of forty-five (45) miles per hour.

(8) [~~(6)~~] On a two (2) lane highway, a vehicle and load with a length in excess of seventy-five (75) feet but not more than eighty-five (85) feet shall have one (1) lead escort. If the vehicle and load exceed eighty-five (85) feet on a two (2)-lane highway, is shall have one (1) lead and one (1) trail escort.

(9) [~~(7)~~] On a four (4) lane or wider highway, a vehicle and load with a length of 110 feet or greater shall have one (1) trail escort.

(10) [~~(8)~~] Red or orange fluorescent flags which are a minimum of eighteen (18) inches square shall be displayed on each vehicle and load operating under the auspices of either an overlength or an overwidth permit.

(a) Vehicles operating overwidth shall display two (2) warning flags, one (1) on each side of the vehicle or load at its widest extremities.

(b) Vehicles operating overlength or with a rear end overhang shall display two (2) warning flags at the extreme rear of the vehicle or load. These flags shall be located to indicate maximum width of the rear end.

[~~(9) All toll roads shall be considered four (4) lane for the purpose of determining the need for escort vehicles regardless of the actual number of lanes on the highway.~~]

(11) [~~(10)~~] All vehicles exceeding ten and one-half (10.5) [~~(10)~~] feet in width or having front overhang shall display two (2) warning signs. The warning signs shall:

(a) State in black letters on a yellow background, "OVERSIZE LOAD";

(b) [~~The sign shall not~~] Be not less than seven (7) feet long and eighteen (18) inches high;

(c) Have [~~with~~] a brush stroke of one and four-tenths (1.4) inches; and

(d) [~~One (1) sign shall~~] Be fastened at the front of the power unit and the [~~other at the~~] rear end of the towed unit or at the rear of the load.

(13) [~~(11)~~] As a special provision of the permit, the Department of Vehicle Regulation may require additional escort vehicles, lighting or warning flags.

Section 11. Liability. (1) Any damage to the highway, signs, guardrail or other public or private property caused by the transportation of overdimensional vehicles shall be the responsibility of the permit holder.

(2) The permit holder shall either repair all damage incurred or pay for the repair.

Section 12. Duplicate Permits. A duplicate permit which is needed to replace a lost, stolen or destroyed annual permit or to transfer the annual permit to another towing vehicle may be obtained from the Division of Motor Carriers by the payment of ten (10) dollars. Only one (1) transfer to another towing vehicle shall be allowed for each annual permit during its effective year. Any additional transfer of the annual permit requested shall be subject to the fees set forth in KRS 189.270.

NORRIS BECKLEY, Deputy Commissioner
GLEN KELLY, Acting State Highway Engineer
DON C. KELLY, Secretary/Commissioner
APPROVED BY AGENCY: June 12, 1992
FILED WITH LRC: June 15, 1992 at 8 a.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(As Amended)

603 KAR 5:105. Annual permits for moving wood trusses.

RELATES TO: KRS 189.270
STATUTORY AUTHORITY: KRS 189.270
NECESSITY AND FUNCTION: KRS 189.270 authorizes the Department of Highways to issue annual permits for the movement of wood trusses exceeding legal dimensions. This **administrative** regulation establishes the permit application procedures within the Transportation Cabinet and establishes movement requirements necessary in the interest of highway safety.

Section 1. Definitions. (1) "Daylight hours" means the period of a day from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset. However, it **shall** [~~does~~] not include any time when atmospheric conditions such as heavy rain, snow, sleet or fog render visibility lower than is ordinarily the case during that period of the day.

(2) "National holiday" means:
(a) New Year's Day;
(b) Memorial Day (as observed on the last Monday in May);
(c) Independence Day;
(d) Labor Day;
(e) Thanksgiving Day; and
(f) Christmas Day.
(3) "Overdimensional" means the motor vehicle exceeds the dimension limits set forth in 603 KAR 5:070.

Section 2. Permit Application. (1) Application for a permit to move an overdimensional [~~a~~] wood truss on a Kentucky state-maintained highway shall only be made to the Department of Vehicle Regulation, Division of Motor Carriers, Frankfort, Kentucky.
(2) An annual permit application or request shall:
(a) Be made in writing;
(b) Specify the following about the towing vehicle:
1. Make; [~~rated capacity,~~]
2. Vehicle identification number;
3. License plate number and state of registration;
4. [~~and~~] State of apportioned registration if registered in other than Kentucky;
5. The maximum weight for which it is registered; and
6. Name, telephone number and address of the owner[~~of the towing vehicle~~].
(3) The applicant [~~In addition, it~~] shall specify whether the motor carrier operating the towing vehicle is a for-hire or private carrier.
(4) The applicant shall certify that the towing vehicle has sufficient horsepower and braking capacity to safely transport the wood trusses.

Section 3. Permit Required. Without a permit issued by the Department of Vehicle Regulation, Division of Motor Carriers either under the provisions of this administrative regulation or 603 KAR 5:075, a [~~No~~] motor vehicle transporting wood trusses shall not operate on the following state-maintained highways with [~~of~~] a width greater than:
(1) Eight and one-half (8.5) feet [~~shall be operated~~] on any highway listed in 603 KAR 5:070, Section **3** [~~2(2)(b)~~]; and
(2) [~~nor shall any vehicle with a width greater than~~] Eight (8) feet [~~be operated~~] on any other Kentucky highway [~~unless, and until, a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers either under the provisions of 603 KAR 5:075 or this administrative regulation~~].

Section 4. Annual Permits. (1) An annual permit shall not be issued for the movement of a motor vehicle transporting wood trusses under the following conditions:
(a) If the vehicle or load exceeds twelve (12) feet in width;
(b) If the length of the trailer and towing unit combination exceeds ninety-five (95) feet;
(c) If the length of the straight truck and load exceeds fifty-five (55) feet in length;
(d) If the height of the load exceeds thirteen and one-half (13.5) feet; or
(e) If the towing vehicle:
1. Is registered in another jurisdiction; and
2. Is not apportioned registered to operate in Kentucky.
(2) A movement of wood trusses under the provisions of an annual permit shall only be on highways:
(a) Specified on the annual permit;
(b) On the map included as part of the annual permit; or
(c) On the local access highways granted in subsection (5) of this section.
(3) The permit holder shall plan his route to stay on the routes shown on the map as acceptable whenever possible.
(4) A copy of the map which is included as a part of the annual permit is hereby incorporated by reference. This map was revised by the Transportation Cabinet in June, 1992.
(5)(a) The permit holder may have local access to facilities and construction or shipping sites up to thirty (30) miles beyond those routes shown as acceptable on the map incorporated by reference.
(b) Prior to travelling that thirty (30) miles, the permit holder shall ensure that the route can safety accommodate the overdimensional load.
(6)(a) If after scouting the local access highway to ensure safe accommodation of the overdimensional load, there is any doubt of the adequacy of the access highway segments specified in subsection (5) of this section, the permit holder shall:
1. Select a different route; or
2. Contact the jurisdictional highway office for clearance to move the overdimensional load over that specific **road** [~~load~~].
(b) If the highway district office does not issue clearance for the use of a particular route, that route shall not be used.
(7) If the permit holder needs to go further than the thirty (30) local access miles, he shall apply for a single trip permit in accordance with 603 KAR 5:075.
[~~(3) An annual permit shall not be issued or used for the movement of wood trusses if the length of the trailer and towing unit combined exceeds ninety-five (95) feet in length.~~
~~(4) An annual permit shall not be issued or used for the movement of wood trusses if the length of the straight truck and load exceeds fifty-five (55) feet in length.~~]

Section 5. Permit Cost. The issuance of an annual permit, as set forth in KRS 189.270, shall apply to the towing vehicle and the cost shall not be prorated.

Section 6. Safety Features. (1) One (1) lead escort vehicle is required for the movement of wood trusses where the width of the vehicle or load exceeds ten and one-half (10.5) feet [~~the legal width~~] on all two (2) lane highways.
(2) A trail escort vehicle shall be provided when:
(a) The vehicle is operating below the average traffic speed on a two (2) lane highway; or
(b) The vehicle does not maintain a forty-five (45) mile per hour speed on a four (4)-lane highway.
(3) Escort vehicles, either front or rear, may be required by the Transportation Cabinet where highway conditions dictate the need.
(4) Escort vehicles shall maintain radio contact with the towing vehicle at all times.
(5) Escort vehicles shall have their headlamps on any time the escort vehicle is operating.
(6)(a) On open highways an escort vehicle shall be spaced approximately 300 feet from the towing vehicle.
(b) In cities or congested area this distance shall be shortened to protect other traffic.
(7) Each required escort vehicle shall have one (1) of the following:
(a) An amber strobe or flashing light mounted on the roof of the escort vehicle; or

(b) A warning sign which:
1. Is clearly visible;
2. States "OVERSIZE LOAD" in black letters on a yellow background; and
3. Is placed on the front of the front escort vehicle.

(8) [(3)] Red or orange warning flags at least eighteen (18) inches square shall be displayed on both sides of the vehicle at the widest extremities of the vehicle or load.

(9) If the vehicle and load exceeds ten and one-half (10.5) feet a [(4) A] warning sign shall:

(a) Be fastened to both the front of the power unit and the far end of the towed unit or at the rear of the load; [. Each warning sign shall]

(b) State "OVERSIZE LOAD" in black letters on a yellow background; [and shall not be less than]

(c) Be at least seven (7) feet long and eighteen (18) inches high; and

(d) Have [with] a brush stroke of not less than one and four-tenths (1.4) inches.

(10) [(5)] All overdimensional vehicles shall be marked and lighted in accordance with those requirements set forth in 601 KAR 1:005.

Section 7. Duplicate Permits. A duplicate permit which is needed to replace a lost, stolen or destroyed annual permit or to transfer the permit to another towing vehicle may be obtained from the Division of Motor Carriers by the payment of ten (10) dollars. Only one (1) transfer to another towing vehicle shall be allowed for each annual permit during its effective year. Any additional transfer of the annual permit requested shall be subject to the fees set forth in KRS 189.270.

Section 8. Route Deviation. Prior approval shall be secured from the Division of Motor Carriers for any vehicle transporting wood trusses under an annual permit which deviates from the routes prescribed in the permit issued for the towing vehicle.

Section 9. Presentation of Permits. (1) The original **or photocopy authenticated by the Transportation Cabinet by embossing with a stamp** of the annual permit [Permits] shall be carried in the towing vehicles at all times; [and]

(2) The permit shall be presented, upon request, to any law enforcement officer or any authorized personnel of the Department of Vehicle Regulation for inspection; and

(3) An **unauthenticated** photocopy of the annual permit shall not be valid.

Section 10. Permit Validity. (1) Permits shall be [are] valid during the following:

(a) [only] Daylight hours; and

(b) [as defined in Section 1 of this regulation,] From Monday through Saturday noon. [, except for those periods before, during and after national holidays. In connection with these holidays,]

(2) Travel is not permitted from noon of the day preceding a [the] national holiday until daylight of the next permissible day.

(3) If the national holiday occurs on Saturday, Sunday or Monday the restricted period shall extend from noon of the preceding Friday to daylight of the following Tuesday.

(4) A annual permit issued under the provisions of this administrative regulation shall not be valid if the combined gross weight of the towing vehicle and the load of wood trusses exceeds:

(a) The registered weight of the towing vehicle; or

(b) The weight capacity of the highway on which it is being operated.

Section 11. Liability. The permit holder shall be responsible to pay for or replace any sign, traffic control device, guardrail or other property damaged or destroyed during the move of the wood truss.

NORRIS BECKLEY, Deputy Commissioner
DON C. KELLY, Secretary/Commissioner
GLEN KELLY, Acting State Highway Engineer
APPROVED BY AGENCY: June 12, 1992

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TRANSPORTATION CABINET
Department of Highways
Department of Vehicle Regulation
Division of Maintenance
Division of Motor Carriers
(As Amended)

603 KAR 5:112. Annual permits for moving utility poles or pipes.

RELATES TO: KRS 189.270
STATUTORY AUTHORITY: KRS 189.270
NECESSITY AND FUNCTION: KRS 189.270 authorizes the Department of Highways to issue annual permits for the movement of utility equipment, poles or pipes exceeding legal dimensions. This administrative regulation establishes the permit application procedures within the Transportation Cabinet and establishes movement requirements necessary in the interest of highway safety.

Section 1. Definitions. (1) "Daylight hours" means the period of a day from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset. However, it **shall** [does] not include any time when atmospheric conditions such as heavy rain, snow, sleet or fog render visibility lower than is ordinarily the case during that period of the day.

(2) "National holiday" means:
(a) New Year's Day;
(b) Memorial Day (as observed on the last Monday in May);
(c) Independent Day;
(d) Labor Day;
(e) Thanksgiving Day; and
(f) Christmas Day.

(3) "Pole trailer" means the vehicle which is designed to be drawn by a motor vehicle and attached to the towing motor vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing motor vehicle and used for transporting long or irregularly shaped loads such as poles, pipes or structural members which generally are capable of sustaining themselves as beams between the supporting connections.

(4) "Utility equipment" means the specialized equipment, including earth-moving equipment, necessary for the installation or operation of utility poles or pipes or utility electrical field equipment such as transformers or regulators. It shall not include any equipment necessary for the construction or operation of a power generation station.

(5) "Overdimensional" means the motor vehicle exceeds the dimension limits set forth in 603 KAR 5:070.

Section 2. Permit Application. (1) Application for an annual permit to move overdimensional utility equipment, poles or pipes on Kentucky highways shall only be made to the Department of Vehicle Regulation, Division of Motor Carriers, Frankfort, Kentucky. **The address is 501 High Street, Third Floor, State Office Building, Frankfort, Kentucky 40622. The telephone number is (502) 564-4540.**

(2) An application for an annual permit to transport overdimensional utility equipment, poles or pipes shall include the following information:

(a) Name of the motor carrier applying for the permit;
(b) KYU identification number of the motor carrier;
(c) The full address of the motor carrier; and
(d) Description of the towing vehicle for which the annual permit is being applied specifically including the following:
1. Its length;
2. Number of axles;
3. Truck configuration; [style,]
4. Year;
5. Make;
6. Registration license plate number;

7. Vehicle identification number; and
8. Company unit number.

Section 3. Permit Required. A special single trip or annual permit shall be obtained from the Department of Vehicle Regulation, Division of Motor Carriers either under the provisions of this administrative regulation, **601 KAR 1:015, 601 KAR 1:016, or 603 KAR 5:075** [~~or another administrative regulation~~] issued pursuant to KRS Chapter 189 prior to the following:

(1) Operation on any state-maintained highway of a [~~No utility pole or pipe and~~] straight truck style vehicle transporting utility equipment, pole or pipe with a total [~~combined~~] length greater than forty-five (45) feet; [~~shall be operated upon any state maintained Kentucky highway until a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers.~~]

(2) Operation on any state-maintained highway of a [~~No utility pole or pipe and~~] combination style vehicle, including a truck and pole trailer combination, transporting utility equipment, pole, or pipe which has a total [~~with a combined~~] length greater than fifty-five (55) feet; [~~shall be operated upon any state maintained Kentucky highway not listed in 603 KAR 5:070, Section 2(2) until a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers.~~]

(3) Operation on any highway listed in 603 KAR 5:070, Section 3 [~~2(2)~~] of a [~~No~~] vehicle and trailer combination, including a truck and pole trailer combination, transporting utility equipment, [~~and utility~~] pole or pipe which exceeds the length limitations set forth in 603 KAR 5:070, Section 2**(2)(b)** [~~(1)~~]; [~~shall be operated upon any Kentucky highway listed in 603 KAR 5:070, Section 2(2) until a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers.~~]

(4) Operation on a state-maintained highway not listed in 603 KAR 5:070, Section 3 [~~2(2)~~] of a motor vehicle transporting utility equipment, pole or pipe which has an overall width greater than ninety-six (96) inches;

(5) Operation on a state-maintained highway listed in 603 KAR 5:070, Section 3 [~~2(2)~~] of a motor vehicle transporting utility equipment, pole or pipe which has an overall width greater than 102 inches; and

(6) Operation of a motor vehicle transporting utility equipment, poles, or pipe which has a combined gross weight in excess of the legal weight limit set forth for the highway in 603 KAR 5:**300** [~~096~~].

(7) [~~(4)~~] The procedures which shall be followed for the issuing of a single trip permit or an annual permit for the movement of overweight specialized equipment are set forth in 601 KAR 1:015, 601 KAR 1:016 and 603 KAR 5:075 [~~601 KAR 5:075~~].

Section 4. Annual Permits. (1) The movement of a vehicle transporting utility equipment, poles or pipe under the provisions of an annual permit shall only be on highways or in the geographical area specified on the annual permit.

(2) If the permit holder intends to transport overdimensional utility equipment, poles or pipes under the provisions of the annual permit but outside the area or highways specified on the annual permit, he shall contact the Division of Motor Carriers and receive approval for that move or series of moves prior to the move.

(3)(a) If the utility equipment, pole or pipe in excess of forty-five (45) feet overhangs the vehicle required to be permitted on both the front and rear by more than ten (10) feet each, the permit holder shall contact the Operations Branch of the Highway District Office having jurisdiction over the county in which the moves are scheduled to occur and receive permission for that move or series of moves prior to the move.

(b) The Highway District Office may require that the permit holder demonstrate his proposed method and route of operation prior to issuing or denying permission for the move.

(4) An annual permit issued under the provisions of this administrative regulation shall not be valid for the utility equipment, pole or pipe and transporting motor vehicle if it exceeds twelve (12) feet in width. In this instance, a permit shall be obtained pursuant to 603 KAR 5:075.

Section 5. Safety Items. (1) On all highways of four (4) or more lanes, one (1) rear street escort vehicle shall be required for the movement of a vehicle and trailer combination which:

(a) When combined with its load exceeds 110 feet in length; or

(b) When a minimum speed of forty-five (45) miles per hour is not maintained.

(2)(a) On highways of less than four (4) lanes, one (1) escort shall be required in the rear of each vehicle and trailer combination which when combined with its load exceeds seventy-five (75) feet in length.

(b) This requirement shall not be applicable if the utility equipment, pole or pipe being transported is fifty-five (55) feet or less in length.

(3) On highways of less than four (4) lanes, one (1) rear and one (1) lead escort shall be required for each vehicle and trailer combination which when combined with its load exceeds eighty-five (85) feet in length.

(4) If the utility equipment, pole or pipe being transported exceeds fifty-five (55) feet in length, a front escort vehicle shall accompany the vehicle required to be permitted when transporting utility equipment, poles or pipe if the front overhang exceeds ten (10) feet.

(5) If the utility equipment, pole or pipe being transported exceeds fifty-five (55) feet in length, a rear escort vehicle shall accompany the vehicle required to be permitted when transporting utility equipment, poles or pipe if the rear overhang exceeds ten (10) feet.

(6) On a two (2)-lane highway, utility equipment with a width in excess of ten and one-half (10.5) feet but twelve (12) feet or less in width shall have one (1) lead escort.

(7)(a) Required escort vehicles shall accompany the permitted vehicle at a distance of 300 feet on open highway.

(b) This interval shall be shortened in cities or congested areas to protect other traffic.

(8) An escort vehicle's headlamps shall be lit at all times.

(9) [~~(5)~~] An escort vehicle, either front or rear, may be required by the Transportation Cabinet when the cabinet determines that highway conditions dictate the need.

(10) [~~(6)~~] An amber strobe or flashing light shall be placed on the power unit of the towing vehicle and shall be in use any time the power unit is in operation.

(11) [~~(7)~~] An amber strobe or flashing light shall be placed on the extreme ends of the utility equipment, pole or pipe when the front or rear overhang exceeds four (4) feet. The light shall be in use any time the vehicle is on or beside a highway. **A** [~~No~~] front overhang shall **not** be allowed on a combination vehicle.

(12) Red or orange fluorescent warning flags at least eighteen (18) inches square shall be displayed on both sides of an overwidth vehicle at the widest extremities of the vehicle or load.

(13) A warning sign shall be fastened to both the front of the towing unit and the rear of the load if the towing vehicle and load exceeds ten and one-half (10.5) in width or has either a front or rear overhang of four (4) or more feet. Each warning sign shall:

(a) State "OVERSIZE LOAD" in black letters on a yellow background;

(b) Not be less than seven (7) feet long and eighteen (18) inches high; and

(c) Have a brush stroke of not less than one and four-tenths (1.4) inches.

(14) [~~(8)~~] All towing vehicles and loads shall be marked and lighted and operated in accordance with those requirements set forth in 601 KAR 1:005.

(15) [~~(9)~~] The towing unit shall maintain radio communication with its escort vehicles at all times.

(16) Each required escort vehicle shall have one (1) of the following:

(a) An amber strobe or flashing light on the roof of the escort vehicle; or

(b) A clearly-legible warning sign in black letters on a yellow background which states "OVERSIZE LOAD". The sign shall be placed on the front of a front escort vehicle and on the rear of a rear escort vehicle.

Section 6. Duplicate Permits. A duplicate permit which is needed to replace a lost, stolen or destroyed annual permit or to transfer the permit to another towing vehicle may be obtained from the Division of Motor Carriers by the payment of ten (10) dollars. Only one (1) transfer to another towing vehicle shall be allowed for each annual permit during its effective year. Any additional transfer of the annual permit requested shall be subject to the fees set forth in KRS 189.270.

Section 7. Presentation of Permits. (1) The original of the annual permit **or copy of the annual permit authenticated by the Transportation Cabinet by embossing with a stamp** [~~Permits~~] shall be carried in the towing vehicles at all times. [~~; and~~]

(2) It shall be presented, upon request, to any law enforcement officer or any authorized personnel of the Department of Vehicle Regulation for inspection.

(3) An **unembossed** photocopy of the annual permit shall not be valid.

Section 8. Permit Validity. (1) Permits are valid only:

(a) During daylight hours; and

(b) [~~as defined in Section 1 of this regulation,~~] From Monday through Saturday noon. [~~, except for those periods before, during and after national holidays. If the national holiday occurs on Tuesday or Wednesday, travel shall not be allowed from noon of the day preceding the national holiday until daylight of the day following the national holiday.~~]

(2) Travel shall not be permitted from noon of the day preceding a national holiday until daylight of the next permissible day.

(3) If the national holiday occurs on Saturday, Sunday or Monday the restricted movement period shall extend from noon of the preceding Friday to daylight of the following Tuesday. [~~If the national holiday occurs on a Thursday, Friday or Saturday, the restricted period shall extend from noon of the preceding day to daylight of the following Monday.~~]

Section 9. Liability. Any damage to the highway, signs, guardrail or other public or private property caused by the transportation of utility poles or pipes shall be the responsibility of the permit holder. The permit holder shall either repair all damage incurred or pay for the repair.

NORRIS BECKLEY, Deputy Commissioner
DON C. KELLY, Secretary/Commissioner
GLEN KELLY, Acting State Highway Engineer
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Department of Vehicle Regulation
Division of Motor Carriers
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603 KAR 5:260. Annual permits for moving farm equipment.

RELATES TO: KRS 189.270
STATUTORY AUTHORITY: KRS 189.270
NECESSITY AND FUNCTION: KRS 189.270 authorizes the Department of Highways to issue annual permits for the movement of farm equipment exceeding legal dimensions. It further allows for the issuance of an annual permit for the movement of farm equipment up to sixteen (16) feet wide between the dealership and the farm. This administrative regulation establishes the permit application procedures within the Transportation Cabinet and establishes movement requirements necessary in the interest of highway safety.

Section 1. Definitions. (1) "Daylight hours" means the period of a day from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset. However, it **shall** [~~does~~] not include any time when atmospheric conditions such as heavy rain, snow, sleet or fog render visibility lower than is ordinarily the case during that period of the day.

(2) "Farm equipment" means machinery, equipment or vehicles used exclusively in an agricultural operation and which is not required by KRS Chapter 186 to be registered.

(3) "Fully-controlled limited access highway" means a highway which gives preference to through traffic and which shall have access only at selected public roads or streets and which shall have no at-grade highway crossings or intersections. (4) "National holiday" means one (1) of the following:

(a) New Year's Day;
(b) Memorial Day as observed on the last Monday in May;
(c) Independence Day;
(d) Labor Day;
(e) Thanksgiving Day; and
(f) Christmas Day.

(5) "Overdimensional" means the motor vehicle exceeds the dimension limits set forth in 603 KAR 5:070.

Section 2. Permit Required. Except as allowed in 603 KAR 5:075, overdimensional self-propelled farm equipment or a motor vehicle transporting overdimensional farm equipment shall obtain a permit pursuant to KRS Chapter 189 by the Department of Vehicle Regulation, Division of Motor Carriers, **501 High Street, Third Floor, State Office Building, Frankfort, Kentucky 40622,** prior to operation on a state-maintained highway. The following overwidth farm equipment shall not be operated on any state-maintained highway without a special permit.

(1) That with a width greater than eight and one-half (8.5) feet shall not be operated on any highway listed in 603 KAR 5:070, Section 2(2)(b); and

(2) That with a width greater than eight (8) feet shall not be operated on any Kentucky highway not listed in 603 KAR 5:070 Section 2(2)(b).

Section 3. Permit Application. (1) Application for an annual permit to move overdimensional farm equipment on Kentucky highways **may be completed on forms provided by** [~~shall only be made to~~] the Department of Vehicle Regulation, Division of Motor Carriers, **501 High Street,** Frankfort, Kentucky **40622**.

(2) An annual permit application or request shall be made in writing and shall specify the following:

(a) Make of the vehicle;
(b) The vehicle identification number of the towing vehicle;
(c) The license plate number and state of registration of the towing vehicle;
(d) The name, telephone number and address of the owner of the towing vehicle; and
(e) The name, telephone number, address, and number of license required by KRS 138.665 (KYU#) of the person applying for the annual permit.

Section 4. Annual Permits. (1) An annual permit shall not be issued for the movement of the following:

(a) Self-propelled farm equipment which exceeds twelve (12) feet in width;
(b) Motor vehicle transporting farm equipment if the vehicle or load exceeds twelve (12) feet in width unless the transporter is a farm equipment dealer transporting farm equipment from his dealership to a farm or from a farm to his dealership;
(c) A motor vehicle transporting farm equipment which exceeds sixteen (16) feet in width;
(d) Farm equipment if the length of the trailer and towing unit combined exceeds ninety-five (95) feet in length;
(e) Farm equipment if the length of the straight truck and load exceeds fifty-five (55) feet in length; or
(f) A motor vehicle transporting farm equipment if the power unit does not have sufficient horsepower or braking capacity to safely handle the load being transported.

(2) A permit for the movement of farm equipment with a width greater than twelve (12) feet but which does not exceed sixteen (16) feet shall only be:

(a) Issued to a farm equipment dealer; and

(b) Valid when he is transporting the farm equipment from his dealership to a farm or from a farm to his dealership.

(3) A motor vehicle for which a permit was issued to a farm equipment dealer to transport farm equipment with a width greater than twelve (12) feet shall be:

(a) Titled, registered and licensed in Kentucky; or

(b) Apportioned licensed in another jurisdiction to operate in Kentucky.

Section 5. Permit Cost. (1) The issuance cost of an annual permit for the movement of farm equipment which does not exceed twelve (12) feet in width shall be eighty (80) dollars.

(2) The issuance cost of an annual permit to a farm equipment dealer for the movement of farm equipment which does not exceed sixteen (16) feet shall be $150.

(3) The issuance cost of a single trip permit shall be established by KRS 189.270.

(4)(a) The annual permit shall apply to a specific towing vehicle or self-propelled farm equipment.

(b) Each towing vehicle shall have a separate permit either issued under the provisions of this administrative regulation or another provision of KRS Chapter 189.

(c) The cost of the annual permit shall not be prorated.

Section 6. Movement of Farm Equipment in Excess of Twelve (12) Feet in Width. (1) If the farm equipment to be transported exceeds twelve (12) feet in width, the farm equipment dealer who holds the annual permit shall, prior to the proposed move, scout the entire route proposed to be used for the movement of the overdimensional farm equipment.

(2) If there is any doubt of the adequacy of the highway to safely accommodate the overdimensional farm equipment, the dealer shall:

(a) Select a different route; or

(b) Contact the appropriate highway district office for clearance to move the equipment over that specific route.

(3) If the highway district office does not issue clearance for the use of a particular route, that route shall not be used.

Section 7. Escort Vehicles. (1)(a) Required escort vehicles shall accompany the permitted vehicle at a distance of 300 feet on open highways.

(b) This interval shall be shortened in cities or congested areas to protect other traffic.

(2) An escort vehicle's headlamps shall be lit at all times.

(3) On a two (2)-lane highway, farm equipment with a width greater than:

(a) Ten and one-half (10.5) feet but twelve (12) feet or less in width shall have one (1) lead escort;

(b) Twelve (12) feet shall have one (1) lead and one (1) trail escort.

(4) On a four (4)-lane or wider highway, one (1) trail escort shall be required for:

(a) Farm equipment with a width greater than twelve (12) feet; or

(b) If the minimum speed of forty-five (45) miles per hour for any farm equipment being transported is not maintained.

(5) All escort vehicles shall maintain radio contact with the transporting vehicle at all times.

(6) Each required escort vehicle shall have one (1) of the following:

(a) An amber strobe or flashing light on the roof of the escort vehicle; or

(b) A warning sign which:

1. Is clearly legible;

2. States "OVERSIZE LOAD" in black letters on a yellow background; and

3. Shall be placed on the front of a front escort vehicle and on the rear of a trail escort vehicle.

Section 8. Other Safety Requirements. (1) Red or orange fluorescent warning flags at least eighteen (18) inches square shall be displayed on both sides of the vehicle at the widest extremities of the vehicle or load and at the four (4) top corners of the load.

(2) A warning sign shall be fastened to both the front of the towing unit and the rear of the load if:

(a) The total overdimensional permitted vehicle exceeds ten and one-half (10.5) feet in width; or

(b) Has front or rear overhang of four (4) or more feet.

(3) Each warning sign shall:

(a) State "OVERSIZE LOAD" in black letters on a yellow background;

(b) Not be less than seven (7) feet long and eighteen (18) inches high; and

(c) Have a brush stroke of not less than one and four-tenths (1.4) inches.

(4) If the overdimensional permitted vehicle has front or rear overhang of four (4) or more feet, a flag as described in subsection (1) of this section shall be placed at the outer extremity of the overhang.

(5) All overdimensional vehicles shall be marked and lighted in accordance with those requirements set forth in 601 KAR 1:005.

Section 9. Duplicate Permits. A duplicate permit which is needed to replace a lost, stolen or destroyed annual permit or to transfer the permit to another towing vehicle may be obtained from the Division of Motor Carriers by the payment of ten (10) dollars. Only one (1) transfer to another towing vehicle shall be allowed for each annual permit during its effective year. Any additional transfer of the annual permit requested shall be subject to the fees set forth in KRS 189.270.

Section 10. Presentation of Permits. (1) The **original of the** permit **or a copy authenticated by the Transportation Cabinet by embossing** shall be carried in the towing vehicle at all times.

(2) The permit shall be presented, upon request, to any law enforcement officer or any authorized personnel of the Department of Vehicle Regulation for inspection.

(3) A**n unauthenticated** photocopy of the annual permit shall not be valid.

Section 11. Permit Validity. (1) A permit for the movement of overdimensional farm equipment shall be valid only during daylight hours.

(2) A permit for the movement of overdimensional farm equipment shall not be valid on any fully-controlled limited access highway during the following time periods:

(a) From Saturday noon until daylight on Monday; or

(b) From noon of the day preceding a national holiday until daylight of the next permissible day.

(c) If the national holiday occurs on Saturday, Sunday or Monday, the restricted period shall extend from noon of the preceding Friday to daylight of the following Tuesday.

Section 12. Traffic Control. (1) When farm equipment with a width greater than fourteen (14) feet is crossing a bridge on a two (2) lane road, all other traffic shall be stopped.

(2) The Department of Vehicle Regulation may require that special traffic controls be implemented or the stopping of traffic be accomplished when the conditions indicate this action is necessary to maintain traffic safety.

Section 13. Responsibility of the Permit Holder. (1) Any damage to the highway, signs, guardrail or other public or private property caused by the transportation of overdimensional farm equipment on an annual permit shall be the responsibility of the permit holder. The permit holder shall either repair all damage incurred or pay for the repair.

(2) The permit holder who is moving farm equipment greater than twelve (12) feet in width under the provisions of an annual permit shall immediately prior to moving the farm equipment determine if there are any construction zones on his proposed route which would be too narrow or have curves too sharp to safely accommodate the

farm equipment. This information may be obtained from the jurisdictional Highway District Office.

(3) A permit holder shall not cut, trim, remove or relocate any tree, shrub, guardrail, highway sign or other object on the highway right-of-way without the personal, written approval of the chief district engineer having jurisdiction over the property involved.

DON C. KELLY, Secretary
GLEN KELLY, Acting State Highway Engineer
NORRIS BECKLEY, Deputy Commissioner
APPROVED BY AGENCY: June 12, 1992
FILED WITH LRC: June 15, 1992 at 8 a.m.

TRANSPORTATION CABINET
Department of Highways
Department of Vehicle Regulation
Division of Maintenance
Division of Motor Carriers
(As Amended)

603 KAR 5:270. Annual overweight permits for the movement of steel products or materials.

RELATES TO: KRS 189.222, 1992 Acts c. 94, 23 CFR 658.17
STATUTORY AUTHORITY: 1992 Acts c. 94
NECESSITY AND FUNCTION: House Bill 492 passed by the 1992 General Assembly created a new section of KRS Chapter 189 which authorizes the Department of Highways to issue an annual $250 permit for the movement of a motor vehicle whose load of steel does not exceed a gross weight of 120,000 pounds and which does not travel more than thirty-five (35) miles on Kentucky highways. This administrative regulation establishes the procedures for application and safety requirements necessary in the interest of highway safety and convenience for the issuance of this overweight permit.

Section 1. "Overweight" means the motor vehicle exceeds:
(1) The gross weight limit established for a highway segment in 603 KAR 5:300;
(2) The axle weight limit established in 603 KAR 5:066;
(3) The gross weight limits established by KRS 177.9771 for a motor vehicle transporting coal or coal by-products;
(4) The bridge weight limit established by 603 KAR 5:066; or
(5) The gross weight limit posted at a bridge or other structure.

Section **2.** [~~1.~~] Application for Permit. (1) An application for an annual overweight permit issued pursuant to this administrative regulation shall be **completed on forms provided by** [~~made to~~] the Department of Vehicle Regulation, Division of Motor Carriers, **501 High Street, Third Floor, State Office Building,** Frankfort, Kentucky 40622.

(2) The written application shall:

(a) State the name and address of the applicant;

(b) The purpose of the movements for which a permit is requested;

(c) The portion of the state primary road system to be used;

(d) The specific steel cargo to be hauled; [~~and~~]

(e) Description and identity of the vehicle for which the application is made**; and**

(f) A certification that the tractor or towing unit has sufficient horsepower and braking capacity to safely transport the steel.

(3) A highway map showing the proposed route shall also be attached to the application.

(4) A separate permit application shall be required for each tractor or power unit which the applicant intends to operate under the provisions of this administrative regulation.

Section **3.** [~~2.~~] Limits on Permits. (1) This annual overweight permit shall only be issued to a tractor or power unit which is:

(a) Registered in Kentucky for a combined gross weight of 80,000 pounds; or

(b) Apportioned registered in another licensing jurisdiction to operate in Kentucky with a gross weight of 80,000 pounds.

(2) All trailers or semitrailers used in conjunction with the tractor or power unit shall be registered and licensed:

(a) In Kentucky; or

(b) If in another jurisdiction, apportioned registered to operate in Kentucky.

(3) Each special permit issued shall be limited to designated portions of the state primary road system.

(4) An overweight permit shall not be issued or valid for a vehicle or vehicle combination whose axle weight exceeds the product of 600 pounds times the aggregate width in inches established from the manufacturer's stamped tire measurement for all tires on the axle.

(5) An annual overweight permit shall not be issued or valid for a vehicle or vehicle combination whose axle or axle group weight exceeds the following:

(a) Single axle - 24,000 pounds;

(b) Tandem axle group if the combination vehicle has only five (5) axles total - 45,000 pounds but there shall be at least forty-two (42) inches spacing between the center of each of the axles of the tandem axle group;

(c) Tandem axle group if the combination vehicle has six (6) axles or more - 48,000 pounds but there shall be at least forty-two (42) inches spacing between the center of each of the axles of the tandem axle group;

(d) Tridem axle group - 60,000 pounds but there shall be at least forty-two (42) inches spacing between the center of each of the axles of the tridem axle group; and

(d) Five (5) axle combination units shall not exceed 96,000 pounds gross weight.

Section **4.** [~~3.~~] Denial of Permit Application. (1) The Transportation Cabinet, Division of Motor Carriers shall deny a permit application if the route includes any portion of the interstate highway system. Federal regulation 23 CFR 658.17 forbids the issuance of a permit for the movement on the interstate highway system of an overweight load which can be readily divided.

(2) The Transportation Cabinet shall have the right to deny or restrict a permit for the use of any route which may be detrimental to public safety or convenience. The Transportation Cabinet shall consider the following when making the determination on the application:

(a) The strength of all bridges and structures on the route;

(b) Traffic congestion on the route;

(c) Horizontal and vertical alignment of the route;

(d) The availability of alternate routes that afford greater safety;

(e) Urban development in residential and commercial areas on the route;

(f) The proximity of schools to the route; and

(g) Any other condition that would unduly compromise public safety and convenience.

Section **5.** [~~4.~~] Permit Availability. (1) The original of the annual permit **or a copy authenticated by the Department of Vehicle Regulation by embossing** shall be carried in the overweight vehicle at all times.

(2) It shall be presented, upon request, to any law enforcement officer or authorized personnel of the Department of Vehicle Regulation.

(3) A**n unauthenticated** photocopy of the annual permit shall not be valid.

Section **6.** [~~5.~~] Overdimensional Loads. If any movement to be made under an annual permit issued under this administrative regulation involves a motor vehicle which is overdimensional as well as overweight, the permit holder shall apply for an overdimensional permit under the provisions of KRS Chapter 189.

Section **7.** [~~6.~~] Duplicate Permits. A duplicate permit which is needed to replace a lost, stolen or destroyed annual permit or to

transfer the permit to another towing vehicle may be obtained from the Division of Motor Carriers by the payment of ten (10) dollars. Only one (1) transfer to another towing vehicle shall be allowed for each annual permit during its effective year. Any additional transfer of the permit requested shall be subject to the fees set forth in KRS Chapter 189.

DON C. KELLY, Secretary
GLEN KELLY, Acting State Highway Engineer
NORRIS BECKLEY, Deputy Commissioner
APPROVED BY AGENCY: June 12, 1992
FILED WITH LRC: June 15, 1992 at 8 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of the Commissioner
(As Amended)

701 KAR 5:035. Procedures for records requests.

RELATES TO: KRS 61.876
STATUTORY AUTHORITY: KRS 61.876, 156.070
NECESSITY AND FUNCTION: The State Board for Elementary and Secondary Education is required by KRS 61.876(1) to promulgate rules governing access to Department of Education and State Board public records, to protect the records from damage and disorganization, to prevent excessive disruption of essential functions, to provide assistance and information upon request, and to ensure efficient and timely action in response to application for inspection of public records. This **administrative** regulation establishes the general rules to be followed by the Department of Education in affording public access to their records and by persons applying to inspect the records.

Section 1. The principal office location for the Department of Education is the First Floor of the Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Regular office hours are 8 a.m. to 4:30 p.m., Monday through Friday, prevailing time in Frankfort, Kentucky. Any person shall have the right to inspect public records during the regular office hours.

Section 2. The title of the official custodian of the records of the Department of Education is the Commissioner of Education of the Commonwealth of Kentucky, whose address is Room 102, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. The records officer of the Department of Education as designated by the Commissioner of Education is the Associate Commissioner for the Office of Management Information Services, whose address is Room 1607, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

Section 3. **(1) Public records shall be open for inspection by any person, except as otherwise provided by KRS 61.870 through 61.884.**

(2) Suitable facilities shall be made available by each office or bureau for the exercise of this right.

(3) A person shall not remove original copies of public records from the offices of any office or bureau without the written permission of the official custodian of the record.

(a) A log shall be kept of all persons who examine records to include a description of the records reviewed.

(b) Questions about the right of inspection of records shall be directed to the official custodian for resolution.

(4) Records shall remain in the division in which they are normally housed except that an employee of the Kentucky Department of Education may transport and remain with records while they are being duplicated. ~~[All public records shall be open for inspection by any person, except as otherwise provided by KRS 61.870 through 61.884, and suitable facilities shall be made available by each office/bureau for the exercise of this right. No person shall remove original copies of public records from the offices of any office/bureau without the written permission of the official custodian of the record. A log shall be kept of all persons who examine records to include a description of the records reviewed. Any questions about right of inspection of records shall be directed to the official custodian for resolution. All records shall remain in the division in which they are normally housed except an employee of the Kentucky Department of Education may transport and remain with records while they are being duplicated.]~~

Section 4. **(1) Fees to be charged for copies of:**

(a) Public records shall be ten (10) cents for each photocopy; and

(b) Photographs, maps and other nonwritten material, and records stored in computer files or libraries, shall be furnished to any person requesting them on payment of a fee equal to the actual cost to the Department of Education of producing the copies.

(2) Persons requesting copies of records shall be advised of the total actual cost of written material, and the actual, if known, or approximate cost of producing copies of nonwritten material or of records stored in computer files or libraries before the copies are prepared.

(3) If the requestor's residence or principal place of business is outside the county in which the requested public records are located, the department shall be obligated to mail the documents if so requested. Postage may be included in fees.

(4) The total fee shall be collected before the copies are handed or sent to the person requesting them. ~~[Fees to be charged for copies of public records shall be ten (10) cents for each photocopy; copies of photographs, maps and other nonwritten material, and records stored in computer files or libraries, shall be furnished to any person requesting them on payment of a fee equal to the actual cost to the Department of Education of producing the copies. Persons requesting copies of records shall be advised of the total actual cost of written material, and the actual, if known, or approximate cost of producing copies of nonwritten material or of records stored in computer files or libraries before the copies are prepared. If the requestor's residence or principal place of business is outside the county in which the requested public records are located, the department shall be obligated to mail the documents if so requested. Postage may be included in fees. The total fee shall be collected before the copies are handed or sent to the person requesting them.]~~

Section 5. The procedure to be followed in requesting inspection of public records shall be as follows:

(1) Requests to inspect public records must be made in writing by the requestor to the records officer of the Department of Education on the form, "Request to Inspect Public Records," dated July, 1992, which is available from the Records Officer, Associate Commissioner, Office of Management Information Services, Room 1607, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, from 8 a.m. to 4:30 p.m., Monday through Friday. Designated employees of the Department of Education shall assist, on request of the applicant, in completing the form; the applicant shall sign the application form. The application form shall include a receipt to be completed and signed by the custodian of the records for payment received for copies of records requested by applicants, and one (1) copy of the receipt shall be furnished to the applicant.

(2) Records shall be inspected in the presence of and copied by a member of the Department of Education to protect the records from damage or disorganization, to lessen disruption of office procedure, to provide timely assistance and information upon request to the person requesting inspection, and to provide full access to public records. Materials produced will be retained for thirty (30) days from the date notice of availability is made to the requestor.

Section 6. A copy of this **administrative** regulation shall be displayed in the main reception room of the Department of Education on the first floor of the Capital Plaza Tower.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: July 9, 1992
FILED WITH LRC: July 15, 1992 at 11 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of the Commissioner
(As Amended)

701 KAR 5:085. Hearing process for school-based decision making complaints.

RELATES TO: KRS 160.345
STATUTORY AUTHORITY: KRS 156.070, 160.345
NECESSITY AND FUNCTION: The State Board for Elementary and Secondary Education is directed by KRS 160.345 to establish by administrative regulation a hearing process for complaints referred by the Office of Education Accountability regarding intentional patterns of practice by local board members, superintendents, and school district employees which are detrimental to the successful implementation of or circumvent the intent of school-based decision making. This **administrative** regulation establishes the hearing process.

Section 1. The hearing officer for the State Board for Elementary and Secondary Education shall conduct a hearing as to each written complaint referred by the Office of Education Accountability pursuant to KRS 160.345.

Section 2. Within twenty (20) days after the Office of Education Accountability has filed with the board the referred written complaint and any relevant documentation, the secretary of the board shall provide to the complaining party and the party alleged to have committed a violation a copy of the complaint and relevant documents referred from the Office of Education Accountability and written notice of the date, time, and location of the hearing.

Section 3. The hearing officer shall have full authority to do the following:
(1) Grant continuances of the scheduled hearing for just cause shown;
(2) Administer oaths, examine witnesses under oath, and issue requested subpoenas to compel attendance of witnesses or production of physical evidence; and
(3) Tape record all testimony taken.

Section 4. Both the complaining party and the party alleged to have committed the violation may require the presence of witnesses upon subpoena issued by the board.

Section 5. After conclusion of the hearing, the hearing officer shall file with the board a tape recording of all testimony taken, any exhibits filed, findings of fact, conclusions of law and a recommended order.

Section 6. (1) **A** [~~Any~~] party may submit written exceptions to the findings of fact and recommended order. Exceptions shall be filed with the board through its secretary within ten (10) days of entry of the recommended order, unless otherwise directed by the hearing officer at the time the recommended order is entered, and served on **the** [~~all~~] parties.
(2) **A** [~~Any~~] party may submit a written response to exceptions filed with the board. The response shall be filed with the board through its secretary within twenty (20) days of entry of the recommended order, unless otherwise directed by the hearing officer at the time the recommended order is entered, and served on **the** [~~all~~] parties.
(3) Exceptions and responses not timely filed shall be noted and made a part of the record, but shall not be considered by the board in making a final determination.

Section 7. (1) The state board may:
(a) Accept or reject the submission of the hearing officer in total or in part;
(b) [~~may~~] Return the matter to the hearing officer for further proceedings; or
(c) [~~may~~] Have the parties appear before the state board for further proceedings and ultimate decision.
(2) In making its final decision, the board shall adopt or incorporate appropriate findings and conclusions.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: July 9, 1992
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EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration & Finance
(As Amended)

702 KAR 3:190. Maximum class sizes.

RELATES TO: KRS 157.360
STATUTORY AUTHORITY: KRS 156.070, 157.310, 157.360
NECESSITY AND FUNCTION: KRS 157.360(4) prescribes that the chief state school officer shall enforce maximum class sizes for every academic course requirement in all grades, except in vocal and instrumental music, and [~~art,~~] physical education[~~, and special education~~] classes and shall establish procedures for exemptions to the above. This **administrative** regulation implements the [~~such~~] functions and prescribes criteria for granting class size exemptions. However, this **administrative** regulation does not apply to schools which have implemented school-based decision making.

Section 1. Definitions. (1) "Restricted exemptions" shall mean those exemptions granted prior to September 15.
(2) "Annual exemptions" shall mean those exemptions granted after September 15.

Section 2. [~~1.~~] [~~All~~] Classes shall be within the maximum class size by September 15 of each school year.

Section 3. [~~2.~~] In order to be in compliance by September 15, a superintendent of a local school district may request approval from the State Board for Elementary and Secondary Education for a one (1) year restricted exemption of no more classes than enroll twenty (20) percent of the pupils in [~~the primary grades and~~] grades four (4) through eight (8) in each school, when unusual circumstances are believed to warrant an increased class size. No restricted exemptions shall be granted [~~prior to September 15~~] for classes in grades nine (9) through twelve (12).

Section 4. [~~3.~~] **A** [~~No~~] class granted a restricted [~~an~~] exemption [~~prior to September 15~~] shall **not** enroll more than five (5) students over the maximum class size requirements.

Section 5. [~~4.~~] Since the district must provide a plan to alleviate the overcrowding problem, **a** [~~no~~] school granted a restricted [~~which~~

~~has an~~] exemption [~~prior to September 15~~] in a grade shall **not** be granted a restricted [~~an~~] exemption in that grade or the next grade for the following year. Transferring of students between schools in subsequent years for the purpose of qualifying for an exemption shall [~~is~~] not be approvable.

Section 6. (1) In order to provide local school districts flexibility in scheduling for short-term transient students, after September 15 this **administrative** regulation shall not be considered violated until a student enrolled in excess of the class size is enrolled for a three (3) week transition period.

(2) After the three (3) week transition period, the district may immediately request an annual class size exemption.

Section 7. [~~6.~~] **(1) The department shall randomly conduct an off-site visit to analyze the district's:**

(a) Total classroom space;

(b) Class enrollments; and

(c) Enrollment alternatives.

(2) Exemptions may be granted by the Department of Education if it determines that the district is unable to meet the class size requirements due to lack of classroom space.

(3) A district shall not enroll more than two (2) students over the maximum class size in classes in grades four (4) through twelve (12) as to which an annual exemption has been granted. [~~Exemptions may [shall] be granted by [only after] the Department of Education which shall randomly conduct [has made] an on-site visit to [and] analyze[d] the district's total classroom space, class enrollments and all alternatives, and to [has] determine[d that] whether the district is unable to meet the class size requirements due to lack of classroom space. [Temporary exemptions shall be granted by the department pending the required on-site visit and analysis.] For annual exemptions granted in [kindergarten and] grades four (4) [one (1)] through twelve (12) [after September 15], no class shall enroll more than two (2) students over the maximum class size.~~]

[~~Section 6. (1) After September 15, in order to provide local school districts flexibility in scheduling for short term transient students, no student enrolled in excess of the class size cap shall be considered in violation of this regulation until such student is enrolled for a three (3) week transition period.~~

~~(2) After the three (3) week transition period, the district shall immediately request a class size exemption.~~]

Section 8. [~~7.~~] (1) [~~All~~] Restricted and annual exemption requests shall be submitted on the specified forms and forwarded to the Office of Assistance and Intervention [~~Division of Accreditation~~], Department of Education.

(2) The request for exemption shall contain specific reasons and circumstances causing the increased class size.

(3) The request for exemption shall include a specific plan for reducing the class size prior to the beginning of the next school year.

Section 9. [~~8.~~] The services of an aide shall be provided immediately upon approval of all class size exemptions, whether restricted or annual [~~granted either before or after September 15~~].

Section 10. [~~9.~~] There shall be no exemptions for a class or classes with combined grades. [~~No~~] Ungraded students shall **not** be placed in a combined class with graded students. In addition, there shall be no more than two (2) consecutive grade levels combined in any one (1) class in grades four (4) through six (6). No exemptions, restricted or annual, shall be approved for the primary grades (K-3) [~~after the 1991-92 school year~~].

Section 11. [~~10.~~] The State Board for Elementary and Secondary Education, through the chief state school officer, shall enforce this **administrative** regulation through [~~continuous~~] monitoring and update reports submitted by the local school districts on September 15 and January 31 [~~15~~] of each school year. Classes that exceed cap size by no more than two (2) students during the last month of the school year shall not require an exemption.

Section 12. [~~11.~~] Failure to comply with this **administrative** regulation may, in addition to other appropriate sanctions, result in the local superintendent and principal being charged [~~by the State Board for Elementary and Secondary Education~~] with willful neglect of duty pursuant to KRS 156.132.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: July 15, 1992
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EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration and Finance
(As Amended)

702 KAR 5:120. Blind and deaf pupils, reimbursement for.

RELATES TO: KRS 156.031, 157.280
STATUTORY AUTHORITY: KRS 156.070, 157.220
NECESSITY AND FUNCTION: [~~KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; and~~] KRS 157.280 [~~now~~] requires each local school district to provide for weekly transportation for its resident pupils at the Kentucky Schools for the Blind and Deaf except those whose residence is more than 200 miles one way from either school shall not be required to go home more than twice each month. [~~such~~] Transportation shall [~~to~~] be provided in a manner approved by the State Board for Elementary and Secondary Education. KRS 157.280 also mandates reimbursement of local districts, at the same rate per trip as for resident pupils, but from the Transportation Fund of the Fund to Support Education Excellence in Kentucky, for transportation, as approved by the State Board, which may be provided to and from such schools for day pupils. This regulation establishes the rate of reimbursement for providing home-to-school transportation for such pupils enrolled at the Kentucky School for the Blind and the Kentucky School for the Deaf.

Section 1. **(1)** The chief state school officer shall determine the number of**:**

(a) Pupils **residing** [~~resident~~] in each school district of the state who **are resident pupils at** [~~attend~~] the Kentucky School for the Blind in Louisville, Kentucky **or** [~~and who attend~~] the Kentucky School for the Deaf in Danville, Kentucky; [~~, as resident pupils,~~] and

(b) [~~shall determine the number of~~] Miles the county seat of the district in which the pupil resides is from Louisville or Danville.

(2) He shall then determine the aggregate number of pupil miles which would result in each child enrolled in either the School for the Blind at Louisville, or the School for the Deaf in Danville, making weekly trips home each year.

(3) The aggregate number of pupil miles [~~so~~] determined will be divided into the total appropriation made for this program in order to establish a tentative value per pupil mile.

Section 2. On or before October 15 of each year, the chief state school officer shall provide each school district with a "tentative allotment report" which contains the number of resident children in each program in each school district and the tentative allotment to that school district for the weekly transportation of resident children.

Section 3. (1) On or before May 31 of each year each school district shall certify to the chief state school officer the number of:

(a) Children; and

(b) [~~the number of~~] Trips each child was provided home, not to exceed one (1) round trip each week the child was enrolled in either of the schools.

(2) [~~In no instance shall~~] Distances used to generate pupil miles **shall not** exceed the distance provided in the tentative allocation which is the distance from the cities of Louisville or Danville to the county seat of the district in which the pupil is a resident.

Section 4. (1) On or before May 31 of each year, the superintendent of a local school district qualifying for reimbursement for transportation by reason of this **administrative** regulation shall certify to the chief state school officer the aggregate pupil miles for resident pupils for which reimbursement is sought.

(2) [~~The chief state school officer,~~] Based upon the certification of the local school district, **the chief state school officer** shall, on or before June 30 of each year, determine the final value of the pupil mile.

(3) The final value of the pupil mile shall be determined by dividing the aggregate pupil miles certified into the appropriation contained in the executive budget.

(4) The chief state school officer shall [~~, and~~] calculate a final allotment for each school district having children enrolled in the Kentucky School for the Blind and the Kentucky School for the Deaf as resident pupils.

Section 5. (1) The chief state school officer shall determine the number of pupils enrolled in each school district as day school pupils that are provided daily transportation to the Kentucky School for the Blind in Louisville and the Kentucky School for the Deaf in Danville.

(2) He [~~, and~~] shall determine the number of miles by the most direct route from the child's residence to the school that they attend in either Danville or Louisville.

(3) He shall then determine the aggregate number of pupil miles from each pupil's home to school and back home again, making a maximum of 175 trips per year.

Section 6. (1) On or before May 31 of each year, the superintendent of a local school district qualifying for reimbursement for transportation by reason of Section 5 of this regulation shall certify to the chief state school officer the aggregate pupil miles for which reimbursement is sought.

(2) The chief state school officer, based upon the certification of the local school district, shall calculate a final allotment for reimbursement purposes for each school district having children enrolled as day school pupils in the Kentucky School for the Blind and the Kentucky School for the Deaf.

(3) The reimbursement rate to be paid from the Transportation Fund of the Fund to Support Education Excellence in Kentucky shall be the same rate per pupil mile as calculated in Section 4 of this regulation for resident pupils.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: July 9, 1992
FILED WITH LRC: July 15, 1992 at 11 a.m.

COMPILER'S NOTE: The following administrative regulation, 704 KAR 7:056, was amended at the September 4 Administrative Regulation Review Subcommittee meeting. However, the agency and the Subcommittee agreed to defer this regulation, as amended, to the October meeting for further consideration.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development
(As Amended)

704 KAR 7:056. Conditions for administering corporal punishment.

RELATES TO: KRS 156.160, 158.6451
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY AND FUNCTION: **KRS 156.160 gives the State Board for Elementary and Secondary Education the authority to promulgate administrative regulations deemed necessary or advisable for the protection of the physical welfare and safety of pupils, and to set standards for local school districts in programs, services, and operation performance and with the latter tied to outcomes set forth in KRS 158.6451. Based upon the findings that corporal punishment has significant negative effects upon the general health and welfare of school children and the goals established in KRS 158.6451, all of which outweigh any positive aspects of its ability to actually control conduct, the state board determines that corporal punishment shall have certain required conditions for its use in public schools. These conditions reflect the philosophy of the Kentucky Education Reform Act to solicit continual parental/guardian involvement, provide discipline that encourages student self-responsibility, and establish rules that facilitate a safe, positive, school environment. The state board maintains that corporal punishment shall occur only after other disciplinary means have proved ineffective, and shall always consider the student's age, size, health, and previous disciplinary record.** [~~KRS 156.160 gives the State Board for Elementary and Secondary Education the authority to promulgate regulations deemed necessary or advisable for the protection of the physical welfare and safety of pupils, and to set standards for local school districts in programs, services, and operation performance and with the latter tied to outcomes set forth in KRS 158.6451. Such goals include an expectation of a high level of achievement by all students, students becoming self-sufficient individuals and responsible family/community members, reduction of physical and mental health barriers to learning, and successful transition to postgraduation life. Based upon the findings that corporal punishment has significant negative effects upon the general health and welfare of school children and said goals, all of which outweigh any positive aspects of its ability to actually control conduct, the state board determines that corporal punishment shall have certain required conditions for its use in public schools. These conditions reflect the philosophy of the Kentucky Education Reform Act to solicit continual parental/guardian involvement, provide discipline that encourages student self-responsibility, and establish rules that facilitate a safe, positive, school environment. Finally, with this regulation the state board maintains that corporal punishment shall occur only after other disciplinary means have proved ineffective, and shall always consider the student's age, size, health, and previous disciplinary record.~~]

Section 1. Definitions. (1) "Corporal punishment" shall mean the deliberate infliction of physical pain by any means upon the whole or part of a student's body as a punishment or penalty for student misbehavior.

(2) "Written parental permission" shall mean a signed statement from the parent/guardian which provides the school with permission for the parent/guardian's child to receive corporal punishment during the school year of that district.

(3) "Behavior improvement plan" shall mean a written plan developed by school/district personnel, the student, and the student's parent/guardian, that shall be required for all students who receive two (2) or more acts of corporal punishment during the district's school year.

(4) "Required records of corporal punishment" shall include the current records required by the U.S. Office of Civil Rights for those students receiving corporal punishment.

Section 2. Corporal punishment shall be administered only upon the buttocks of a student's body.

Section 3. [2.] Before corporal punishment is administered to any student in a public school, the student's school or district shall have on file a form with the student's parent/guardian's signature indicating permission for the parent/guardian's child to receive corporal punishment. Students without such parental/guardian permission shall be given alternative punishment for misbehavior.

Section 4. [3.] All acts of corporal punishment in public schools shall be administered only by certified staff, with at least two (2) other certified staff serving as official witnesses of the corporal punishment act. Official witnesses shall be informed beforehand, and in the student's presence, of the reason(s) for the use of corporal punishment. Corporal punishment shall not be administered in the presence of other students.

Section 5. (1) [4.] Schools and districts which permit corporal punishment shall keep accurate records on its use.

(2) [Such] Records shall:

(a) List the student's name, age, gender, race, and educational status;

(b) [These records shall] Include a written account of the circumstances[, including past and present student behaviors,] resulting in the punishment **including:**

1. Past and present student behaviors; and

2. A description of the punishment.

(c) **Include** prior efforts to work with the student, student's parent/guardian, and school staff [shall also be noted].

(3) The administrator of the corporal punishment, as well as the official witnesses, shall provide written verification of this information.

(4) Complete copies of these reports shall be:

(a) Filed for at least three (3) years with the school council or principal, the district superintendent, and the Kentucky Department of Education; **and**

(b) **Forward to** the student's parent/guardian [shall also receive a copy of the reports].

(5) The official forms of the U.S. Office of Civil Rights shall be incorporated into this recordkeeping process.

Section 6. (1) [5.] Schools and districts which permit corporal punishment shall maintain a current list of all students who receive corporal punishment during the district's school year.

(2) A written behavior improvement plan shall be developed for those students who receive two (2) or more acts of corporal punishment during the current school year.

(3) **The** [This] written behavior improvement plan shall be developed with input from the:

(a) Student;

(b) [the] Student's parents/guardians;

(c) [the] Student's teacher(s); and

(d) Other appropriate school personnel.

(4) **The** [This] plan shall have the goal of eliminating the need for further corporal punishment for the student.

(5) For students identified as having an educational disability and receiving special education services, this behavior improvement plan shall be considered by the student's Admissions and Release Committee for inclusion in or consistency with the individualized education plan (IEP).

Section 6. The parents/guardians of all children receiving any act of corporal punishment shall receive written notification of the acts within seven (7) calendar days from the act's occurrence. Districts and schools shall develop policies for implementation of this parental notification process.

Section 7. All districts and schools permitting corporal punishment shall include summaries of board and council policies on corporal punishment in their district/school student code of conduct handbook.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: July 9, 1992
FILED WITH LRC: July 15, 1992 at 11 a.m.

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

803 KAR 2:015. General industry standards.

RELATES TO: KRS 338.011, 338.051, 338.061 [Chapter 338]
STATUTORY AUTHORITY: KRS 338.051, 338.061 [Chapter 13A]
NECESSITY AND FUNCTION: **This administrative regulation is necessary for effective enforcement of the purposes and policies of the Occupational Safety and Health Act which is to insure, safe and healthful working conditions of Kentucky workers. This administrative regulation establishes standards to be enforced by the Division of Occupational Safety and Health Compliance.** [KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, regulations, and standards. Consistent with this authority the following regulations contain those standards to be enforced by the Division of Occupational Safety and Health Compliance. The Occupational Safety and Health Standards Board hereby adopts the following regulations applicable to general industry. Necessary for effective enforcement of the purposes and policies of the Occupational Safety and Health Act which is to insure so far as is possible, safe and healthful working conditions of Kentucky workers (KRS 338.011).]

Section 1. [(1) Batteries. Scope and application. This standard applies to the changing of storage batteries, charging of batteries in and out of vehicles, and jump starting of vehicles. Note: This standard does not apply to those charging operations where the battery terminals are protected by physical barriers and no electrolyte is being manipulated.

(2)] Definitions. (1) [(a)] "Corrosive" means any solid, liquid, or gaseous substance that burns, irritates, or destructively attacks organic tissues, most notably the skin, eyes, and when taken internally, the lungs and gastrointestinal tract.

(2) [(b)] "Establishment" means a single physical location where work is performed, industrial operations are conducted, or where services are rendered. **This definition shall include:** [Examples include but are not limited to]

(a) Factories;

(b) Mills;

(c) Stores;

(d) Automotive service centers; [and]

(e) Warehouses; **and**

(f) [. Note: This definition includes] Those facilities that serve as satellites or in a backup and support role for the primary establishment.

(3) [(c)] "Field operation" means activity occurring outside of an existing structure.

(4) [(d)] "Remote work area" means any work area in which a person may become visibly or audibly separated from coworkers by the nature of the environment and thus unable to summon/elicit help from coworkers in the event of an exposure to "corrosive" materials.

(5) "Disconnected" means disconnected from any electrical source of supply.

(6) "Guarded" means protected by personnel, covered, fenced, or enclosed by means of suitable castings, barrier, rails,

screens, mats, platforms, or other suitable devices in accordance with standard barricading techniques designed to prevent dangerous approach or contact by persons or objects. Wires, which are insulated but not otherwise protected, are not considered as guarded.

(7) "Hold cards" or "hold tags" mean a card or tag-type device, usually having a predominant color of white or red which warns or cautions against the operation of a particular switch, device, circuit, tool, machine.

(8) "Near" means a distance no closer than that shown in the table in Section 2(3)(c) of this administrative regulation.

(9) "Qualified person" means a person who, because of experience and training is familiar with the construction and operation of the apparatus or equipment and the hazards involved in the performance of the job.

(10) ~~[(3)]~~ Establishments.

(a) In "establishments," facilities shall be provided and used when necessary for flushing electrolyte from the eyes and skin with water when changing or charging storage batteries. The emergency eyewash and emergency shower facilities shall be provided in accordance with 29 CFR 1910.151(d)(3)(a) or (b) and (c) as adopted by 803 KAR 2:310. Note: Operations that occur outside of the confines of an existing structure, ("field operations") are exempt from this paragraph. These operations shall be done in accordance with paragraph (b) through (e) of this subsection.

(b) Employees shall be instructed and required to:

1. Turn off the battery charger to connect or disconnect the battery.

2. Wash acid spills as soon as practicable.

3. Flush electrolyte from eyes and skin with potable water for fifteen (15) minutes, as soon as possible.

(c) No battery shall be charged or discharged within a closed or unvented container. The batteries shall be charged:

1. In the open; or

2. In a mechanically-vented space; or

3. In a space providing at least twenty (20) cubic feet per ampere of charging capacity.

The requirements of this paragraph apply to both "establishments" and operations outside the "establishment" ("field operations").

(d) A face shield or goggles shall be provided and available at each charging unit. The use of the face shield or goggles shall be required for connection and disconnection of vehicle or charger leads to the battery terminals and for the handling of electrolyte. The requirements of this paragraph apply to both establishments" and operations outside the "establishment" ("field operations").

(e) Before manipulation of the storage battery, the charging apparatus shall be turned off. Employees shall wear face shields or goggles during installation and removal of batteries from vehicles, while connecting and disconnecting battery charger or jumper cable leads, and while handling electrolyte. The requirements of this paragraph apply to both "establishments" and operations outside the "establishment" ("field operations").

(f) These requirements are effective October 1, 1992.

~~[Changing and charging storage batteries (for automotive-type battery charging installations, in vehicle charging of batteries, and battery jump-starting of vehicles).~~

~~(1) Facilities shall be provided for flushing electrolyte from the eyes and skin with water when changing or charging storage batteries. An adequate water supply shall be within twenty five (25) feet of the work area.~~

~~(2) No battery shall be charged or discharged within a closed or unvented container. The batteries shall be charged:~~

~~(a) In the open; or~~

~~(b) In a mechanically-ventilated space; or~~

~~(c) In a space providing at least twenty (20) cubic feet per ampere of charging capacity.~~

~~(3) A face shield or goggles shall be provided and available at each charging unit. The use of the face shield or goggles shall be required for connection and disconnection of vehicle or charger leads to the battery terminals and for the addition or pouring of electrolyte.~~

~~(4) Employees shall wear face shields or goggles during installation and removal of batteries from vehicles, while connecting and disconnecting battery charger or jumper cable leads, and while handling electrolyte.~~

~~(5) Employees shall be instructed to:~~

~~(a) Turn off the battery charger to connect or disconnect the battery;~~

~~(b) Wash acid spills immediately; and~~

~~(c) Flush electrolyte from eyes and skin with water for ten (10) minutes.]~~

Section 2. Batteries. (1) The requirements of this section shall:

(a) Apply to the:

1. Changing of storage batteries;

2. Charging of batteries in and out of vehicles; and

3. Jump starting of vehicles.

(b) Not apply to charging operations where the battery terminals are protected by physical barriers and electrolyte is not being manipulated.

(2) Except as provided in subsection (4) of this section, the requirements of this section shall apply to:

(a) Establishments; and

(b) Field operations.

(3) An establishment employer shall provide employees with:

(a) Facilities for flushing electrolyte from the eyes and skin with water when changing or charging storage batteries; and

(b) Emergency eyewash and shower facilities as specified in 803 KAR 2:310.

(4) Field operations are exempted from 803 KAR 2:015, Section 2(3).

(5) Establishment employers shall inform employees of safety requirements and require employees to:

(a) Turn off the battery charger to connect or disconnect the battery;

(b) Wash acid spills as soon as practicable;

(c) Flush electrolyte from eyes and skin with potable water for fifteen (15) minutes, as soon as possible; and

(d) Wear a face shield or goggles at each charging unit when:

1. Connecting or disconnecting a battery charger or jumper cable leads;

2. Handling electrolyte; and

3. Installing or removing a battery from a vehicle.

(6) A battery shall not be charged or discharged within a closed or unvented container, and shall only be charged in:

(a) The open;

(b) A mechanically-vented space; or

(c) A space providing at least twenty (20) cubic feet per ampere of charging capacity.

(7) A charging apparatus shall be turned off before manipulation of a storage battery.

(8) These requirements are effective October 1, 1992.

Section 3. ~~[2.]~~ Safety and Testing of Supply Lines in Excess of 600 Volts. (1) The safety procedures established in this section shall apply to non-utility electrical workers engaged in:

(a) Electrical construction; and

(b) Maintenance of electrical conductors and equipment rated at 600 volts and greater.

~~[(1) Definitions.~~

~~(a) Disconnected means disconnected from any electrical source of supply;~~

~~(b) Guarded: protected by personnel, covered, fenced, or enclosed by means of suitable castings, barrier, rails, screens, mats, platforms, or other suitable devices in accordance with standard barricading techniques designed to prevent dangerous approach or contact by persons or objects. (Note: Wires, which are insulated but not otherwise protected, are not considered as guarded);~~

~~(c) Hold cards (also called "hold tags"): a card or tag type device, usually having a predominant color of white or red which warns against or which cautions against the operation of a particular switch, device, circuit, tool, machine, etc.;~~

~~(d) Near: a distance no closer than that shown in the table in subsection (3)(c) of this section;~~

~~(e) Qualified person: a person who, because of experience and training is familiar with the construction and operation of the apparatus or equipment and the hazards involved in the performance of the job.~~]

[~~(2) Purpose.~~

~~(a) The intent and purpose of this regulation is to provide and establish safety procedures for testing equipment to protect electrical workers from hazards resulting from exposure to high voltage;~~

~~(b) This regulation shall apply to nonutility electrical workers who are engaged in electrical construction or maintenance of electrical conductors and equipment rated at 600 volts and above.~~]

(2) [~~(3)~~] Energized conductors and equipment.

(a) Only qualified employees ~~shall~~ work on or near high voltage conductors or equipment;

(b) Personal protective equipment shall be provided by the employer and used by the employee when working on or near energized, ungrounded high voltage conductors or equipment;

(c) **An** [~~No~~] employee shall **not** approach or **remove** [~~take~~] any conductive object, without an approved insulating handle, within the minimum distance specified in the table below, unless the energized part is insulated or guarded from the employee, or the employee is effectively insulated from the live parts. Rubber gloves (sleeves if necessary) rated for the voltage involved shall be considered effective insulation of the employee from the energized part.

Minimum Clear Distance From Live Parts

Voltage Phase to Phase (Kilovolts)	Distance Phase to Employee
0.6 to 34.5	2'
34.5 to 46	2 1/2'
46 to 69	3'
69 to 115	3' 4"
115 to 138	3' 6"
138 to 169	3' 8"

(3) [~~(4)~~] Deenergized conductor or equipment.

(a) Existing conditions shall be determined before starting work on electrical conductor and/or equipment;

(b)1. Before any work is performed, all electrical switches, breakers and associated disconnecting devices shall be opened, made inoperable and hold tagged out by the person in charge.

2. Employees shall be trained and thoroughly instructed in the tagging procedure. One (1) qualified person, for example: foreman, general foreman or first class electrician, of each crew shall be responsible for attaching hold tags [~~and/~~]or hold cards to the disconnecting means.

3. When more than one (1) crew is involved in the work, multiple hold tags or hold cards shall be placed in the handle of the disconnecting equipment.

4. The use of [~~such~~] tags must be respected. Equipment or items so tagged must not be activated or used without full and proper authority of a responsible person whose signature appears on the tag;

(c) Conductors shall be short circuited and grounded wherever possible;

(d) Capacitors may be components of apparatus of the disconnected electrical system. Before employees are allowed to work, the capacitors shall be discharged, short circuited and grounded;

(e)1. When deenergizing conductors and equipment and the means of disconnecting from the energy source is not visibly open, a voltage test shall be made before starting work.

2. An operational check shall be made of the voltage tester prior to and following the voltage test to determine reliability of the testing device.

3. The test device **shall** [~~must~~] be handled and used while wearing or using approved protective equipment during the test;

(f) All conductors and equipment shall be treated as energized until tested, short circuited and effectively grounded except when the circuit involved is isolated from all possible sources of energizing voltage from another circuit, induced voltage or back feed;

(g) The voltage condition of deenergized conductors [~~and/~~]or equipment shall be determined with testing equipment designed for the applicable voltage;

(h) Upon completion of work on deenergized conductors and equipment, the person responsible shall ascertain that all employees under his jurisdiction are clear and that all protective short circuit and grounding lines are removed. The qualified person(s) shall then remove his hold tag(s). Only at this time shall conductors and equipment be reenergized.

Section 4. [~~3.~~] Safety Belts, Lanyards and Life Lines. (1) Employees working from open-sided unguarded floors, pipe racks, and ledges, platforms, walkways, machinery, stock shelves, or similar unguarded working surfaces which are elevated ten (10) feet or more above a lower level shall be secured by safety belts and lanyards, life lines where necessary, or shall be protected by safety nets.

(2) Lanyards shall have a nominal breaking strength of 5,400 lbs. The combination of safety belts and lanyards, life lines where necessary, shall be designed to permit a fall of not more than five (5) feet.

(3) All safety belt and lanyard hardware, except rivets, shall be capable of withstanding a tensile loading of 4,000 lbs. without cracking, breaking or taking a permanent deformation.

(4) Life lines, where necessary, shall be secured above the point of operation to an anchorage of structural member capable of supporting a minimum dead weight of 5,400 lbs.

(5) This standard shall not preempt any applicable standard now in effect.

Section 5. [~~4.~~] Off-highway Motor Vehicles and Equipment. (1) General requirements.

(a)1. Heavy machinery, equipment, or parts thereof, which are suspended or held aloft by use of slings, hoists, or jacks shall be substantially blocked or cribbed to prevent falling or shifting before employees are permitted to work under or between them. Bulldozers and scraper blades, end-loader buckets, dump bodies, and similar equipment, shall be either fully lowered or blocked when being repaired or when not in use.

2. [~~All~~] Controls shall be in a neutral position, with the motors stopped and brakes set, unless work being performed requires otherwise.

(b) Whenever the equipment is parked, the parking brake shall be set. Equipment parked on inclines shall have the wheels chocked and the parking brake set.

(c) [~~All~~] Cab glass shall be safety glass, or equivalent, that introduces no visible distortion affecting the safe operation of any machine covered by this subpart.

(d) [~~All~~] Equipment covered by this **subsection** [~~subpart~~] shall comply with the requirements of §29 CFR 1910.180(j)(l) when working or being moved in the vicinity of power lines or energized transmitters.

(2)**(a) Motor vehicles are those vehicles that operate within an off-highway job site. The requirements of this section shall not apply to equipment for which rules are prescribed in subsection (3) of this section.**

(b) Vehicles shall have a service brake system, an emergency brake system, and a parking brake system. These systems may use common components, and shall be maintained in operable condition. [~~Motor vehicles.~~

~~(a) Coverage. Motor vehicles as covered by this part are those vehicles that operate within an off-highway job site. The requirements of this section do not apply to equipment for which rules are prescribed in subsection (3) of this section.~~

~~(b) General requirements. All vehicles shall have a service brake system, an emergency brake system, and a parking brake system. These systems may use common components, and shall be maintained in operable condition.~~]

(c) Whenever visibility conditions warrant additional light, all

vehicles, or combinations of vehicles, in use shall be equipped with at least two (2) headlights and two (2) taillights in operable condition.

(d) [All] Vehicles, or combination of vehicles, shall have brake lights in operable condition regardless of light conditions.

(e) [All] Vehicles shall be equipped with an adequate audible warning device at the operator's station and in an operable condition.

(f) An [No] employer shall not use any motor vehicle equipment having an obstructed view to the rear unless:

1. The vehicle has a reverse signal alarm audible above the surrounding noise level; or

2. The vehicle is backed up only when an observer signals that it is safe to do so.

(g) [All] Vehicles with cabs shall be equipped with windshields and powered wipers. Cracked and broken glass shall be replaced. Vehicles operating in areas or under conditions that cause fogging or frosting of the windshields shall be equipped with operable defogging or defrosting devices.

(h) [All] Haulage vehicles, whose pay load is loaded by means of cranes, power shovels, loaders, or similar equipment, shall have a cab shield [and/]or canopy adequate to protect the operator from shifting or falling materials.

(i) Tools and material shall be secured to prevent movement when transported in the same compartment with employees.

(j) Vehicles used to transport employees shall have seats firmly secured and adequate for the number of employees to be carried.

(k) The employer will provide and insure the use of seat belts and anchorages meeting the requirements of 49 CFR Part 571 (Department of Transportation, Federal Motor Vehicle Safety Standards).

(l) Trucks with dump bodies shall be equipped with positive means of support, permanently attached, and capable of being locked in position to prevent accidental lowering of the body while maintenance or inspection work is being done.

(m) Operating levers controlling hoisting or dumping devices on haulage bodies shall be equipped with a latch or other device which will prevent accidental starting or tripping of the mechanism.

(n) Trip handles for tailgates of dump trucks shall be so arranged that, in dumping, the operator will be in the clear.

(o)1. An [Each] employer shall assure that the following parts, equipment, and accessories are in safe operating condition and free of apparent damage that could cause failure while in use: service brakes, including trailer brake connections; parking system (hand brake); emergency stopping system (brakes); tires; horn; steering mechanism; coupling devices; seat belts; operating controls; and safety devices.

2. [All] Defects shall be corrected before the vehicle is placed in service. These requirements [also] apply to the following equipment: [such as] lights, reflectors, windshield wipers, defrosters, fire extinguishers[, etc., where such equipment is necessary].

(3)(a) Material handling equipment shall apply to [.

[(a) Equipment; general. These rules apply to the following types of equipment:] scrapers, loaders, crawler or wheel tractors, bulldozers, off-highway trucks, graders, agricultural and industrial tractors, and similar equipment. [The promulgation of specific rules for compactors and rubber-tired "skid-steer" equipment is reserved pending consideration of standards currently being developed.]

(b) An [Seating and seat belts. Each] employer shall insure safe seating with seat belts on all equipment covered by this section, and shall meet the requirement of J386, Society of Automotive Engineers Handbook, 1986, Seat Belts for Construction Equipment. Seat belts for agricultural and light industrial tractors shall meet the seat belt requirements of Society of Automotive Engineers J1194, Society of Automotive Engineers Handbook, 1986, Operator Protection for Agricultural and Light Industrial Tractors.

(c) Seat belts need not be provided for equipment which:

1. Is designed only for stand-up operation; and

2. Does not have rollover protective structure (ROPS) or adequate canopy protection.

(d) Equipment specified in paragraph (a) of this sub-section shall have a service braking system capable of stopping. [Seat belts need not be provided for equipment which is designed only for stand-up operation.

(d) Seat belts need not be provided for equipment which does not have rollover protective structure (ROPS) or adequate canopy protection.

(e) Brakes. All equipment mentioned in subsection (a) of this section shall have a service braking system capable of stopping and holding the equipment fully loaded, as specified in Society of Automotive Engineers SAE J237, Loader Dozer, Society of Automotive Engineers Handbook, 1986, J236, Graders, Society of Automotive Engineers Handbook, 1986, and J319b, Scrapers, Society of Automotive Engineers Handbook, 1986. Brake systems for self propelled rubber tired off highway equipment manufactured after January 1, 1987 shall meet the applicable minimum performance criteria set forth in the following Society of Automotive Engineers Recommended Practices:

Self propelled Scrapers	SAE J319B, Society of Automotive Engineers Handbook, 1986.
Self propelled Graders	SAE J236, Society of Automotive Engineers Handbook, 1986.
Trucks and Wagons	SAE J166, Society of Automotive Engineers Handbook, 1986.
Front end Loaders and Dozers	SAE J237, Society of Automotive Engineers Handbook, 1986.]

(e) [(f)] Rollover protective structures for off-highway trucks. The promulgation of standards for rollover protective structures for off-highway trucks is reserved pending further study and development.

(f)1. [(g) Audible alarms. 1. All] Bidirectional machines, such as rollers, compactors, front-end loaders, bulldozers, and similar equipment, shall be equipped with a horn, distinguishable from the surrounding noise level, which shall be operated as needed when the machine is moving in either direction. The horn shall be maintained in an operative condition.

2. An [No] employer shall not permit material handling equipment or compacting equipment which has an obstructed view to the rear to be used in reverse gear unless the equipment has in operation a reverse signal alarm distinguishable from the surrounding noise level or an employee signals that it is safe to do so.

(g) [(h)] Scissor points. Scissor points on all front-end loaders, which constitute a hazard to the operator during normal operation, shall be guarded.

Section 6. [5.] Rollover Protective Structures; Overhead Protection. (1) Rollover protective structure (ROPS) for material handling equipment.

(a) Coverage. This section applies to the following types of material handling equipment: To all rubber-tired, self-propelled scrapers, rubber-tired front-end loaders, rubber-tired dozers, wheel-type agricultural and industrial tractors, crawler tractors, crawler-type loaders, and motor graders, with or without attachments, that are used in general industry work. This requirement does not apply to sideboom pipe-laying tractors.

(b) The promulgation of specific standards for rollover protective structures for compactors and rubber-tired skid-steer equipment is reserved pending consideration of standards currently being developed.

(c) Equipment manufactured on or after January 1, 1987. Material handling machinery described in paragraph (a) of this subsection and manufactured on or after January 1, 1987, shall be equipped with rollover protective structures which meet the minimum performance standards prescribed in subsections (2) and (3) of this section as applicable.

(d) Equipment manufactured before January 1, 1987. All material handling equipment described in paragraph (a) of this subsection and manufactured or placed in service (owned or operated by the employer) prior to January 1, 1987, shall be fitted with rollover protective structures no later than January 1, 1988. Machines manufactured before July 1, 1969: Reserved pending further study, development, and review.

(e) Rollover protective structures and supporting attachment shall

meet the minimum performance criteria detailed in subsections (2) and (3) of this section, as applicable or shall be designed, fabricated, and installed in a manner which will support, based on the ultimate strength of the metal, at least two (2) times the weight of the prime mover applied at the point of impact.

(f) The design objective shall be to minimize the likelihood of a complete overturn and thereby minimize the possibility of the operator being crushed as a result of a rollover or upset.

(g) The design shall provide a vertical clearance of at least fifty-two (52) inches from the work deck to the ROPS at the point of ingress or egress.

(h) Remounting. ROPS removed for any reason, shall be remounted with equal quality, or better, bolts or welding as required for the original mounting.

(i) Labeling. Each ROPS shall have the following information permanently affixed to the structure:

1. Manufacturer or fabricator's name and address;

2. ROPS model number, if any;

3. Machine make, model, or series number that the structure is designed to fit.

(j) Machines meeting certain existing governmental requirements. Any machine in use, equipped with rollover protective structures, shall be deemed in compliance with this subsection if it meets the rollover protective structure requirements of the state of California, the U.S. Army Corps of Engineers, or the Bureau of Reclamation of the U.S. Department of the Interior in effect on April 5, 1972. The requirements in effect are:

1. State of California: Construction Safety Orders, issued by the Department of Industrial Relations pursuant to Division 5, Labor Code, §6312, state of California.

2. U.S. Army Corps of Engineers: General Safety Requirements, EM-385-1-1 (March 1967).

3. Bureau of Reclamation, U.S. Department of the Interior: Safety and Health Regulations for Construction. Part II (September 1971).

(2) Minimum performance criteria for rollover protective structures for designated scrapers, loaders, dozers, graders, and crawler tractors.

(a) General. This section prescribes minimum, performance criteria for rollover protective structures (ROPS) for rubber-tired self-propelled scrapers; rubber-tired front-end loaders and rubber-tired dozers; crawler tractors, crawler-type loaders, and motor graders. The vehicle and ROPS as a system shall have the structural characteristics prescribed in paragraph (f) of this subsection for each type of machine described in this paragraph.

(b) The static laboratory test prescribed herein will determine the adequacy of the structures used to protect the operator under the following conditions:

1. For rubber-tired self-propelled scrapers, rubber-tired front-end loaders, and rubber-tired dozers: operating between zero and ten (10) miles per hour over hard clay were rollover would be limited to a maximum roll angle of 360 degrees down a slope of thirty (30) degrees maximum.

2. For motor graders: operating between zero and ten (10) miles per hour over hard clay where rollover would be limited to 360 degrees down a slope of thirty (30) degrees maximum.

3. For crawler tractors and crawler-type loaders: operating between zero and ten (10) miles per hour over hard clay where rollover would be limited to a maximum roll angle of 360 degrees down a slope of forty-five (45) degrees.

(c) Facilities and apparatus.

1. The following material is necessary:

a. Material, equipment, and tie-down means adequate to insure that the ROPS and its vehicle frame absorb the applied energy.

b. Equipment necessary to measure and apply loads to the ROPS. Adequate means to measure deflections and lengths should also be provided.

c. Recommended, but not mandatory, types of test setups are illustrated in Figure W-1 for all types of equipment to which this section applies; and in Figure W-2 for rubber-tired self-propelled scrapers; Figure W-3 for rubber-tired front-end loaders, rubber-tired dozers, and motor graders; and Figure W-4 for crawler tractors and crawler-type loaders.

2. Table W-1 contains a listing of the required apparatus for all types of equipment described in paragraph (a) of this subsection.

TABLE W-1

Means to Measure	Accuracy
Deflection of ROPS, inches	+5% of deflection measured.
Vehicle weight, pounds	+5% of the weight measured.
Force applied to frame pounds	+5% of force measured.
Dimensions of critical zone	+0.5 inches.

(d) Vehicle conditions. The ROPS to be tested must be attached to the vehicle structure in the same manner as it will be attached during vehicle use. A totally assembled vehicle is not required. However, the vehicle structure and frame which support the ROPS must represent the actual vehicle installation. All normally detachable windows, panels, or nonstructural fittings shall be removed so that they do not contribute to the strength of the ROPS.

(e) Test procedure. The test procedure shall include the following, in the sequence indicated:

1. Energy absorbing capabilities of ROPS shall be verified when loaded laterally by incrementally applying a distributed load to the longitudinal outside top member of the ROPS, as shown in Figure W-1, W-2, or W-3, as applicable. The distributed load must be applied so as to result in approximately uniform deflection of the ROPS. The load increments should correspond with approximately five-tenths (0.5) inches ROPS deflection increment in the direction of the load application, measured at the ROPS top edge. Should the operator's seat be off-center, the load shall be applied on the off-center side. For each applied load increment, the total load (lb.) versus corresponding deflection (in.) shall be plotted, and the area under the load-deflection curve shall be calculated. This area is equal to the energy (in.-lb.) absorbed by the ROPS. For a typical load-deflection curve and calculation method, see Figure W-5. In Figure W-1, incremental loading shall be continued until the ROPS has absorbed the amount of energy and the minimum applied load specified under paragraph (f) of this subsection has been reached or surpassed. (See Figures for this section following the regulation.)

2. To cover the possibility of the vehicle coming to rest on its top, the support capability shall be verified by applying a distributed vertical load to the top of the ROPS so as to result in approximately uniform deflection (see Figure W-1). The load magnitude is specified in paragraph (f)2a of this subsection.

3. The low temperature impact strength of the material used in the ROPS shall be verified by suitable material tests or material certification (see paragraph (f)2d of this subsection).

(f) Performance requirements.

1. General performance requirements.

a. No repairs or straightening of any member shall be carried out between each prescribed test.

b. During each test, no part of the ROPS shall enter the critical zone as detailed in SAE J397b, Society of Automotive Engineers Handbook, 1986. Deformation of the ROPS shall not allow the plane of the ground to enter this zone.

2. Specific performance requirements.

a. The energy requirement for purposes of meeting the requirements of paragraph (e)1 of this subsection is to be determined by referring to the plot of the energy versus weight of vehicle (see Figure W-6 for rubber-tired self-propelled scrapers; Figure W-7 for rubber-tired front-end loaders and rubber-tired dozers; Figure W-8 for crawler tractors and crawler- type loaders; and Figure W-9 for motor graders). For purposes of this subsection, force and weight are measured as pounds (lb.); energy (U) is measured as inch-pounds.

b. The applied load must attain at least a value which is determined by multiplying the vehicle weight by the corresponding factor shown in Figure W-10 for rubber-tired self-propelled scrapers; in Figure W-11 for rubber-tired front-end loaders and rubber-tired dozers; in Figure W-12 for crawler tractors and crawler-type loaders; and in Figure W-13 for motor graders.

c. The load magnitude for purposes of compliance with paragraph (e)2 of this subsection is equal to the vehicle weight. The test of load magnitude shall only be made after the requirements of subparagraph 2a of this paragraph are met.

d. Material used in the ROPS must have the capability of performing at zero degrees Fahrenheit, or exhibit Charpy V notch impact strength of eight (8) foot-pounds at minus twenty (20) degrees Fahrenheit. This is a standard Charpy specimen as described in American Society of Testing and Materials A 370, Methods and Definitions for Mechanical Testing of Steel Products (available at the Central Office of the Kentucky Occupational Safety and Health Program). The purpose of this requirement is to reduce the tendency of brittle fracture associated with dynamic loading, low temperature operation, and stress raisers which cannot be entirely avoided on welded structures.

(g) Definitions. For purposes of this subsection, "vehicle weight" means the manufacturer's maximum weight of the prime mover for rubber-tired self-propelled scrapers. For other types of equipment to which this subsection applies, "vehicle weight" means the manufacturer's maximum recommended weight of the vehicle plus the heaviest attachment.

(h) Source of standard. This standard is derived from, and restates, the following Society of Automotive Engineers Recommended Practices: SAE J1349, Society of Automotive Engineers Handbook, 1986, Minimum Performance Criteria for Rollover Protective Structure for Rubber-tired, Self-propelled Scrapers; SAE J394, Society of Automotive Engineers Handbook, 1986, Minimum Performance Criteria for Rollover Protective Structure for Rubber-tired Front-end Loaders and Rubber-tired Dozers; SAE J395, Society of Automotive Engineers Handbook, 1986, Minimum Performance Criteria for Rollover Protective Structure for Crawler Tractors and Crawler-type Loaders; and SAE J396, Society of Automotive Engineers handbook, 1986, Minimum Performance Criteria for Rollover Protective Structures for Motor Graders. These recommended practices shall be resorted to in the event that questions of interpretation arise. The recommended practices appear in the 1986 SAE Handbook, which may be examined in the Central Office of the Kentucky Occupational Safety and Health Program.

(3) Protective frame (ROPS) test procedures and performance requirements for wheel-type agricultural and industrial tractors used in construction.

(a) General.

1. The purpose of this section is to set forth requirements for frames for the protection of operators of wheel type agricultural and industrial tractors to minimize the possibility of operator injury resulting from accidental upsets during normal operation. With respect to agricultural and industrial tractors, the provisions of subsections (2) and (4) of this section for rubber-tired dozers and rubber-tired loaders may be utilized in lieu of the requirements of this section.

2. The protective frame which is the subject of this standard is a structure mounted to the tractor that extends above the operator's seat and conforms generally to Figure W-14.

3. If an overhead weather shield is attached to the protective frame, it may be in place during tests: provided, that it does not contribute to the strength of the protective frame. If such an overhead weather shield is attached, it must meet the requirements of paragraph (i) of this subsection.

4. For overhead protection requirements, see subsection (4) of this section.

5. If protective enclosures are used on wheel-type agricultural and industrial tractors, they shall meet the requirements of Society of Automotive Engineers Standard J1249, Society of Automotive Engineers Handbook, 1986, Protective Enclosures, Test Procedures, and Performance Requirements. This standard appears in the 1986 SAE Handbook and may be examined in the Central office of the Kentucky Occupational Safety and Health Program.

(b) Applicability. The requirements of this subsection apply to wheel-type agricultural tractors used in general industry work and to wheel-type industrial tractors used in general industry work. See paragraph (j) of this subsection for definitions of agricultural tractors and industrial tractors.

(c) Performance requirements.

1. Either a laboratory test or a field test is required in order to determine the performance requirements set forth in this paragraph.

2. A laboratory test may be either static or dynamic. The laboratory test must be under conditions of repeatable and controlled loading in order to permit analysis of the protective frame.

3. A field upset test, if used, shall be conducted under reasonably controlled conditions, both rearward and sideways to verify the effectiveness of the protective frame under actual dynamic conditions.

(d) Test procedures - general.

1. The tractor used shall be the tractor with the greatest weight on which the protective frame is to be used.

2. A new protective frame and mounting connections of the same design shall be used for each test procedure.

3. Instantaneous and permanent frame deformation shall be measured and recorded for each segment of the test.

4. Dimensions relative to the seat shall be determined with the seat unloaded and adjusted to its highest and most rearward latched position provided for a seated operator.

5. If the seat is offset, the frame loading shall be on the side with the least space between the centerline of the seat and the upright.

6. The low temperature impact strength of the material used in the protective structure shall be verified by suitable material tests or material certifications in accordance with subsection (2)(f)2d of this section.

(e) Test procedure for vehicle overturn.

1. Vehicle weight. The weight of the tractor, for purposes of this subsection, includes the protective frame, all fuels, and other components required for normal use of the tractor. Ballast must be added if necessary to achieve a minimum total weight of 130 lbs. (59 kg.) per maximum power takeoff horsepower at rated engine speed. The weight of the front end must be at least thirty-three (33) lb. (15 kg.) per maximum power takeoff horsepower. In case power takeoff horsepower is unavailable, ninety-five (95) percent of net engine flywheel horsepower shall be used.

2. Agricultural tractors shall be tested at the weight set forth in subparagraph 1 of this paragraph.

3. Industrial tractors shall be tested with items of integral or mounted equipment and ballast that are sold as standard equipment or approved by the vehicle manufacturer for use with the vehicle where the protective frame is expected to provide protection for the operator with such equipment installed. The total vehicle weight and front end weight as tested shall not be less than the weights established in subparagraph 1 of this paragraph.

4. The test shall be conducted on a dry, firm soil bank as illustrated in Figure W-15. The soil in the impact area shall have an average cone index in the 0-6 inch (153 mm.) layer not less than 150 according to American Society of Agricultural Engineers Recommendation ASAE R313, Soil Cone Penetrometer (available in the Central Office of the Kentucky Occupational Safety and Health Program). The path of travel of the vehicle shall be 12°+2° to the top edge of the bank.

5. The upper edge of the bank shall be equipped with an eighteen (18) inch (457 mm.) high ramp as described in Figure W-15 to assist in tipping the vehicle.

6. The front and rear wheel tread settings, where adjustable, shall be at the position nearest to halfway between the minimum and maximum settings obtainable on the vehicle. Where only two (2) settings are obtainable, the minimum setting shall be used.

7. Vehicle overturn test - sideways and rearward.

a. The tractor shall be driven under its own power along the specified path of travel at a minimum speed of ten (10) m.p.h. (16 km./hr.) or maximum vehicle speed if under ten (10) m.p.h. (16 km./hr.) up the ramp as described in subparagraph 5 of this paragraph to induce sideways overturn.

b. Rear upset shall be induced by engine power with the tractor operating in gear to obtain 3-5 m.p.h. (4.8-8 km./hr.) at maximum governed engine r.p.m. preferably by driving forward directly up a minimum slope of two (2) vertical to one (1) horizontal. The engine clutch may be used to aid in inducing the upset.

(f) Other test procedures. When the field upset test is not used to

determine ROPS performance, either the static test or the dynamic test, contained in paragraph (g) or (h) of this subsection, shall be made.

(g) Static test.

1. Test conditions.

a. The laboratory mounting base shall include that part of the tractor chassis to which the protective frame is attached including the mounting parts.

b. The protective frame shall be instrumented with the necessary equipment to obtain the required load deflection data at the location and directions specified in Figures W-16, W-17, and W-18.

c. The protective frame and mounting connections shall be instrumented with the necessary recording equipment to obtain the required load-deflection data to be used in calculating FSB (see paragraph (j)3 of this subsection). The gauges shall be placed on mounting connections before the installation load is applied.

2. Test procedure.

a. The side load application shall be at the upper extremity of the frame upright at a ninety (90) degree angle to the centerline of the vehicle. This side load "L" shall be applied according to Figure W-16. "L" and "D" shall be recorded simultaneously. The test shall be stopped when:

(i) The strain energy absorbed by the frame is equal to the required input energy (E_{is}); or

(ii) Deflection of the frame exceeds the allowable deflection; or

(iii) The frame load limit occurs before the allowable deflection is reached in the side load.

b. The L-D diagram, as shown by means of a typical example in Figure W-19, shall be constructed, using the data obtained in accordance with clause a of this subparagraph.

c. The modified L_m-D_m diagram shall be constructed according to clause (ii) of this subparagraph and according to figure W-20. the strain energy absorbed by the frame (E_u) shall then be determined.

d. E_{is}, FER, and FSB shall be calculated.

e. The test procedure shall be repeated on the same frame utilizing L (rear input; see Figure W-18) and E_{ir} Rear load application shall be uniformly distributed along a maximum projected dimension of twenty-seven (27) inches (686 mm.) and a maximum area of 160 square inches (1,032 sq. cm.) normal to the direction of load application. The load shall be applied to the upper extremity of the frame at the point which is midway between the centerline of the seat and the inside of the frame upright.

(h) Dynamic test.

1. Test conditions.

a. The protective frame and tractor shall meet the requirements of paragraph (e)2 or 3 of this subsection, as appropriate.

b. The dynamic loading shall be produced by use of a 4,410 lb. (2,000 kg.) weight acting as a pendulum. The impact face of the weight shall be twenty-seven (27) plus, or minus one (1) inch by twenty-seven (27) plus or minus one (1) inch (686 + or - 25 mm.) and shall be constructed so that its center of gravity is within one (1) inch (25.4 mm.) of its geometric center. The weight shall be suspended from a pivot point 18-22 feet (5.5-6.7 m.) above the point of impact on the frame and shall be conveniently and safely adjustable for height. (See Figure W-21).

c. For each phase of testing, the tractor shall be restrained from moving when the dynamic load is applied. The restraining members shall be of 0.5-0.63 inch (12.5-16 mm.) steel cable and points of attaching restraining members shall be located an appropriate distance behind the rear axle and in front of the front axle to provide a 15°-30° angle between a restraining cable and the horizontal. The restraining member shall either be in the plane in which the center gravity of the pendulum will swing or more than one (1) restraining cable shall give a resultant force in this plane. (See Figure W-22).

d. The wheel tread setting shall comply with the requirements of paragraph (e)6 of this subsection. The tires shall have no liquid ballast and shall be inflated to the maximum operating pressure recommended by the tire manufacturer. With specified tire inflation, the restraining cables shall be tightened to provide tire deflection of 6-8 percent of nominal tire section width. After the vehicle is properly restrained, a wooden beam 6 x 6 in. (15 x 15 cm.) shall be driven tightly against the appropriate wheels and clamped. For the test to the side, an additional wooden beam shall be placed as a prop against the wheel nearest the operator's station and shall be secured to the floor so that it is held tightly against the wheel rim during impact. The length of this beam shall be chosen so that when it is positioned against the wheel rim, it is at an angle of 25°-40° to the horizontal. It shall have a length 20-25 times its depth and a width two (2) to three (3) times its depth. (See Figures W-22 and W-23.)

e. Means shall be provided indicating the maximum instantaneous deflection along the line of impact. A simple friction device is illustrated in Figure W-23.

f. No repair or adjustments may be carried out during the test.

g. If any cables, props, or blocking shift or break during the test, the test shall be repeated.

2. Test procedure.

a. General. The frame shall be evaluated by imposing dynamic loading to rear followed by a load to the side on the same frame. The pendulum dropped from the height (see definition "H" in paragraph (j)3 of this subsection) imposes the dynamic load. The position of the pendulum shall be so selected that the initial point of impact on the frame shall be in line with the arc of travel of the center of gravity of the pendulum. A quick release mechanism should be used but, if used, shall not influence the attitude of the block.

b. Impact at rear. The tractor shall be properly restrained according to subparagraphs 1c and d of this paragraph. The tractor shall be positioned with respect to the pivot point of the pendulum such that the pendulum is twenty (20) degrees from the vertical prior to impact, as shown in Figure W-22. The impact shall be applied to the upper extremity of the frame at the point which is midway between the centerline of the seat and the inside of the frame upright of a new frame.

c. Impact at side. The block and restraining shall conform to subparagraphs 1c and d of this paragraph. The point of impact shall be that structural member of the protective frame likely to hit the ground first in a sideways accidental upset. The side impact shall be applied to the side opposite that used for rear impact.

(i) Performance requirements.

1. General.

a. The frame, overhead weather shield, fenders, or other parts in the operator area may be deformed but shall not shatter or leave sharp edges exposed to the operator, or violate dimensions as shown in Figures W-16 and W-17 as follows:

D = 2 in. (51 mm.) inside of frame upright to vertical centerline of seat.
E = 30 in. (762 mm.).
F = Not less than 0 in. and not more than 12 in. (305 mm.), measured at centerline front of seat backrest to crossbar along the line of load application as shown in Figure W-17.
G = 24 in. (610 mm.).

b. The material and design combination used in the protective structure must be such that the structure can meet all prescribed performance tests at zero degrees Fahrenheit in accordance with subsection (2)(f)2d.

2. Vehicle overturn performance requirements. The requirements of this paragraph must be met in both side and rear overturns.

3. Static test performance requirements. Design factors shall be incorporated in each design to withstand an overturn test as prescribed in this paragraph. The structural requirements will be generally met if FER is greater than one (1) and FSB is greater than K-1 in both side and rear loadings.

4. Dynamic test performance requirements. Design factors shall be incorporated in each design to withstand the overturn test prescribed in this paragraph. The structural requirements will be generally met if the dimensions in this paragraph are adhered to in both side and rear loads.

(j) Definitions applicable to this section.

1. SAE J1194, Society of Automotive Engineers Handbook, 1986, Operator Protection for Wheel-type Agricultural and Industrial Tractors (1983) defines "agricultural tractor" as a "wheel-type vehicle of more

than 20 engine horsepower designed to furnish the power to pull, carry, propel, or drive implements that are designed for agricultural usage." Since this subsection applies only to general industry work, the following definition of "agricultural tractor" is adopted for purposes of this regulation: "agricultural tractor" means a wheel-type vehicle of more than twenty (20) engine horsepower, used in general industry work, which is designed to furnish the power to pull, propel, or drive implements.

2. "Industrial tractor" means that class of wheeled-type tractor of more than twenty (20) engine horsepower (other than rubber-tired loaders and dozers described in subsection (2) of this section) used in operations such as landscaping, loading, digging, grounds keeping, and highway maintenance.

3. The following symbols, terms, and explanations apply to this section:

E_{ic} = Energy input to be absorbed during side loading. $E'_{ic} = 723 + 0.4$ W ft.-lb. ($E'_{ic} = 100 + 0.12W'$, m.-kg.).

E_{ir} = Energy input to be absorbed during rear loading. $E_{ir} = 0.47$ W ft.-lb. ($E'_{ir} = 0.14$ W', m.-kg.).

W = Tractor weight as prescribed in subsection (3)(e)1 and (e)3, in lb. (W', kg.). L = Static load, lb. (kg.).

D = Deflection under L, in. (mm.).

L-D = Static load-deflection diagram.

L_mD_m = Modified static load-deflection diagram (Figure W-20). To account for increase in strength due to increase in strain rate, raise L in plastic range to L x K.

K = Increase in yield strength induced by higher rate of loading (1.3 for hot rolled low carbon steel 1010-1030). Low carbon is preferable; however, if higher carbon or other material is used, K must be determined in the laboratory. Refer to Charles H. Norris, et al., Structural Design for Dynamic Loads (1959), p. 3.

L_{max} = Maximum observed static load.

Load = Point on L-D curve where observed static load is Limit08 L_{max} (refer to Figure W-19).

E_u = Strain energy absorbed by the frame, ft.-lb. (m.-kg.) area under L_mD_m curve.

FER = Factor of energy ratio, FER = E_u/E_{ic} also = E_u/E_{ir}

P_b = Maximum observed force in mounting connection under static load, L, lb. (kg.).

FSB = Design margin for mounting connection FSB = $(P_u/P_b)-1$.

H = Vertical height of lift of 4.410 lb. (2,000 kg.) weight, in. (H', mm.). The weight shall be pulled back so that the height of its center of gravity above the point of impact is defined as follows: H = 4.92 + 0.00190 W or (H' = 125 + 0.107 W') (Figure W-24).

(k) Source of standard. The standard in this section is derived from, and restates, Society of Automotive Engineers Standard J1194, Society of Automotive Engineers Handbook, 1986, Protective Frame Test Procedures and Performance Requirements. This standard shall be resorted to in the event that questions of interpretation arise. The standard appears in the 1986 SAE Handbook, which may be examined in the Central Office of the Kentucky Occupational Safety and Health Program.

(4) Overhead protection for operators of agricultural and industrial tractors.

(a) General.

1. Purpose. When overhead protection is provided on wheel-type agricultural and industrial tractors, the overhead protection shall be designed and installed according to the requirements contained in this subsection. The provisions of subsection (2) of this section for rubber-tired dozers and rubber-tired loaders may be used in lieu of the standards contained in this subsection. The purpose of the standard is to minimize the possibility of operator injury resulting from overhead hazards such as flying and falling objects, and at the same time to minimize the possibility of operator injury from the cover itself in the event of accidental upset.

2. Applicability. This standard applies to wheel-type agricultural tractors used in general industry work and to wheel-type industrial tractors used in general industry work.

(b) Overhead protection. When overhead protection is installed on wheel-type agricultural or industrial tractors used in general industry work, it shall meet the requirements of this paragraph. The overhead protection may be constructed of a solid material. If grid or mesh is used, the largest permissible opening shall be such that the maximum circle which can be inscribed between the elements of the grid or mesh is 1.5 in. (38 mm.) in diameter. The overhead protection shall not be installed in such a way as to become a hazard in the case of upset.

(c) Test procedures - general.

1. The requirements of subsection (3)(d), (e), and (f) of this section shall be met.

2. Static and dynamic rear load application shall be uniformly distributed along a maximum projected dimension of 27 in. (686 mm.) and a maximum area of 160 inch^2 (1,032 cm.^{2}) normal to the direction of load application. The load shall be applied to the upper extremity of the frame at the point which is midway between the centerline of the seat and the inside of the frame upright.

3. The static and dynamic side load application shall be uniformly distributed along a maximum projected dimension of 27 in. (686 mm.) and a maximum area of 160 inch^2 (1,032 cm.^{2}) normal to the direction of load application. The direction of load application is the same as in subsection (3)(g) and (h) of this section. To simulate the characteristics of the structure during an upset, the center of load application may be located from a point 24 in. (610 mm.) (K) forward to 12 in. (305 mm.) (L) rearward of the front of the seat backrest to best utilize the structural strength. See Figure W-25.

(d) Drop test procedures.

1. The same frame shall be subjected to the drop test following either the static or dynamic test.

2. A solid steel sphere or material of equivalent spherical dimension weighing 100 lb. (45.4 kg.) shall be dropped once from a height 10 ft. (3,048 mm.) above the overhead cover.

3. The point of impact shall be on the overhead cover at a point within the zone of protection as shown in Figure W-26, which is furthest removed from major structural members.

(e) Crush test procedures.

1. The same frame shall be subjected to the crush test following the drop test and static or dynamic test.

2. The test load shall be applied as shown in Figure W-27 with the seat positioned as specified in subsection (3)(d)4 of this section. Loading cylinders shall be pivotally mounted at both ends. Loads applied by each cylinder shall be equal within two (2) percent, and the sum of the loads of the two (2) cylinders shall be two (2) times the tractor weight as set forth in subsection (3)(e)1 of this section. The maximum width of the beam illustrated in Figure W-27 shall be 6 in. (152 mm.).

(f) Performance requirements.

1. General. The performance requirements set forth in subsection (3)(i)2, 3, and 4 of this section shall be met.

2. Drop test performance requirements.

a. Instantaneous deformation due to impact of the sphere shall not enter the protected zone as illustrated in Figure W-25, W-26, and W-28.

b. In addition to the dimensions set forth in subsection (3)(i)1a.of this section, the following dimensions apply to Figure W-28:

H = 17.5 in. (444 mm.).

J = 2 in. (50.8 mm.) measured from the outer periphery of the steering wheel.

3. Crush test performance requirements. The protected zone as described in Figure W-28 must not be violated.

(g) Source of standard. This standard is derived from, and restates, the portions of Society of Automotive Engineers Standard J167, Society of Automotive Engineers Handbook, 1986, which pertain to overhead protection requirements. The full title of the SAE standard is: Protective Frame with Overhead Protection-test Procedures and Performance Requirements. The SAE standard shall be resorted to in the event that questions of interpretation arise. The SAE standard appears in the 1986 SAE Handbook, which may be examined in the Central Office of the Kentucky Occupational Safety and Health Program.

Section 7. [6.] Fire Apparatus and Fire Department Facilities. (1) Scope. This section shall apply to industrial fire departments and private, public or contractual type fire departments. This section shall not apply to volunteer fire departments.

(2) Persons riding on fire apparatus. Beginning September 1, 1991, a person riding on fire apparatus shall be secured to the vehicle by seat belts or safety harnesses when the vehicle is in motion.

(3) Inspection, maintenance, and repair of vehicles. Beginning January 1, 1992:

(a) All fire department vehicles shall be inspected at least weekly and within twenty-four (24) hours after any use or repair to identify and correct unsafe conditions.

(b) A fire department vehicle found to be unsafe shall be placed out of service until repaired. After being repaired, the vehicle shall be inspected prior to being placed back in service.

(c) The inspection shall include:

1. Tires, brakes, warning lights and devices, headlights and clearance lights, windshield wipers and mirrors;

2. Starting the apparatus, and verification of the operation of pumps and other equipment; and

3. Inspection of the safety equipment carried on fire department vehicles.

(d) A fire department shall maintain inspection, maintenance, repair, and service records for all vehicles and equipment used for emergency operations.

(4) Facility safety. Beginning July 1, 1993:

(a) Sleeping areas in fire stations shall:

1. Be separated from vehicle storage areas by at least one (1) hour fire resistive assemblies; or

2. Have operable fire suppression or operable smoke detection systems.

(b) A fire station shall have a system capable of ventilating.

(5) Effective dates.

(a) Subsection (2) of this section shall become effective September 1, 1991.

(b) Subsection (3) of this section shall become effective January 1, 1992.

(c) Subsection (4) of this section shall become effective July 1, 1993.

COMPILER'S NOTE: The figures referred to in this regulation may be viewed in Volume 5 of both the 1991 or 1992 bound volumes of the Kentucky Administrative Regulations.

MRS. CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: June 11, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

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

803 KAR 2:306. Adoption of 29 CFR Part 1910.94-.100.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910.94-.100 [Chapter 338, 29 CFR 1910]

STATUTORY AUTHORITY: KRS 338.051, 338.061 [Chapter 13A]

NECESSITY AND FUNCTION: **This administrative regulation is necessary for effective enforcement of the purposes and policies of the Occupational Safety and Health Act which is to insure, safe and healthful working conditions of Kentucky workers. This administrative regulation establishes standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.** [KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.]

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910.94-.100 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: 29 CFR 1910.95, "Hearing Conservation Program," is amended as follows:

(1) Revision to 29 CFR 1910.94, as published in the Federal Register, Volume 55, No. 151, August 6, 1990, is incorporated by reference.

(2) 29 CFR 1910.94(d)(9)(vii) is revised to read as follows: Near each tank containing a liquid which may burn, irritate, or otherwise be harmful to the skin if splashed upon the worker's body, there shall be an (a supply of clean cold water) emergency eyewash and emergency shower facilities installed in accordance with 1910.151(d)(3)(a) or 1910.151(d)(3)(b) and 1910.151(d)(3)(c) as adopted by 803 KAR 2:310. (The waterpipe (carrying a pressure not exceeding twenty-five (25) pounds) shall be provided with a quick opening valve and at least forty-eight (48) inches of hose not smaller than three-fourths (3/4) inch, so that no time may be lost in washing off liquids from the skin or clothing. Alternately, deluge showers and eye flushes shall be provided in cases where harmful chemicals may be splashed on parts of the body.) These requirements are effective October 1, 1992.

(3) [(2)] 29 CFR 1910.95, "Hearing Conservation Program," is amended as follows:

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

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

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

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

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

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

(g) **29 CFR 1910.95 Appendix E shall be mandatory.**

1. Audiometer calibration shall be checked acoustically, at least annually, according to the procedures described in this Appendix.

2. The equipment necessary to perform these measurements is a sound level meter, octave-band filter set, and a National Bureau of Standards 9A coupler.

3. In making these measurements, the accuracy of the

calibrating equipment shall be sufficient to determine that the audiometer is within the tolerances permitted by American Standard Specification for Audiometers, S3.6-1969. [~~29 CFR 1910.95 Appendix E shall read: Acoustic Calibration of Audiometers.~~

~~This Appendix is Mandatory.~~

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

(h) [~~(a)~~] Sound Pressure Output Check.

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

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

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

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

(i) [~~(b)~~] Linearity check.

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

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

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

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

(j) [~~(c)~~] Tolerances.

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

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

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

TABLE E-2 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-49 EARPHONES

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

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

MRS. CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: June 11, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

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

803 KAR 2:310. Adoption of 29 CFR Part 1910.151-.153.

RELATES TO: KRS **338.051, 338.061, 29 CFR 1910.151-.153** [~~Chapter 338, 29 CFR 1910~~]
STATUTORY AUTHORITY: KRS **338.051, 338.061** [~~Chapter 13A~~]
NECESSITY AND FUNCTION: **This administrative regulation is necessary for effective enforcement of the purposes and policies of the Occupational Safety and Health Act which is to insure, safe and healthful working conditions of Kentucky workers. This administrative regulation establishes standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.** [~~KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.~~]

Section 1. [~~The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1910.151 .153 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions: 29 CFR 1910.151(c) is revised to read as follows:~~

~~(1) Scope: Where the eyes or body of any person may be exposed to (injurious) corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be in accordance with either subsection (3)(a) or (3)(b) and, (3)(c) of this section for "establishments" as follows:~~

~~(2)~~] Definitions. (1) [~~(a)~~] "Corrosive" means any solid, liquid, or gaseous substance that burns, irritates, or destructively attacks organic tissues, most notably the skin, eyes, and when taken internally, the lungs and gastrointestinal tract.

(2) [~~(b)~~] "Establishment" means a single physical location where work is performed, industrial operations are conducted, or where services are rendered. **This definition shall include:** [~~Examples include but are not limited to~~]

(a) Factories;
(b) Mills;
(c) Stores;
(d) Automotive service centers; [~~and~~]
(e) Warehouses; **and**
(f) [~~. Note: This definition includes~~] Those facilities that serve as satellites or in a backup **and** support role for the primary "establishment".

(3) [(c)] "Field operations" means activities occurring outside an

existing structure.

(4) [(d)] "Remote work area" means any work area in which a person may become visibly **or** [and] audibly separated from co-workers by the nature of the environment and thus unable to summon/elicit help from coworkers in the event of an exposure to "corrosive" materials.

Section 2. Scope. Where the eyes or body of any person may be exposed to (injurious) corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be in accordance with either subsection (3)(a) or (3)(b) and, (3)(c) of this section for "establishments" as follows:

Section 3. (1) Plumbed emergency eyewash facilities shall be provided in each establishment utilizing corrosives.

(a) The eyewash shall have the capability to deliver fifteen (15) minutes of freely flowing water at a comfortable temperature range of:

1. Fifteen (15) to thirty-five (35) degree C;

2. Sixty (60) to ninety-five (95) degree F; and

(b) The eyewash shall have the capability to deliver a maximum inlet pressure of thirty (30) psig and a minimum flow of one and five-tenths (1.5) liters per minute (four-tenths (0.4) gallons per minute).

(2) The supply line shall provide an uninterruptible supply of water at a maximum of 0.207 megapascal (thirty (30) pounds per square inch) of flow pressure.

(3) A filter shall be provided upstream of the eyewash to remove particles.

(4) A record of the initial setup parameters shall be retained to verify proper operation.

(5) The initial parameters shall be rechecked when there is a change in the water distribution or utilization in the facility that could alter any of the above criteria for proper setup. [~~(3) "Establishment" (utilizing "corrosives").~~

~~(a) Plumbed emergency eyewash facilities.~~

~~1. The eyewash shall have the capability to deliver fifteen (15) minutes of freely flowing water at a comfortable temperature range (fifteen (15) to thirty five (35) degree C or sixty (60) to ninety five (95) degree F), a maximum inlet pressure of thirty (30) psig, and a minimum flow of one and five tenths (1.5) liters per minute (four-tenths (0.4) gallons per minute). The supply line shall provide an uninterruptible supply of water at a maximum of 0.207 megapascal (thirty (30) pounds per square inch) of flow pressure. A filter shall be provided upstream of the eyewash to remove particles. A record of the initial setup parameters shall be retained to verify proper operation. The initial parameters shall be rechecked when there is a change in the water distribution or utilization in the facility that could alter any of the above criteria for proper setup.~~]

(6) [2.] A means shall be provided to ensure that a controlled flow of potable water is provided to both eyes simultaneously at a velocity low enough not to be injurious to the user, and to wash the eyes and facial region free of "corrosive" materials.

(7) [3.] The emergency eyewash shall be accessible in locations that require no more than ten (10) seconds to reach and shall be within a travel distance no greater than 6.92 meters (twenty-five (25) feet) from the hazard, or in the nearest safe area outside of the release area if the release could pose a further danger to the employee while using the emergency eyewash facility.

(8) [4.] There shall be no sharp projections anywhere in the operating area of the eyewash facility and the eyewash shall be accessible from three (3) sides.

(9) [5.] The height of the nozzles shall be between thirty-three (33) and forty-five (45) inches as measured from the floor or ground level. Nozzles shall be protected from airborne contaminants. Whatever means is used to afford such protection, its removal shall not require a separate motion by the operator when activating the unit.

(10) [6.] The unit shall be designed to provide enough room to allow the eyelids to be held open with the hands while the eyes are in the stream of water.

(11)(a) The valve shall be designed to:

1. Allow the water flow to remain on without the use of the operator's hands;

2. Remain open until intentionally shut off;

3. Be simple to operate and shall go from the "off" position to the "on" position in one (1) second or less; and

4. Be resistant to corrosion by potable water.

(b) The valve actuator shall be large enough to be easily located by the operator in an emergency situation without the normal available visual cues. [~~7. The valve shall be designed in such a manner that the water flow remains on without the use of the operator's hands. The valve shall be designed to remain open until intentionally shut off. The valve shall be simple to operate and shall go from the "off" position to the "on" position in one (1) second or less. The valve shall be resistant to corrosion by potable water. The valve actuator shall be large enough to be easily located by the operator in an emergency situation without the normal available visual cues.~~]

(12) [8.] The eyewash unit shall be activated weekly to flush the line and to verify proper operation. (Before work is begun in an "establishment" that has not been occupied for a period of one (1) week or more, the plumbed emergency eyewash facility shall be activated to insure it is functioning properly.)

(13) [9.] A weekly record or a record consistent with **subsection (12) of this section** [~~subparagraph 8 of this paragraph~~] shall be maintained for the previous twelve (12) consecutive months to verify compliance with testing procedures. These records may be affixed to the apparatus or kept in a location readily accessible to Labor Cabinet representatives of the Occupational Safety and Health Program.

(14) [10.] Each emergency eyewash station shall be identified with a highly visible sign which all employees can comprehend. The area around or behind the emergency eyewash shall be painted a bright color and shall be well lighted.

(15) [11. Instructions.] Instructions on proper usage shall be affixed to the eyewash facility which all employees are capable of comprehending [~~and/~~]or depicting proper usage in the emergency setting.

(16) **An employee** [12. All employees] who might be exposed to releases of "corrosives" shall be instructed in the proper use of emergency eyewash units at the time of initial assignment to the hazardous work area and whenever a new hazard is introduced into the work area. A training/retraining record shall be kept to verify training for compliance purposes for a period of three (3) years.

(17) [13.] Units shall be installed in accordance with the manufacturer's instructions.

(18) [14.] In "remote work areas" where this standard applies an effective alarm system consisting of audible [~~and/~~]or visual alerting device(s) shall be installed. The audible or visible alarm shall activate when the eyewash unit is used and **shall** [~~must~~] continue until the unit is not in immediate use.

(19) Self-contained emergency eyewash units shall be constructed of materials that will not corrode in the presence of the flushing fluid. The stored fluid shall be protected from airborne contaminants. [~~(b) Self contained emergency eyewash facilities.~~

~~1. Self contained units shall be constructed of materials that will not corrode in the presence of the flushing fluid. The stored fluid shall be protected from airborne contaminants.~~]

(20) [2.] The emergency eyewash shall be accessible in locations that require no more than ten (10) seconds to reach and shall be within a travel distance no greater than 6.92 meters (twenty-five (25) feet) from the hazard, or in the nearest safe area.

(21) [3.] The self-contained unit shall be capable of delivering to the eyes not less than one and five-tenths (1.5) liters per minute (four-tenths (0.4) gallons per minute) for fifteen (15) minutes.

(22) [4.] A means shall be provided to ensure that a controlled flow of potable water or its equivalent is provided to both eyes simultaneously at a velocity low enough not to be injurious to the user, and to wash the eyes and facial region free of "corrosive" materials.

(23) [5.] There shall be no sharp projections anywhere in the

operating area of the eyewash facility and the eyewash shall be accessible from three (3) sides.

(24) [6.] Nozzles shall be protected from airborne contaminants. Whatever means is used to afford the [such] protection, its removal shall not require separate motion by the operator when activating the unit.

(25) [7.] The eyewash unit shall be inspected in accordance with the manufacturer's recommendations for proper operation. (Before work is begun in an "establishment" that has not been occupied for a period of one (1) week or more the self-contained emergency eyewash facilities shall be inspected to insure it is functioning properly.)

(26) [8.] A weekly record or a record consistent with subsection (25) of this section [subparagraph 7 of this paragraph] shall be maintained to verify compliance with inspection procedures for the previous twelve (12) consecutive months. These records may be affixed to the apparatus or kept in a location readily accessible to Labor Cabinet representatives of the Occupational Safety and Health Program.

(27) [9.] The unit shall be designed to provide enough room to allow the eyelids to be held open with the hands while the eyes are in the stream of water.

(28) [10.] Instructions. Instructions on proper usage shall be affixed to the eyewash facility which all employees are capable of comprehending and/or depicting proper usage in the emergency setting.

(29) [11. All] Employees who might be exposed to "corrosives" shall be instructed in the proper use of emergency eyewash units at the time of initial assignment to the hazardous work area and whenever a new hazard is introduced into the work area. A training/retraining record shall be kept to verify training for compliance purposes for a period of three (3) years.

(30) [12. Each] Emergency eyewash station shall be identified with a highly visible sign which all employees can comprehend. The area around or behind the emergency eyewash shall be painted a bright color and shall be well lighted.

Section 4. (1) [(c) Emergency shower facilities.

1.] Emergency shower heads shall be designed so that a water column is provided that is not less than 208.3 cm (eighty-two (82) inches) nor more than 243.8 cm (ninety-six (96) inches) in height from the surface on which the user stands. The spray pattern shall have a minimum diameter of fifty and eight-tenths (50.8) cm (twenty (20) inches) at 152.4 cm (sixty (60) inches) above the surface on which the user stands, and the center of the spray pattern shall be located at least forty and six-tenths (40.6) cm (sixteen (16) inches) from any obstruction. Emergency showers shall deliver a minimum of 113.6 liters (thirty (30) gallons) per minute of water, which shall be substantially dispersed throughout the pattern.

(2) [2.] Emergency showers shall be accessible in locations that require no more than ten (10) seconds to reach and shall be within a travel distance no greater than 6.92 meters (twenty-five (25) feet) from the hazard, or in the nearest safe area outside of the release area if the release could pose any further danger to the employee while using the emergency shower facility.

(3) [3.] Manual or automatic actuators shall be easy to locate and readily accessible to the user.

(4) [4.] Shower enclosures, if used, shall provide for a minimum unobstructed area eighty-six and four-tenths (86.4) cm (thirty-four (34) inches) in diameter.

(5)(a)The valve shall be:

1. Designed to allow the water flow to remain on without the use of the operator's hands;

2. Designed to remain open until intentionally shut off;

3. Simple to operate and shall go from the "off" position to the "on" position in one (1) second or less; and

4. Resistant to corrosion by potable water.

(b) The valve actuator shall be large enough to be easily located by the operator in an emergency situation without the normal available visual cues. [5. The valve shall be designed in such a manner that the water flow remains on without the use of the operator's hands. The valve shall be designed to remain open until intentionally shut off. The valve shall be simple to operate and shall go from the "off" position to the "on" position in one (1) second or less. The valve shall be resistant to corrosion by potable water. The valve actuator shall be large enough to be easily located by the operator in an emergency situation without the normal available visual cues.]

(6) [6.] The shower unit shall be activated weekly to flush the line and to verify proper operation. (Before work is begun in an "establishment" that has not been occupied for a period of one (1) week or more the plumbed emergency shower facilities shall be activated to insure it is functioning properly.)

(7) [7.] A weekly record or a record consistent with subsection (6) of this section [subparagraph 6 of this paragraph] shall be maintained to verify compliance with inspection procedures for the previous twelve (12) consecutive months. These records may be affixed to the apparatus or kept in a location readily accessible to Labor Cabinet representatives of the Occupational Safety and Health Program.

(8) [8.] Each emergency shower station shall be identified with a highly visible sign which all employees can comprehend. The area around or behind the emergency shower shall be painted a bright color and shall be well lighted.

(9) [9. Instructions.] Instructions on proper usage shall be affixed to the shower facility which all employees are capable of comprehending and/or other signs depicting proper usage in the emergency setting.

(10) [10. All] employees who might be exposed to releases of "corrosives" shall be instructed in the proper use of emergency shower units at the time of initial assignment to the hazardous work area and whenever a new hazard is introduced into the work area. A training record shall be kept to verify training for compliance purposes for a period of three (3) years.

(11) [11.] Units shall be installed in accordance with the manufacturer's instructions.

(12) [12.] In "remote work areas" where this standard applies, an effective alarm system consisting of audible [and/]or visual alerting device(s) shall be installed. The audible and/or visible alarm shall activate when the eyewash unit is used and must continue until the unit is not in immediate use.

(13) [(4)] "Field operations" (areas outside the confines of an existing structure). Personal protective equipment.

(a) A face shield or goggles and appropriate personal protection equipment for hands and body shall be provided and utilized at the area where "corrosives" are to be used.

(b) Eyewash facilities shall be in accordance with 29 CFR 1910.151(d)(3)(a) as adopted by this regulation where feasible or 29 CFR 1910.151(d)(3)(b) as adopted by this regulation.

(14) [(5)] Effective dates. These requirements are effective October 1, 1992.

[29 CFR 1910.151 relating to medical services and first aid shall be changed to read as follows:

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

(2) Employers with eight (8) or more employees within the establishment shall have persons adequately trained to render first aid and first aid supplies approved by the consulting physician, along with a signed list of these supplies, shall be readily available. Outside salesmen, truck drivers, seasonal labor, and others who while performing their duties, are away from the premises more than fifty (50) percent of the time are not to be included in determining the number of employees.

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

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

~~for immediate emergency use.~~]

Section 5. [~~2.~~] Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

MRS. CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: June 11, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

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

803 KAR 2:313. Adoption of 29 CFR Part 1910.176-.190.

RELATES TO: KRS 338.011, 338.061, 29 CFR 1910.176-.1910.190 [~~Chapter 338, 29 CFR 1910~~]
STATUTORY AUTHORITY: KRS 338.051, 338.061 [~~Chapter 13A~~]
NECESSITY AND FUNCTION: **This administrative regulation is necessary for effective enforcement of the purposes and policies of the Occupational Safety and Health Act which is to insure, safe and healthful working conditions of Kentucky workers. This administrative regulation establishes standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.** [~~KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1910.~~]

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910.176-.190 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) 29 CFR 1910.177(a)(2), "Servicing Multipiece and Single Piece Rim Wheels," shall be amended as follows:

(a) Amendments as published in the Federal Register, Volume 52, Number 186, September 25, 1987 are incorporated by reference.

(b) Amendments to 29 CFR 1910.177(b), "Servicing Multipiece and Single Piece Rim Wheels," as published in Federal Register, Volume 53, Number 174, September 8, 1988, are incorporated by reference.

(2) The amendment to 29 CFR 1910.178(a)(7), "Powered Industrial Trucks," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(3) The amendment to 29 CFR 1910.178, "Powered Industrial Trucks," as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(4) 29 CFR 1910.178(g)(2) is amended by adding the following: Facilities shall be provided for flushing and neutralizing spilled electrolyte, for fire protection, for protecting charging apparatus from damage by trucks, and for adequate ventilation for dispersal of fumes from gassing batteries. In areas where electrolyte is handled or added to batteries there shall be emergency eyewash and emergency shower facilities installed in accordance with 1910.151(d)(3)(a) or 1910.151(d)(3)(b) and 1910.151(d)(3)(c) as adopted by 803 KAR 2:310. Note: This standard does not apply to those charging operations where the battery terminals are protected by physical barriers and no electrolyte is being manipulated. These requirements are effective October 1, 1992.

(5) [~~(4)~~] Revisions to 29 CFR 1910.179(j)(2)(iii) and (iv), "Overhead and Gantry Cranes," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, are incorporated by reference.

(a) Revision to 29 CFR 1910.179(m)(l), "Overhead and Gantry Cranes," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, is incorporated by reference.

(b) Revision to 29 CFR 1910.179, "Overhead and Gantry Cranes," as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

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

(a) Revisions to 29 CFR 1910.180(g)(l) and (2)(ii), "Crawler and Locomotive Truck Cranes," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, are incorporated by reference.

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

(c) Amendment to 29 CFR 1910.180, "Crawler, Locomotive, and Truck Cranes," as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(7) [~~(6)~~] Revisions to 29 CFR 1910.181(g)(1) and (3), "Derricks," as published in the Federal Register, Volume 51, Number 188, September 29, 1986, are incorporated by reference.

(a) The amendment to 29 CFR 1910.181(j)(4)(i), "Derricks," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(b) Amendment to 29 CFR 1910.181, "Derricks," as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

MRS. CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: June 11, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

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

803 KAR 2:317. Adoption of 29 CFR Part 1910.261-.275.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910.261-.275 [~~Chapter 338, 29 CFR 1910~~]
STATUTORY AUTHORITY: KRS 338.051, 338.061 [~~Chapter 13A~~]
NECESSITY AND FUNCTION: **This administrative regulation is necessary for effective enforcement of the purposes and policies of the Occupational and Safety and Health Act which is to insure, safe and healthful working conditions of Kentucky workers. This administrative regulation establishes standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.** [~~KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry. The standards~~

~~are arranged in numerical order in order to facilitate reference to 29 CFR 1910.~~]

Section 1. The Occupational Safety and Health Standards Board hereby adopts 29 CFR Part 1910.261-.275 revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:

(1) The amendment to 29 CFR 1910.261, "Pulp, Paper, and Paperboard Mills," as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(2) The amendment to 29 CFR 1910.265(d)(2) (iv)(c), "Sawmills," as published in Federal Register, Volume 53, Number 70, April 12, 1988, is incorporated by reference.

(3) The amendment to 29 CFR 1910.265, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(4) The amendments to 29 CFR 1910.266(c)(4) (iii) and (iv), "Pulpwood Logging," as published in Federal Register, Volume 53, Number 70, April 12, 1988, are incorporated by reference.

(5) The amendment to 29 CFR 1910.266, as published in the Federal Register, Volume 55, Number 151, August 6, 1990, is incorporated by reference.

(6) 29 CFR 1910.268(c), "Telecommunications," shall be revised as follows: Revisions as published in the Federal Register, Volume 52, Number 187, September 28, 1987, are incorporated by reference.

(7) 29 CFR 1910.268(b)(2)(i) is revised to read as follows: Battery handling. Eye protection devices which provide side as well as frontal eye protection for employees shall be provided when measuring storage battery specific gravity or handling electrolyte, and the employer shall ensure that such devices are used by the employees. The employer shall also ensure that acid resistant gloves and aprons shall be worn for protection against splattering. Facilities for quick drenching or flushing of the eyes and body shall be provided in accordance with 1910.151(d)(3)(a) or 1910.151(d)(3)(b) and 1910.151(d)(3)(c) as adopted by 803 KAR 2:310, unless the storage batteries are of the enclosed type and equipped with explosion proof vents (in which case sealed water rinse or neutralizing packs may be substituted for the quick drenching or flushing facilities). Employees assigned to work with storage batteries shall be instructed in emergency procedures such as dealing with accidental acid spills. ~~[Note:]~~ This standard shall ~~[does]~~ not apply to those charging operations where the battery terminals are protected by physical barriers and no electrolyte is being manipulated. These requirements are effective October 1, 1992.

(8) ~~[(7)]~~ 29 CFR 1910.272, "Grain Handling Facilities," as published in the Federal Register, Volume 52, Number 251, December 31, 1987, is incorporated by reference.

(a) The amendments to 29 CFR 1910.272, "Grain Handling Facilities," as published in the Federal Register, Volume 53, Number 96, May 18, 1988, are incorporated by reference.

(b) The amendment to 29 CFR 1910.272, as published in the Federal Register, Volume 55, Number 119, June 20, 1990, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

MRS. CAROL M. PALMORE, Chairman
APPROVED BY AGENCY: June 11, 1992
FILED WITH LRC: June 15, 1992 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Alcoholic Beverage Control
(As Amended)

804 KAR 9:040. Retail package liquor license quota.

RELATES TO: KRS 241.060, 241.065, 241.075, 243.030
STATUTORY AUTHORITY: KRS 241.060
NECESSITY AND FUNCTION: **This administrative regulation is necessary to establish individual quotas for smaller political subdivisions within a county when the general retail liquor license quota established in 804 KAR 9:010, if applied, would result in the issuance of an impermissible number of licenses disproportionate to the population of the political subdivision. The function of this administrative regulation is to establish individual retail liquor license quotas for political subdivisions of a county in which a prohibition has been repealed.** ~~[The express provisions of KRS 241.060(2) enable the Alcoholic Beverage Control Board to limit the number of licenses to be issued in any political subdivision of the state and permit the board to make reasonable division and subdivisions of the state or any political subdivision into districts for this purpose. 804 KAR 9:010 establishes a general retail liquor license quota based upon county population for any area within that county in which prohibition has been repealed. Instances may arise, however, in which the quota based on county population permits the issuance of retail liquor licenses in a number totally disproportionate to the population of the area in said county in which prohibition has been repealed. It is, therefore, necessary for the board to establish individual quotas when such a situation as above described arises.~~]

~~[Section 1. The Alcoholic Beverage Control Board may, for good reason shown, adopt by regulation, retail liquor license quotas for political subdivisions less than a county where the county quota established by 804 KAR 9:010 would be excessively disproportionate to that based upon the population of the smaller political subdivisions. In such instances, the quota set in Sections 1 and 2 of 804 KAR 9:010 shall be inapplicable. The quota exceptions contained in Section 2 of 804 KAR 9:010 shall remain in effect and be incorporated herein.~~]

Section **1. The city of Pikeville repealed prohibition on April 12, 1983, therefore the board shall set the retail package liquor license quota of thirteen (13) for the city of Pikeville as the resident population of the city of Pikeville is 4,756 and the resident population of Pike County is 81,123.** ~~[2. Pursuant to the authority herein, the City of Pikeville, having voted to repeal prohibition on April 12, 1983, the actual resident population of the City of Pikeville being 4,756, and the resident population of Pike County being 81,123 according to the 1980 census, it is determined that the retail package liquor license quota established according to 804 KAR 9:010 would create a permissible number of retail package liquor licenses excessively disproportionate to the population of the City of Pikeville, the retail package liquor license quota for the City of Pikeville, Kentucky, is therefore set at thirteen (13).~~]

Section **2. The city of Madisonville repealed prohibition on March 10, 1992, therefore the board shall set the retail package liquor license quota of seven (7) for the city of Madisonville as the resident population of the city of Madisonville is 16,200 and the resident population of Hopkins County is 45,964.** ~~[3. Pursuant to the authority herein, the city of Madisonville, having voted to repeal prohibition on March 10, 1992, the actual resident population of the city of Madisonville being 16,200, and the resident population of Hopkins County being 45,964 according to the 1992 population projections of the Urban Studies Center of the University of Louisville, it is determined that the retail package liquor license quota established according to 804 KAR 9:010 would create a permissible number of retail package liquor licenses excessively disproportionate to the population of the city of Madisonville, the retail package liquor license quota for the city of Madisonville, Kentucky, is therefore set~~

~~at seven (7).~~]

DON W. STEPHENS, Commissioner
ED HOLMES, Secretary
APPROVED BY AGENCY: April 23, 1992
FILED WITH LRC: April 24, 1992 at 3 p.m.

REGULATIONS AMENDED AFTER HEARING OR WRITTEN COMMENTS RECEIVED

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (Amended After Hearing)

11 KAR 4:020. Disapproval, assessment of liabilities [~~probation~~], limitation, suspension or termination of eligibility to participate in authority programs.

RELATES TO: KRS 164.746(6), 164.748(13), 164.748(14), 34 CFR §682.401(b)(10)(i)(C), **20 USC 1078(b)(1)(T),(U), 1082(h)(2),(3)**

STATUTORY AUTHORITY: KRS 164.748(4), 34 CFR §682.401(b)(10)(i)(C), **20 USC 1078(b)(1)(T),(U)**

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority administers programs to provide financial assistance to students to attend postsecondary institutions. The board is empowered by statute to enter into contracts with eligible educational institutions and lenders for participation in these programs and disapprove, limit, suspend or terminate participation. KRS 164.746(6) empowers the board to adopt regulations governing the conduct of the authority's business and to appoint officers and employees and prescribe their duties. This regulation prescribes the ministerial functions of authority officers and sets forth the conditions and procedures under which the authority or its delegated officers may initiate action to assess contractual liabilities or disapprove, [probate,] limit, suspend or terminate the participation [~~eligibility~~] of [~~educational institutions,~~] eligible educational institutions or eligible lenders [~~to participate~~] in any of the student financial assistance programs administered by the authority. Federal **statutes and** regulations governing the authority's insured student loan program require the authority to establish **criteria, rules, or regulations which are substantially the same as regulations with respect to emergency action, limitation, suspension, or termination issued by the secretary**, disseminate and enforce such standards and procedures. This amendment applies uniform standards and procedures to all of the authority's programs.

Section 1. Definitions. (1) The definition of the term "authority" is governed by KRS 164.740(1).

(2) "Authority program" means a program of student financial assistance administered or funded by the authority pursuant to KRS 164.740 through 164.785 or the federal act.

(3) The definition of the term "board" is governed by KRS 164.740(2).

(4) The term "delegated officer" means the executive director, general counsel, directors of the divisions of program administration or fiscal affairs, or any other individual the board may designate to whom the board has delegated ministerial responsibilities set forth in this regulation.

(5) The definition of the term "eligible institution" is governed by KRS 164.740(5).

(6) The definition of the term "eligible lender" is governed by KRS 164.740(6).

(7) The definition of the term "federal act" is governed by KRS 164.740(9).

(8) The term "funds" means any money, commitments to provide money, and commitments of insurance under any or all authority programs.

(9) The definition of "insured student loan" is governed by KRS 164.740(12).

(10) The term "limitation" means:

(a) A limit on the number or percentage of students enrolled or planning to enroll in a participating institution who may receive funds through an authority program;

(b) A limit, for a stated period of time, on the percentage of a participating institution's total receipts from tuition and fees derived from authority program funds;

(c) A requirement that an institution that is already participating obtain a bond, in a specified amount, to assure its ability to meet its financial obligations to students, lenders and the authority funds;

(d) A limit on the number or amount of insured loans that may be made or held by a participating lender or that may be received by students at a participating institution; or

(e) Any special conditions or procedures required in the administration of authority programs.

(11) The definition of "participating institution" is governed by KRS 164.740(15).

(12) The definition of "participating lender" is governed by KRS 164.740(16).

(13) The definition of "secretary" is governed by KRS 164.740(20).

Section 2. Standard of Conduct. (1) A participating institution shall establish and consistently implement policies and procedures to ensure that [~~it~~]:

(a) **The institution** fully and continuously complies with all statutory, regulatory, and contractual requirements related to the administration of authority programs and performs all duties and responsibilities to students, participating lenders, the authority, and, if applicable to participation in an authority program, the secretary;

(b) **The institution** makes full and accurate representations of facts required to be reported or disclosed or voluntarily disclosed to students, the authority, and, if applicable to participation in an authority program, the secretary;

(c) **The institution** disburses, holds, and accounts for funds administered through any authority program with the standard of care and diligence of a fiduciary;

(d) The institution does not fail to make timely refunds to students as required by regulations issued by the secretary or fail to satisfy within thirty (30) days of issuance a final judgment attained by a student seeking such a refund;

(e) Neither the institution owner, director, or officer of the institution is found guilty in any criminal, civil, or administrative proceeding or liable in any civil or administrative proceeding regarding the obtaining, maintenance, or disbursement of state or federal grant, loan or work assistance funds; and

(f) Neither the institution or an owner, director, or officer of the institution has unpaid financial liabilities involving the improper acquisition, expenditure, or refund of state or federal financial assistance funds.

(2) A participating lender in the authority's insured student loan program shall establish and consistently implement policies and procedures to ensure that it:

(a) Fully and continuously complies with all statutory, regulatory, and contractual requirements related to the administration of authority programs and performs all duties and responsibilities to students, the authority, and the secretary;

(b) Performs directly, or by contract with a third party servicer, due diligence in the approval, making, servicing and collection of authority insured student loans and in the timely and accurate filing of insurance claims on those loans.

(c) Makes full and accurate representations of facts required to be reported or disclosed or voluntarily disclosed to students, the authority, and the secretary.

(3) A participating institution and a participating lender shall establish, maintain, and make accessible to the authority, and if applicable to participation in an authority program, to the secretary a system of complete and accurate records sufficient to demonstrate:

(a) Compliance with all statutory, regulatory, and contractual requirements related to the administration of authority programs and the performance of all duties and responsibilities to students, the authority, and, if applicable to participation in an authority program, the secretary;

(b) Full and accurate disclosure of facts required to be reported or disclosed or voluntarily disclosed to students, the authority, and, if applicable to participation in an authority program, the secretary; and

(c) Proper and timely disposition of funds and administration of authority programs.

(4) Noncompliance with the standard of conduct in this section by a participating institution or a participating lender shall be grounds for disapproval, assessment of liabilities, limitation, suspension, or termination. **The delegated officer may, upon receipt of a complaint or other reliable information indicating that a participant may be in violation of applicable laws, regulations, special arrangements, agreements, or limitations, without restricting the availability of other remedies provided in this regulation, give the participant an opportunity to respond to the complaint or information and show that the violation has been corrected or submit an acceptable plan for correcting the violation and preventing its recurrence. The delegated officer shall not delay the procedures for assessment of liabilities, limitation, suspension, or termination. During the informal compliance process if the delay would result in harm to the authority, students, or the secretary or the informal compliance procedure will not result in correction of the alleged violation.**

Section 3. [~~4.~~] Disapproval. The board [~~authority~~] or any of its delegated officers may, upon verification of misstatements of fact, financial instability, lack of administrative capability, or failure to meet eligibility requirements under applicable law or regulations, related to an application to participate in an authority administered program, notify the applicant of the authority's intent to disapprove such application. For purposes of requesting review of a limitation on participation (including a requirement of a surety bond or other collateral) imposed as a precondition of initial approval or reinstatement, such limitation shall be regarded as a disapproval.

Section 4. Assessment of Liabilities. (1) [~~2. Probation.~~] The board [~~authority~~] or any of its delegated officers may, initiate action to assess liabilities against a participating institution or a participating lender for reimbursement of funds, upon documentation that a participant has failed through acts of commission or omission, including but not limited to improper disbursement or retention of funds, failure to remit funds due on a timely basis, certification of an application for an ineligible student, or failure to account for funds received or expended, to properly administer any program for which the participant [~~institution~~] has previously been approved[~~, place the participant on probation for a period not to exceed six (6) months~~].

(2) The board or its delegated officer may notify a participating institution or a participating lender that the authority requires the participant to take reasonable and appropriate corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements or limitations. The corrective action may include payment of any funds to the authority, or to designated recipients, which the participant improperly received, withheld, disbursed or caused to be awarded or disbursed. Corrective action may, for example, relate to:

(a) With respect to the insured student loan program:

1. Ineligible interest benefits, special allowance, or claims paid by the authority; and

2. Discounts, premiums or excess interest paid in violations of rules of the secretary; and

(b) With respect to all authority programs:

1. Refunds due to students under program regulations; and

2. Any grants, work-study assistance, scholarships or loans caused to be awarded or disbursed to ineligible students, in excess of legal maximums, or otherwise in violation of applicable regulations.

Section 5. [~~3.~~] Limitation. The board [~~authority~~] or any of its delegated officers may, upon documentation that a participating institution or a participating lender [~~participant in any authority administered program~~] has failed through acts of commission or omission to fully adhere to the standard of conduct set forth in Section 2 of this regulation [~~abide by the regulations~~] pertaining to any authority administered program for which the participant has previously been approved, notify the participant of the authority's intent to place limits on the participant's eligibility to participate in authority administered programs [~~for a period not to exceed one (1) year~~].

Section 6. [~~4.~~] Suspension. The board [~~authority~~] or any of its delegated officers may, upon documentation that a participating institution or a participating lender [~~the participant~~] has substantially or repeatedly failed through acts of commission or omission to adhere to the standard of conduct set forth in Section 2 of this regulation [~~abide by the regulations~~] pertaining to any authority administered program for which the participant has previously been approved [~~issued approval~~], notify the participant of the authority's intent to suspend the participant's eligibility to participate in authority administered programs for a period not to exceed sixty (60) days, unless the authority and participant agree otherwise or the delegated officer initiates a limitation or termination during the sixty (60) days [~~one (1) year~~].

Section 7. [~~5.~~] Termination. The board [~~authority~~] or any of its delegated officers may, following any period of [~~probation,~~] limitation or suspension, in the absence of correction of deficiencies which resulted in the adverse action, notify the participant of the authority's intent to terminate a participant's eligibility to participate in all or any of the authority administered programs. The board or any of its delegated officers may, with or without prior limitation or suspension, notify the participant of the authority's intent to terminate the participation of a participating institution or a participating lender upon documentation of an intentional violation or a substantial pattern or practice indicating failure or inability to adhere to the standard of conduct set forth in Section 2 of this regulation, including but not limited to a repetition of previously cited deficiencies. A termination prohibits a participant or the authority from making or increasing awards under authority programs, making any other new obligations against authority funds, and prohibits further guarantee commitments by the authority under the insured student loan programs. The participation of an educational institution or lender shall be deemed automatically terminated without prior action or notice by the authority upon cessation of operation as an ongoing business, loss of state licensure, or termination of its eligibility by the secretary. [~~Participants which have their eligibility terminated may not submit a new application for approval to the authority prior to the expiration of one (1) calendar year immediately following the date of termination.~~]

Section 8. Emergency Action. (1) Under an emergency action, the board acting through its delegated officer may immediately withhold program funds from the students attending a participating institution or from a participating lender, withdraw the right of the participant to certify or approve applications, and preclude the participant from obligating or disbursing funds under any authority program. The delegated officer may initiate an emergency action against a participant only if that officer:

(a) Receives information, determined by the delegated official to be reliable:

1. That the participant is substantially failing to adhere to the standard of conduct set forth in Section 2 of this regulation or is violating any provision of statute, regulation, or any applicable special arrangement, agreement, or limitation; or

2. That the participant has misrepresented any material facts to students, the authority, or, as applicable to participation in an authority program, the secretary; or

3. That the participant ceases to meet the requirements for approval of participation by the authority;

(b) Determines that immediate action is necessary to prevent loss or misuse of funds; and

(c) Determines that the risk of loss or misuse outweighs the importance of delaying the effective date of action through the procedures for limitation, suspension, or termination contained in this regulation.

(2) The emergency action takes effect on the date a notice, personally delivered or mailed to the participant by the delegated officer by certified mail, return receipt requested, is received by the participant. The notice shall state the basis on which the emergency action is based, the consequences of the emergency action to the

institution or lender, and that the participant may request an opportunity to show cause why the emergency action is unwarranted. An emergency action may not exceed thirty (30) days unless the board or a delegated officer initiates a limitation, suspension, or termination proceeding under this subpart against the participant within those thirty (30) days, in which case the delegated officer may extend the emergency action until the completion of those proceedings, including any appeal. The continuation, modification, or cessation of the emergency action during the period described in this paragraph is at the sole discretion of the delegated officer.

Section 9. [6.] Notices. (1) In the event that the delegated officer finds that the authority should assess any liabilities or that participation [~~eligibility~~] of any applicant or participant should be [~~is~~] disapproved, [~~probated,~~] limited, suspended or terminated by act [~~of an officer~~] of the authority, the applicant or participant shall be provided with notice of such action which shall be issued on behalf of the board and signed by [~~in the name of~~] the officer and shall contain a concise statement of the consequences and reason for the disapproval, assessment of liabilities, [~~probation,~~] limitation, suspension or termination of eligibility and sufficient information to reasonably apprise the applicant or participant of the right to request reconsideration of disapproval or **submit** [~~appeal other actions~~] to the authority **a request** for a hearing on all issues contained therein **or written material indicating why the action should not take place**. The proposed date for payment of any assessed liabilities or the proposed effective date of any limitation, suspension or termination, which shall be more than twenty (20) days after the date of mailing of the notice of intent, shall be specified in the notice. The assessment of liabilities shall be based upon payment by the specified due date, and any extension of that date due to a request for a hearing or further appeal may result in the accrual of additional amounts due if interest accrual is applicable.

(2) All requests for hearings **shall** [~~must~~] be made to the authority at Frankfort, Kentucky 40601, within twenty (20) days of receipt of the notice. All [~~Such~~] notices to or from the authority shall [~~or appeals may~~] be delivered by an individual eighteen (18) years old or older who shall prove service by his affidavit or signature of the recipient [~~effected in the manner prescribed by law for the service of civil process~~] or by the officer forwarding same to the applicant or participant, or by the applicant or participant forwarding same to the authority by U.S. [~~registered mail or~~] certified mail, **return receipt requested** [~~postage prepaid~~], to the address of the applicant or participant (as reflected by the records of the authority) or to the authority at Frankfort, Kentucky 40601. If a party refuses to accept a notice served under this section, the notice shall be deemed received on the date that the party refuses to accept the notice.

Section 10. Request for Review. (1) An eligible institution or an eligible lender seeking reconsideration of a final determination of disapproval shall file a written request together with any relevant records or materials for review with the delegated officer issuing the determination no later than forty-five (45) days from the date it receives the determination. The applicant shall identify the issues and facts in dispute and the applicant's position together with the pertinent facts and reasons supporting that position.

(2) An applicant requesting review of the determination of disapproval issued by the delegated officer shall have the burden of proving that the applicant complied with requirements for approval. An applicant may submit as additional evidence to the delegated officer only materials within one (1) or more of the following categories:

(a) Complete audit reports and audit work papers for audits performed by the United States Education Department or independent audit work papers, records, and other materials;

(b) Complete program review reports and reports of resolution of disputed program reviews;

(c) Complete accreditation or licensure review reports and reports of resolution of disputed accreditation or licensure findings;

(d) Internal records and other materials if the records or materials are not:

1. Related to a period of time other than the period of time under consideration;

2. Related to an audit or program review of an institution or lender other than the applicant (unless the determination involves a change of ownership); or

3. Related to policies and procedures that have not yet been implemented.

Section 11. Stay of Proceedings. [~~Unless an emergency action is initiated,~~] A limitation, suspension or termination will not be effective on the date specified in the notice if the delegated officer receives a timely request for a hearing, and the proposed effective date shall continue to be stayed pending the outcome of a hearing.

Section 12. [~~7.~~] Hearings. (1) In the event assessment of liabilities [~~disapproval, probation~~], limitation, suspension or termination of eligibility results from the action of a delegated officer of the authority, the [~~applicant or~~] participant may request [~~appeal to the full authority for~~] a hearing to determine the facts in the case **or submit written material indicating why the action should not take place. If the participant does not request a hearing, but submits written material, the delegated officer shall consider that material and notify the participant that either the proposed action is dismissed or the proposed action shall take effect on a specified date**. Nothing in this section shall preclude the delegated officer, at his sole discretion, from engaging in informal discussions with representatives of the participant for the purpose of settling the dispute.

(2) Notification of hearing. Upon receipt of a participant's request for a hearing, the delegated officer shall arrange for a hearing on the record before a hearing officer, and within thirty (30) days of the delegated officer's receipt of an institution's request for review, the hearing officer shall establish a schedule for any discovery, prehearing conferences, and the time and place of the hearing, which shall be scheduled to occur no later than 120 days from the date upon which the delegated officer receives the request for a hearing.

(3) At a [~~such~~] hearing the officer or officers of the [~~applicant or~~] participant may be accompanied by counsel of their own choosing and at their own expense. The hearing may be conducted by a hearing officer or a hearing committee appointed by the board. [~~All members of the authority and all persons appointed by the board as hearing officers or as members of a hearing committee are authorized to administer oaths, issue subpoenas for the attendance of witnesses and for the production of books, papers and documents and to cite for contempt before the court having jurisdiction in the county in which the hearing is held for disobedience of its process or for contumacious of disrespectful conduct.~~] The [~~applicant or~~] participant proceeded against shall be entitled to be represented at the hearing in person or by counsel or both and shall be entitled to introduce testimony by witnesses or, if the hearing officer [~~authority~~] so permits, by depositions.

(4) A prehearing conference may be convened by the hearing officer if he or she thinks that such a conference would be useful, or if requested by the authority or the participant to allow the parties to settle or narrow the dispute. If agreed to by the hearing officer and the parties, a prehearing conference may consist of a conference telephone call, an informal meeting, or the submission and exchange of written material.

(5) The hearing process may be expedited as agreed by the hearing officer and the parties. Procedures to expedite may include, but are not limited to, the following:

(a) Scheduling of conferences;

(b) Setting time limits for hearings, submission of written documents, and discovery;

(c) Restricting the number or length of submissions;

(d) Shortening any time limits prescribed in this regulation;

(e) Limiting the hearing to written documentation; or

(d) Stipulation by the parties to facts and legal authorities not in dispute.

(6) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable. However, only evidence that is relevant and material to the proceeding and is not unduly repetitious shall be admissible, and discussions of settlement

between the parties or the terms of settlement offers are not admissible. The hearing officer shall not admit evidence that is excludable on constitutional or statutory grounds or privileged as recognized in the courts of the Commonwealth. Hearsay evidence shall be admissible, but shall not be sufficient in itself to support the hearing officer's decision. All testimony shall be made under oath. Evidentiary objections may be made at any time during the prehearing or hearing process and shall be noted in the record of the hearing.

(7) The authority has the burden of persuasion in any assessment of liabilities, limitation, suspension, or termination proceeding under this regulation that a reasonable basis exists under the circumstances for the action being taken.

(8) Discovery, as provided for under the Kentucky Rules of Civil Procedure, is permitted, except that, in recognition of the authority's contractual right to inspect records and the participant's right to inspect public records under KRS 61.870 et seq., the hearing officer may limit the scope, method, and time for discovery as appropriate to expeditiously and fairly resolve the issues, and the hearing officer may summarily rule against a noncomplying party. The hearing officer **may not** [~~is not authorized to~~] issue subpoenas. Nothing in this subsection shall be construed as allowing access to the personal notes, observations, or conclusions of authority staff or to the work product of counsel.

(9) The authority shall provide for recording of the proceeding and shall make the record available to the participant upon its request and upon its payment of any fee required by the individual providing a transcript.

(10) The hearing officer shall regulate the course of the proceeding and conduct of the parties during the hearing and take all steps necessary to conduct a fair and impartial proceeding. The parties shall provide available personnel who have knowledge about the matter under review for oral or written examination. The hearing officer shall take whatever measures are appropriate to expedite the proceeding, and may terminate the hearing and issue a decision against a party failing to comply with any time limits or procedure.

(11)(a) Hearing officers and hearing committees shall prepare [~~a proposed~~] findings of fact and conclusions of law based only on evidence considered at the hearing and on matters given official notice, and shall issue a written initial decision to the parties by certified mail, return receipt requested, within sixty (60) days after the last brief is filed, the last day of the hearing (if the hearing officer does not request the parties to submit briefs), or the date on which the hearing officer terminates the hearing [~~present recommendations to a committee of the board~~].

(b) The hearing officer's decision **shall** [~~must~~] state whether the imposition of the liabilities, limitation, suspension or termination sought by the delegated officer is warranted, in whole or in part.

(c) If the action brought against a participant involves its failure to provide a surety bond, letter of credit or other collateral in the amount specified by the delegated officer, the hearing officer shall find that the amount of the bond, letter of credit or other collateral specified by the delegated officer was appropriate unless the participant can demonstrate that the amount was unreasonable. [~~If the findings warrant, the committee of the board may uphold the findings of the officer of the authority or may find in favor of the participant.~~]

Section 13. [~~8.~~] Decisions and Appeals. (1) All initial assessing liabilities, [~~decisions~~] disapproving, [~~probating,~~] limiting, suspending or terminating participation [~~eligibility~~] may be made by a delegated [~~an~~] officer of the authority and shall be binding upon the authority and the applicant or participant as the decision of the board in the absence of a request for review **of disapproval in accordance with Section 10 of this administrative regulation** or an appeal **of other actions in accordance with Section 12 of this administrative regulation** by the applicant or participant to the authority.

(2) In the event the applicant, participant, or a delegated officer of the authority does not petition the board for a review of the hearing officer's decision [~~hearing~~], the decision resulting from a hearing conducted by the authority shall become final and conclusive as the decision of the board twenty (20) days after notice thereof is given as provided.

(3)(a) An appeal to the board of a hearing officer's initial decision is made by sending a written notice of appeal to the executive director of the authority. This notice must be postmarked not later than twenty (20) days after the issuance of the hearing officer's initial decision, and the appealing party shall send a copy of its appeal notice to the other party.

(b) Within ten (10) days after submitting the notice of appeal, the party that appeals shall submit a brief to the board explaining why the initial decision of the hearing officer should be overturned or modified. The appealing party may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact shall [~~must~~] be supported by the evidence introduced into the record at the hearing, stipulations of the parties, documentary evidence submitted to the hearing officer (if the hearing consisted of written submissions), or matters that may be officially noticed. The opposing party shall respond within ten (10) days after receipt of a brief and proposed findings of fact or conclusions of law from the appealing party. Neither party may introduce new evidence on appeal to the board. Each party shall provide a copy of its brief to the other party when it submits its brief to the board.

(c) The initial decision of the hearing officer assessing liabilities or limiting, suspending, or terminating participation does not take effect pending the appeal.

(d) The board reviews the hearing officer's initial decision and issues a final decision. The board shall adopt the initial decision unless it is clearly unsupported by the evidence presented at the hearing. The board considers only evidence introduced into the record at the hearing, facts agreed to by the parties, documents submitted to the hearing officer (if the hearing consisted of only written submissions), and matters that may be officially noticed. The board's final decision may affirm, modify or reverse the hearing officer's initial decision and shall include a statement of the reasons for the decision.

(e) An assessment of liabilities becomes binding and a limitation, suspension or termination takes effect upon the date on which notice of the final decision of the board is mailed to the participant.

Section 14. Removal of Limitation. (1) A participating institution or a participating lender whose participation in any or all authority programs has been limited after participation may not apply for removal of the limitation before the expiration of twelve (12) months from the effective date of the limitation.

(2) After the minimum limitation period, the participant may request removal of the limitation in writing and show that the deficiency on which the limitation was based has been corrected.

(3) No later than sixty (60) days after the receipt of the request, the delegated officer shall respond to the participant by granting its request, denying its request, or granting the request subject to other limitations.

(4) If the delegated officer denies the request or establishes other limitations, the participant may request a review in accordance with Section 10 of this regulation and be given an opportunity to show cause why its participation should be fully reinstated.

(5) The participant's request for a review shall not waive its right to participate in any or all authority programs if it complies with the continuing limitation(s) pending the outcome of the review.

Section 15. Reinstatement After Termination. (1) An eligible institution or an eligible lender whose participation in any or all of the authority programs has been terminated may file a request for reinstatement as a participating institution or a participating lender.

(2) Except for an institution or lender whose participation has been terminated for engaging in substantial misrepresentation, a request for reinstatement may not be made before the expiration of eighteen (18) months after the effective date of the termination.

(3) An institution or lender whose participation was terminated because the institution or lender engaged in substantial misrepresentation may not request reinstatement before the expiration of three (3) months after the effective date of the termination.

(4) An institution or lender seeking reinstatement shall:

(a) Demonstrate to the authority's satisfaction that it has corrected the deficiencies on which its termination was based, including

payment in full to the authority or to other designated recipients of funds that the institution or lender has improperly received, withheld, disbursed or caused to be disbursed;

(b) Meet all the requirements for initial approval of participation; and

(c) Enter into a new administrative agreement or contract of insurance with the authority.

(5) The board or its delegated officer, within sixty (60) days of receiving the reinstatement request, shall grant the request, deny the request, or grant the request subject to limitations. A denial of the request under this section shall be deemed to be a determination of disapproval under Section 3 of this regulation.

Section 16. Report to Secretary. When a decision to limit, suspend or terminate the participation of a participating institution or a participating lender becomes final in accordance with Section 13 of this administrative regulation, and the decision effects participation in the authority's insured student loan program, the delegated officer initiating the action shall report the action to the secretary for review pursuant to Section 432(h)(2) and (3) of the federal act.

Section 17. [~~16.~~] If any period of time prescribed by this regulation differs from the corresponding period of time prescribed in 11 KAR 3:060, the shorter period of time shall be controlling.

WAYNE STRATTON, Chairman
APPROVED BY AGENCY: September 8, 1992
FILED WITH LRC: September 9, 1992 at 1 p.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 7:001. Definitions for 405 KAR Chapter 7.

RELATES TO: KRS Chapter 350, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

STATUTORY AUTHORITY: KRS Chapter 13A, 350.028, 350.465, 7 CFR Part 657, 30 CFR Parts 700.5, 701.5, 707.5, 730-733, 735, 761.5, 762.5, 773.5, 800.5, 843.5, 917, 30 USC 1253, 1255, 1291

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations under the permanent regulatory program. This regulation provides for the defining of certain essential terms used in 405 KAR Chapter 7.

Section 1. Definitions. (1) "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or groundwater, fish, wildlife, vegetation or other resources protected by KRS Chapter 350 may be adversely impacted by surface coal mining and reclamation operations.

(2) "Administrative hearing" means a formal adjudicatory hearing conducted pursuant to 405 KAR 7:091 and 405 KAR 7:092 before the cabinet.

(3) [~~(2)~~] "Administratively complete application" means an application for permit approval, or approval for coal exploration if required, which the cabinet determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate technical processing and public review.

(4) [~~(3)~~] "Affected area" means any land or water area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings associated with underground mining activities, auger mining, or in situ mining. The affected area shall include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road:

(a) Was designated as a public road pursuant to the laws of the jurisdiction in which it is located;

(b) Is maintained with public funds, and constructed in a manner similar to other public roads of the same classification within the jurisdiction; and

(c) There is substantial (more than incidental) public use.

(5) [~~(4)~~] "Applicant" means any person seeking a permit, permit revision, permit amendment, permit renewal, or transfer, assignment, or sale of permit rights from the cabinet to conduct surface coal mining and reclamation operations or approval to conduct coal exploration operations pursuant to KRS Chapter 350 and all applicable regulations.

(6) [~~(5)~~] "Application" means the documents and other information filed with the cabinet seeking issuance of permits; revisions; amendments; renewals; and transfer, assignment or sale of permit rights for surface coal mining and reclamation operations or, if required, seeking approval for coal exploration.

(7) [~~(6)~~] "Approximate original contour" is defined in KRS 350.010.

(8) [~~(7)~~] "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for domestic, agricultural, industrial, or other beneficial use.

(9) [~~(8)~~] "Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface and shall also include all other methods of mining in which coal is extracted from beneath the overburden by mechanical devices located at the face of the cliff or highwall and extending laterally into the coal seam, such as extended depth, secondary recovery systems.

(10) [~~(9)~~] "Blaster" means a person who is directly responsible for surface blasting operations in surface coal mining and reclamation operations or coal exploration operations.

(11) [~~(10)~~] "Cabinet" is defined in KRS 350.010.

(12) [~~(11)~~] "Cessation order" means an order for cessation and immediate compliance and any similar order issued by OSM under SMCRA or issued by any state pursuant to its laws or regulations under SMCRA.

(13) [~~(12)~~] "CFR" means Code of Federal Regulations.

(14) [~~(13)~~] "Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77.

(15) [~~(14)~~] "Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) Environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 405 KAR Chapters 7 through 24 if the activity may cause any disturbance of the land surface or may cause any appreciable effect upon land, air, water, or other environmental resources.

(16) [~~(15)~~] "Coal mine waste" means coal processing waste and underground development waste.

(17) [~~(16)~~] "Coal processing waste" means materials which are separated from the product coal during the cleaning, concentrating, or other processing or preparation of coal.

(18) [~~(17)~~] "Collateral bond" means an indemnity agreement in a sum certain payable to the cabinet executed by the permittee and which is supported by the deposit with the cabinet of cash, negotiable certificates of deposit, or an irrevocable letter of credit of any bank organized and authorized to transact business in the United States.

(19) [~~(18)~~] "Cumulative measurement period" means the period of time over which both cumulative production and cumulative revenue are measured.

(20) [~~(19)~~] "Cumulative production" means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total shall be governed by Section 7 of 405 KAR 7:035.

(21) [~~(20)~~] "Cumulative revenue" means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

(22) [~~(21)~~] "Day" means calendar day unless otherwise specified to be a working day.

(23) [~~(22)~~] "Department" means the Department for Surface Mining Reclamation and Enforcement.

(24) [~~(23)~~] "Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by 405 KAR Chapter 10 is released.

(25) [~~(24)~~] "Embankment" means a manmade deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water; to support roads or railways; or for other similar purposes.

(26) [~~(25)~~] "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations, for which construction began prior to January 18, 1983.

(27) [~~(26)~~] "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable the construction to be accomplished. Only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line, or similar construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of KRS Chapter 350 and 405 KAR Chapters 7 through 24.

(28) "Final order" means final order of the secretary, which may include[~~s~~] findings of fact, conclusions of law, and an order.

(29) [~~(27)~~] "Government-financed construction" means construction funded fifty (50) percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

(30) [~~(28)~~] "Government financing agency" means a federal, Commonwealth of Kentucky, county, municipal, or local unit of government, or a cabinet, department, agency, or office of the unit which, directly or through another unit of government, finances construction.

(31) [~~(29)~~] "Groundwater" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

(32) "Hearing officer" means the individual duly qualified and assigned as presiding officer to conduct administrative hearings; the term includes the chief hearing officer.

(33) [~~(30)~~] "Highwall" means the face of exposed overburden and coal in an open cut of a surface mining activity or for entry to underground mining activities.

(34) [~~(31)~~] "Historically used for cropland."

(a) "Historically used for cropland" means that lands have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding:

1. The application; or

2. The acquisition of the land for the purpose of conducting surface coal mining and reclamation operations.

(b) Lands meeting either paragraph (a)1 or 2 of this subsection shall be considered "historically used for cropland".

(c) In addition to the lands covered by paragraph (a) of this subsection, other lands shall be considered "historically used for cropland" as described below:

1. Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years immediately preceding the acquisition or the application but for some fact of ownership or control of the land unrelated to the productivity of the land; and

2. Lands that the cabinet determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, are clearly cropland but fall outside the specific five (5) years in ten (10) criterion.

(d) Acquisition includes purchase, lease, or option of the land for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations.

(35) [~~(32)~~] "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationship between precipitation, runoff, evaporation, and changes in ground and surface water storage.

(36) [~~(33)~~] "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

(37) [~~(34)~~] "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of KRS Chapter 350 in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(38) [~~(35)~~] "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

(39) "Individual", as used in 405 KAR 7:091 and 7:092, means a natural person.

(40) "Industrial/commercial lands" means lands used for:

(a) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products, and heavy and light manufacturing facilities.

(b) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(41) "Initiating document" means a petition for administrative hearing, an administrative complaint, a show cause order, or any other document which commences an administrative proceeding.

(42) [~~(36)~~] "In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

(43) "Interim report" means statements made by a hearing officer in written form which are not intended to be considered by the secretary and which are not subject to judicial review.

(44) [~~(37)~~] "KAR" means Kentucky administrative regulations.

(45) [~~(38)~~] "Knowingly" means that a person knew or had reason to know in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that the act or omission constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405

KAR Chapters 7 through 24.

(46) [~~(39)~~] "KRS" means Kentucky Revised Statutes.

(47) [~~(40)~~] "Land use" means specific functions, uses, or management-related activities of an area, and may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. In some instances, a specific use can be identified without active management.

(48) [~~(41)~~] "Mining area", as used in 405 KAR 7:035, means an individual excavation site or pit from which coal, other minerals, and overburden are removed.

(49) [~~(42)~~] "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.

(50) [~~(43)~~] "MSHA" means Mine Safety and Health Administration.

(51) [~~(44)~~] "Notice of noncompliance and order for remedial measures" means a written document and order prepared by an authorized representative of the cabinet which sets forth with specificity the violations of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions which the authorized representative of the cabinet determines to have occurred based upon his inspection, and the necessary remedial actions, if any, and the time schedule for completion thereof, which the authorized representative deems necessary and appropriate to correct the violations.

(52) "Office", as used in 405 KAR 7:091 and 7:092, means the office of administrative hearings.

(53) [~~(45)~~] "Operations" is defined in KRS 350.010.

(54) [~~(46)~~] "Operator" is defined in KRS 350.010.

(55) [~~(47)~~] "Order for cessation and immediate compliance" means a written document and order issued by an authorized representative of the cabinet when:

(a) A person to whom a notice of noncompliance and order for remedial measures was issued has failed, as determined by a cabinet inspection, to comply with the terms of the notice of noncompliance and order for remedial measures within the time limits set therein, or as subsequently extended; or

(b) The authorized representative finds, on the basis of a cabinet inspection, any condition or practice or any violation of KRS Chapter 350, 405 KAR Chapters 7 through 24, or any condition of a permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(56) [~~(48)~~] "OSM" means Office of Surface Mining Reclamation and Enforcement, United States Department of the Interior.

(57) [~~(49)~~] "Other mineral" means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste, and fill material.

(58) [~~(50)~~] "Overburden" is defined in KRS 350.010.

(59) [~~(51)~~] "Performance bond" means a surety bond, a collateral bond, or a combination thereof, or bonds filed pursuant to the provisions of the Kentucky Bond Pool Program (405 KAR 10:200, KRS 350.595, and KRS 350.700 through 350.755), by which a permittee assures faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the requirements of the permit and reclamation plan.

(60) [~~(52)~~] "Permit" means written approval issued by the cabinet to conduct surface coal mining and reclamation operations.

(61) [~~(53)~~] "Permit area" means the area of land and water within boundaries designated in the approved permit application, which shall include, at a minimum, all areas which are or will be affected by surface coal mining and reclamation operations under that permit.

(62) [~~(54)~~] "Permittee" means an operator or a person holding or required by KRS Chapter 350 or 405 KAR Chapters 7 through 24 to hold a permit to conduct surface coal mining and reclamation operations during the permit term and until all reclamation obligations imposed by KRS Chapter 350 and 405 KAR Chapters 7 through 24 are satisfied.

(63) [~~(55)~~] "Person" is defined in KRS 350.010 and KRS 446.010(26).

(64) [~~(56)~~] "Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have been "historically used for cropland" as that phrase is defined above.

(65) [~~(57)~~] "Probable cumulative impacts" means the expected total qualitative, and quantitative, direct and indirect effects of surface coal mining and reclamation operations on the hydrologic regime.

(66) [~~(58)~~] "Probable hydrologic consequences" means the projected results of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and groundwater; the surface or groundwater flow, timing, and pattern; and the stream channel conditions on the permit area and adjacent areas.

(67) [~~(59)~~] "Reclamation" is defined in KRS 350.010.

(68) "Record" means the transcript of a proceeding, if any, and rulings; and all pleadings, motions, and rulings; documentary and physical evidence received or considered; a statement of matters officially noticed; questions and offers of proof, objections, and rulings thereon, proposed findings and recommended orders; and legal briefs and orders.

(69) [~~(60)~~] "Refuse pile" means a surface deposit of coal mine waste that is not retained by an impounding structure and does not impound water, slurry, or other liquid or semiliquid material.

(70) [~~(61)~~] "Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, surface, and contiguous appendages necessary for the total structure. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road construction procedure and promptly replaced by a road pursuant to 405 KAR Chapters 16 and 18 located in the identical right-of-way as the pioneer or construction roadway. The term also excludes any roadway within the immediate mining pit area.

(71) [~~(62)~~] "SCS" means Soil Conservation Service.

(72) [~~(63)~~] "Secretary" is defined in KRS 350.010.

(73) [~~(64)~~] "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with 405 KAR 16:090 or 405 KAR 18:090 and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow suspended solids to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that the secondary sedimentation structures drain to a sedimentation pond.

(74) [~~(65)~~] "Significant, imminent environmental harm" means an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life as further defined in this subsection.

(a) An environmental harm is imminent, if a condition, practice, or violation exists which:

1. Is causing environmental harm; or

2. May reasonably be expected to cause environmental harm at any time before the end of the reasonable abatement time that would be set by the cabinet's authorized agents pursuant to the provisions of KRS Chapter 350.

(b) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(75) [~~(66)~~] "Small operator", as used in 405 KAR 7:080, means an operator whose combined actual and attributed production of coal does not exceed 300,000 tons during any period of twelve (12) consecutive months.

(76) [~~(67)~~] "SMCRA" means Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), as amended.

(77) [~~(68)~~] "Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

(d) "C horizon." The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(78) [~~(69)~~] "Spoil" means overburden and other materials, excluding topsoil, coal mine waste, and mined coal, that are excavated during surface coal mining and reclamation operations.

(79) [~~(70)~~] "Surety bond" means an indemnity agreement in a sum certain, payable to the cabinet and executed by the permittee, which is supported by the performance guarantee of a corporation licensed to do business as a surety in the Commonwealth of Kentucky.

(80) [~~(71)~~] "Surface blasting operations" means the on-site storage, transportation, and use of explosives in association with coal exploration operations, surface mining activities, and surface disturbances of underground mining activities. The term shall be interpreted broadly and shall encompass activities including, but not limited to, the design of individual blasts, the implementation of blast designs, the initiation of blasts, the monitoring of airblast and ground vibration, and the use of protective measures such as access control and warning and all-clear signals.

(81) [~~(72)~~] "Surface coal mining and reclamation operations" is defined in KRS 350.010.

(82) [~~(73)~~] "Surface coal mining operations" is defined in KRS 350.010.

(83) [~~(74)~~] "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam before recovering the coal, by auger coal mining, by extraction of coal from coal refuse piles, or by recovery of coal from slurry ponds.

(84) [~~(75)~~] "Ton" means 2000 pounds avoirdupois (.90718 metric ton).

(85) [~~(76)~~] "Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

(86) [~~(77)~~] "Transfer, assignment, or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the cabinet.

(87) [~~(78)~~] "Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, including construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, and shipping areas; areas upon which are sited support facilities including hoist and ventilating ducts; areas utilized for the disposal and storage of waste; and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities; in situ processing; and underground mining, hauling, storage, and blasting.

(88) [~~(79)~~] "Unwarranted failure to comply" means the failure of the permittee due to indifference, lack of diligence, or lack of reasonable care:

(a) To prevent the occurrence of any violation of any applicable requirement of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions; or

(b) To abate any violation of any applicable requirement of KRS Chapter 350, 405 KAR Chapters 7 through 24, or permit conditions.

(89) [~~(80)~~] "Willfully" and "willful violation" mean that a person acted either intentionally, voluntarily, or consciously, and with intentional disregard or plain indifference to legal requirements, in authorizing, ordering, or carrying out an act or omission that constituted a violation of SMCRA, KRS Chapter 350, 405 KAR Chapters 7 through 24, or a permit condition, or that constituted a failure or refusal to comply with an order issued pursuant to SMCRA, KRS Chapter 350, or 405 KAR Chapters 7 through 24.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: September 11, 1992
FILED WITH LRC: September 11, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 7:091. General practice provisions.

RELATES TO: KRS 350.028, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990, 1992 Acts c. 304, 30 CFR Parts 730, 731, 732, 733, 735, 917, 30 USC 1253, 1255

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.255, 350.465, 350.610, 1992 Acts c. 304, 30 CFR Parts 730, 731, 732, 733, 735, 917, 30 USC 1253, 1255

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. This administrative regulation sets forth hearing, notice and other procedural and due process provisions for the permanent regulatory program. This administrative regulation and 405 KAR 7:092 contain the substance of 405 KAR 7:090 which has been repealed.

Section 1. Applicability. This administrative regulation shall govern the conduct by the cabinet of all administrative hearings and conferences arising under KRS Chapter 350, including those pending at the time this administrative regulation becomes effective, and **provide** for public participation, pertaining to the review of determinations on permits for surface coal mining and reclamation operations and coal exploration operations, including issuance, denial, suspension, revocation, modification, and compliance with the terms of any permit; notices of noncompliance and orders for remedial measures; orders for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4); determinations on performance bond amount, duration, release, and forfeiture; administrative hearings on orders to abate or alleviate issued pursuant to KRS 224.10-410 to surface coal mining and reclamation operations; and all other matters including participation in administrative hearings by any person adversely affected by a determination of the cabinet which in the discretion of the cabinet are appropriate for adjudication and determination by the cabinet or arise by virtue of an order or determination of the cabinet pursuant to the permanent regulatory program for surface coal mining and reclamation operations and coal exploration operations as set forth in KRS Chapter 350 and 405 KAR Chapters 7 through 24.

Section 2. Construction. This administrative regulation shall be construed to achieve just, timely and inexpensive determinations of all questions appropriate for determination pursuant to Section 1 of this administrative regulation.

Section 3. General Provisions for Conducting Administrative Hearings. (1)(a) Hearings generally. All administrative hearings shall be de novo as to all issues of fact and law, provided that those findings previously adjudicated by a final order of the secretary shall be binding against any party to the administrative hearing leading to the final order. A party to an administrative hearing may be represented by counsel, make oral or written argument, offer testimony,

cross-examine witnesses, or take any combination of these actions. An independent hearing officer shall preside at the administrative hearing, shall keep order, and shall conduct the administrative hearing in accordance with reasonable administrative practice and Section 2 of this administrative regulation. Oaths and affirmations shall be administered by the hearing officer or court reporter. The provisions of 400 KAR 1:030 and 400 KAR 1:040 shall apply to cases before the cabinet, consistent with KRS Chapter 350 and 405 KAR Chapters 7 through 24. The hearing officer shall permit any party to represent himself, except a corporate party shall only be represented by an attorney licensed to practice law in the Commonwealth of Kentucky. The failure of a corporate party to appear by counsel, without good cause, shall be grounds for default.

(b) Evidence. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible to proof under rules of evidence, evidence not admissible thereunder may be admitted, except where designated as confidential by statute, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken by the hearing officer of generally recognized technical or scientific facts within the cabinet's specialized knowledge. Parties shall be notified either before or during the administrative hearing, or by reference in reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The cabinet's experience, technical competence, and specialized knowledge may be utilized by the hearing officer in the evaluation of the evidence.

(2) Hearing officer's duties. The hearing officer shall in his discretion:

(a) Administer oaths and affirmations;

(b) Issue subpoenas in accordance with Section 9 of this administrative regulation;

(c) Issue appropriate orders relating to discovery in accordance with 400 KAR 1:040;

(d) Rule on procedural requests or similar matters;

(e) Hold prehearing conferences for settlement or simplification of the issues;

(f) Regulate the course of the administrative hearing;

(g) Rule on offers of proof and receive relevant evidence;

(h) Take any other action authorized by administrative regulation, KRS Chapter 350 and 405 KAR Chapters 7-24; and

(i) Make or recommend decisions or reports in accordance with KRS Chapter 350 and the administrative regulations.

(3) Prehearing conference. A hearing officer may order a prehearing conference:

(a) To simplify and clarify issues;

(b) To receive stipulations and admissions;

(c) To explore the possibility of agreement disposing of any or all of the issues in dispute; and

(d) For any other purposes as may be appropriate, including but not limited to summary disposition of the case.

(4) Summary disposition. At any time after a proceeding has begun, a party may move for a summary disposition of the whole or part of a case, in which event the following procedure shall apply:

(a) The moving party shall verify any allegations of fact with supporting affidavits, unless the moving party is relying upon depositions, answers to interrogatories, admissions, or documents produced upon request to verify such allegations.

(b) A hearing officer may grant a motion and render a report and recommended order to the secretary under this section if the record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows that:

1. There is no disputed issue as to any material fact; and

2. The moving party is entitled to a summary disposition as a matter of law.

(c) If a motion for a summary disposition is not granted for the entire case or for all the relief requested and an evidentiary hearing on some or all of the issues is necessary, the hearing officer shall, if practicable, and upon examination of all relevant documents and evidence before him, ascertain what material facts are actually and in good faith controverted. He shall issue an interim report specifying the facts that appear without substantial controversy and direct further proceedings as deemed appropriate.

(5) Hearing officer's report.

(a) The hearing officer shall, within thirty (30) days of the close of the administrative hearing record, make a report and recommended order to the secretary, except that the administrative hearing officer shall, within twenty (20) days of the close of the hearing record, make a report and recommended order in administrative hearings on permit determinations under 405 KAR 7:092, Section 8. The report and recommended order shall be based on a preponderance of the evidence appearing in the record as a whole and shall contain appropriate findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. If granted by the secretary, all parties shall be notified at the time of the granting of the extension. The hearing officer's report and recommended order shall be mailed, postage prepaid, to all parties and their attorneys of record. The parties may file exceptions and responses to the exceptions as provided under 1992 Acts c. 304. There shall be no other or further submissions.

(b) The hearing officer shall recommend the amount of a civil penalty based exclusively on the record of the administrative hearing. The hearing officer may compute the amount of the penalty to be assessed irrespective of any computation offered by any party, and shall consider the same factors set forth in 405 KAR 7:092, Section 3(2) for consideration in setting proposed penalty assessments. The hearing officer shall state with particularity the reasons, supported by the record of the hearing, for the penalty recommended in his report.

(6) Secretary's order.

(a) The secretary shall consider the report and recommended order, any exceptions filed, and any responses to exceptions, and pass upon the case within a reasonable time. The secretary may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as a final order, or issue his own final order.

(b) The final order of the secretary shall be mailed postage prepaid to parties and their attorneys of record.

(c) A final order of the secretary shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the secretary and the facts and law upon which the decision is based.

Section 4. Standards of Conduct. (1) Ex parte communications.

(a) Prohibition. Except to the extent required for the disposition of ex parte matters as authorized by law, there shall be no communication concerning the merits of a proceeding between a party to the proceeding or a person interested in the proceeding or a representative of a party or interested person and office personnel involved or who may reasonably be expected to become involved in the decision making process of an administrative hearing or conference, unless the communication, if oral, is made in the presence of all other parties or their representatives, or, if written, is furnished to all other parties. Communications concerning case status or advice concerning compliance with procedural requirements are not prohibited unless the area of inquiry is in fact an area of controversy in the administrative hearing or conference. Oral communications made in violation of this administrative regulation shall be reduced to writing in a memorandum by the person receiving the communication and shall be included in the record. Written communications made in violation of this administrative regulation shall be included in the record. Copies of the memorandum or communication shall be provided to all parties,

who shall be given an opportunity to respond in writing.

(b) Sanctions. The hearing officer, who has responsibility for the matter in which a prohibited communication has been knowingly made, may impose appropriate sanctions on the offending person or persons, which may include requiring an offending party to show cause why his claim, motion, or interest should not be dismissed, denied, or otherwise adversely affected; and invoking such sanctions against other offending persons as appropriate.

(2) Disqualification. The hearing officer shall withdraw from a case if he deems himself disqualified under the recognized canons of judicial ethics. If prior to a decision of the hearing officer an affidavit of personal bias or disqualification with substantiating facts is filed, and the hearing officer concerned does not withdraw, the secretary shall determine the matter of disqualification.

Section 5. Service. (1) A proposed penalty assessment, notice of assessment conference, notice of administrative hearing, or other documents required to be served, including administrative summonses, shall be served either under 400 KAR 1:030 or by one (1) of the following methods:

(a) The cabinet may place a copy of the document to be served in an envelope, and address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished by the initiating party. The cabinet shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The cabinet shall forthwith enter the fact of mailing in the record and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. The cabinet shall file the return receipt or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope or as provided by paragraph (c) of this subsection. The return receipt shall be proof of the time, place and manner of service. To the extent the United States postal regulations allow authorized representatives of local, state, or federal governmental offices to accept and sign for "addressee only" mail, signature by such authorized representative shall constitute service on the addressee; or

(b) The cabinet may cause the document, with necessary copies, to be transferred for service to a person authorized by the secretary or by a statute to deliver them, or to a person authorized to serve an action in a court of law who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service; or

(c) Service may be made upon a person issued a permit by the cabinet, upon a person specified as an operator in the permit application, or upon a person who has submitted an exploration notice or application pursuant to 405 KAR 8:020 by placing, in the United States mail as certified mail, return receipt requested, a copy of the document directed to the named agent for service or the permittee or the operator specified in the permit application (at the address specified on the face of the permit, at the permanent address for the permittee or operator specified in the permit application, or at any new address that has been specified in writing by the permittee or operator), or in the case of coal exploration, by placing, in the United States mail as certified mail, return receipt requested, a copy of the document directed to the person authorized to conduct the coal exploration and addressed to said person's permanent address as noted in the exploration notice or application.

(2) Service shall be effective upon acceptance of the document by any person eighteen (18) years of age or older at the permanent address, upon refusal to accept the document by any person at the permanent address, upon the United States Postal Service's inability to deliver the document if properly addressed pursuant to subsection (1)(a) or (c) of this section, or upon failure to claim the document prior to its return to the cabinet by the United States Postal Service. The return receipt shall be proof of acceptance, refusal, inability to deliver, or failure to claim the document.

(3) Any other method of service authorized by statute, administrative regulation, or the civil rules for an action in a court of law shall be supplemental to and shall be accepted as an alternative to any of the methods of service specified in this section.

(4) A copy of each document filed in a proceeding pending before the office must be served by the filing party on all other parties in the case. In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the case. Service of any document relating to the proceeding shall be made upon the attorney in addition to any other service specifically required by law or by order of the cabinet.

(5) Service shall be made upon the cabinet by serving the commissioner of the Department of Law and shall be effective upon receipt by the Department of Law.

Section 6. Administrative Summons and Public Notice of Hearing. (1) Upon receipt of an initiating document, the office shall promptly serve in accordance with Section 5 of this administrative regulation, a copy of the document upon all parties designated to be served along with an administrative summons notifying the responding party that an initiating document has been filed against him and unless a written defense is timely served, action adverse to his interests may be taken. If appropriate and at the direction of the hearing officer, the administrative summons may also designate that a prehearing conference or administrative hearing shall be held along with the date, time and place of the prehearing conference or administrative hearing. An administrative summons shall also include a statement of the legal authority for the hearing and reference to the statutes and regulations involved.

(2) For all administrative hearings initiated pursuant to 405 KAR 7:092, Section 5, notice of the scheduled hearing shall also be mailed to any intervenors, shall be posted at the department's appropriate regional office and, if practicable, shall be published in a newspaper of general circulation in the area of the surface coal mining and reclamation operations or coal exploration operations.

Section 7. Filing and Retention of Documents. (1) Filing of documents. A document is considered filed in the office when the document is received and stamped by the office.

(2) Retention of documents. All documents, books, records, papers, etc., received in evidence in a hearing or submitted for the record in a proceeding before the cabinet will be retained with the official record of the proceedings. The withdrawal of original documents may be permitted while the case is pending upon terms and conditions as may be directed by the hearing officer. When an order of the secretary has become final, the hearing officer in his discretion may, upon request and after notice to the other parties, authorize the withdrawal of original exhibits or any part by the authorized party. The substitution of true copies of exhibits or any part may be required by the hearing officer in his discretion as a condition of granting permission for withdrawal.

(3) Record address. A person who files a document for the record in connection with an administrative hearing before the office shall at the time of initial filing in the matter state his mailing address and telephone number. Thereafter, he shall promptly inform the office of a change in mailing address or telephone number, giving the file number relating to all matters in which he has made a filing. The successors of the person shall likewise promptly inform the office of their interest in the matters and state their addresses and telephone numbers. If a person fails to furnish a record address and telephone number as required, he will not be entitled to notice in connection with the proceedings.

(4) Transcripts. All administrative hearings will be recorded verbatim and transcripts thereof shall be made when requested by interested parties. Costs of transcripts shall be borne by the requesting parties. Fees for transcripts prepared from recordings by office employees will be at rates which cover the cost of manpower, machine use and materials. If the reporting is done pursuant to a contract between the reporter and the cabinet, costs of transcripts will be at rates established by the contract.

Section 8. Time. (1) Computation of time for the initiation of an administrative proceeding or the subsequent filing of a document shall be in accordance with KRS 446.030 and 400 KAR 1:030, Section 4.

(2) The time for filing or serving any document may be extended by a hearing officer except for the time for filing a petition for an administrative hearing under 405 KAR 7:092 or if an extension is contrary to law or regulation.

(3) A request for an extension of time shall be filed within the time allowed for filing or serving the document.

Section 9. Subpoenas. The office shall issue subpoenas requiring the attendance of witnesses or production of books, papers, documents, or tangible things designated therein, or both, at administrative hearings to be held before or at the taking of depositions to be held before other officers. Subpoenas shall be issued on a form approved by the office. A subpoena may be served by a person who is [~~not a party and is~~] not less than eighteen (18) years of age. The original subpoena bearing a certificate of service shall be filed with the office or the subpoena may be served by certified mail, return receipt requested. The return receipt if signed by the addressee or his authorized agent shall constitute proof of service of the subpoena.

Section 10. Location of Administrative Hearings and Penalty Assessment Conferences. (1) A penalty assessment conference shall be held in the department's regional office for the mine site, unless a closer location is approved by the conference officer.

(2) Administrative hearings shall be held at the location designated by the hearing officer unless a written request for a hearing at or close to the mine site is submitted with the petition or other initiating document or answer at the time the petition or other initiating document or answer is filed with the office. The department's regional office for the mine site shall be deemed reasonably close, unless a closer location is requested by a party to the case and agreed to by the hearing officer.

Section 11. Intervention and Consolidation. (1) Who may file. A person may petition in writing for leave to intervene at any stage of a proceeding under 405 KAR 7:092. A petitioner shall set forth a statement setting forth the interest of the petitioner and, if required, a showing of why the interest is or may be adversely affected.

(2) Criteria to intervene.

(a) The hearing officer shall grant intervention if the petitioner:

1. Had a statutory right to initiate the proceeding in which he wishes to intervene; or

2. Has an interest which is or may be adversely affected by the outcome of the proceeding.

(b) If the criteria set forth in paragraph (a) of this subsection does not apply, the hearing officer shall consider the following in determining whether intervention is appropriate:

1. The nature of the issues;

2. The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;

3. The ability of the petitioner to present relevant evidence and argument; and

4. The effect of intervention on the cabinet's implementation of its statutory mandate.

(3) Effect of ruling. A person granted leave to intervene in a proceeding may participate in the proceeding as a full party or, if desired, in a limited capacity. If an intervenor wishes to participate in a limited capacity, the extent and the terms of the participation shall be at the discretion of the hearing officer.

(4) Consolidation. When proceedings involving the same parties or a common question of law or fact are pending before the cabinet, the proceedings are subject to consolidation pursuant to a motion by a party or at the initiative of the hearing officer.

Section 12. Judicial Review, Effect, and Subsequent Proceedings. (1) Judicial review. Judicial review may be taken from a final order of the secretary to the appropriate circuit court of competent jurisdiction in accordance with KRS 350.032 or 1992 Acts c. 304 as applicable.

(2) Effect of final order pending judicial review. The commencement of proceedings for judicial review of a final order of the secretary shall not operate as a stay of a final order, unless specifically ordered by the court of competent jurisdiction.

(3) Remands from courts. Whenever a matter is remanded from any court for further proceedings, and to the extent the court's directive and time limitations will permit, the parties shall be allowed an opportunity to submit to the appropriate hearing officer, a report recommending procedures to be followed in order to comply with the court's order. The hearing officer will review the reports and enter special orders governing the handling of matters remanded to it for further proceedings by any court.

Section 13. 405 KAR 7:090, Hearings, is hereby repealed.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: September 11, 1992
FILED WITH LRC: September 11, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 7:092. Administrative hearings and assessment conferences.

RELATES TO: KRS 350.028, 350.070, 350.090, 350.093, 350.130, 350.255, 350.465, 350.990, 1992 Acts c. 304, 30 CFR Parts 730, 731, 732, 733, 735, 917, 30 USC 1253, 1255

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.255, 350.465, 350.610, 1992 Acts c. 304, 30 CFR Parts 730, 731, 732, 733, 735, 917, 30 USC 1253, 1255

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and regulations pertaining to surface coal mining and reclamation operations and coal exploration operations. This administrative regulation sets forth hearing, conference, notice, penalty assessment and other procedural and due process provisions for the permanent regulatory program. This administrative regulation and 405 KAR 7:091 contain the substance of 405 KAR 7:090 which has been repealed.

Section 1. Applicability. This administrative regulation shall govern the conduct by the cabinet of all administrative hearings and conferences arising under KRS Chapter 350, including those pending at the time this administrative regulation becomes effective, and **provide** for public participation, pertaining to the review of determinations on permits for surface coal mining and reclamation operations and coal exploration operations, including issuance, denial, suspension, revocation, modification, and compliance with the terms of any permit; notices of noncompliance and orders for remedial measures; orders for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4); determinations of performance bond amount, duration, release, and forfeiture; administrative hearings arising under KRS 224.10-410 on orders to abate or alleviate issued to surface coal mining and reclamation operations; and all other matters including participation in administrative hearings by any person adversely affected by a determination of the cabinet which in the discretion of the cabinet are appropriate for adjudication and determination by the cabinet and arise by virtue of an order or determination of the cabinet pursuant to the permanent regulatory program for surface coal mining and reclamation operations and coal exploration operations as set forth in KRS Chapter 350 and 405 KAR Chapters 7 through 24, except that the provisions pertaining to the payment of proposed assessments into an escrow account as set forth in Sections 3 and 6 of this administrative regulation and the waiver of payments as provided in Section 15 of this administrative regulation shall only be applicable to those notices of noncompliance and orders for remedial measures or orders for cessation and immediate compliance issued on or subsequent to the effective date of this administrative regulation. If requests for formal hearings have been timely filed at the time this administrative regulation takes effect, cases shall not be

dismissed for the reason that they do not conform to the new procedural requirements of this administrative regulation for filing administrative complaints and answers.

Section 2. Construction. This administrative regulation shall be construed to achieve just, timely and inexpensive determinations of all questions appropriate for determination pursuant to Section 1 of this administrative regulation.

Section 3. Proposed Penalty Assessment and Request for Assessment Conference and Administrative Hearing. (1) Notification. The cabinet shall notify a person issued a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance in writing of its proposed penalty assessment. The proposed assessment shall be made by authorized personnel of the department.

(2) Criteria. In determining the amount of the penalty, consideration shall be given to the permittee's or operator's history of previous violations at the particular surface coal mining and reclamation operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee, operator, or person was negligent; and the demonstrated good faith of the permittee, operator, or person in attempting to achieve rapid compliance after notification of the violation, except that good faith consideration shall not be applicable to any violation determined not to be correctable. If a violation has been cited against a person conducting coal exploration operations consideration shall be given to the above factors as applicable in determining the amount of the penalty.

(3) Service.

(a) Method; time. The notice of proposed penalty assessment shall be served under 405 KAR 7:091, Section 5, together with copies of applicable worksheets, to the person to whom the notice or order was issued within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order.

(b) Failure to timely serve; substantial prejudice. Failure to serve the proposed assessment within fifteen (15) working days after issuance of the final notice of inspection of noncompliance or final notice of inspection of cessation order shall not be grounds for dismissal of all or part of the assessment unless the person against whom the proposed penalty has been assessed proves actual and substantial prejudice as a result of the delay and makes a timely written objection to the delay. An objection shall be timely only if made on or before the last date to request an assessment conference under subsection (4)(b) of this section.

(4) Options of person issued notice of proposed assessment. (a) Waiver; final order to enter. The person issued the notice of proposed penalty assessment may choose not to contest the assessment and a final order of the secretary shall be entered finding that:

1. The person to whom the notice or order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment; and

2. The fact of the violation is deemed admitted; and

3. The proposed penalty is due and payable within thirty (30) days after the entry of the final order. If a petition requesting an administrative hearing as to the fact of the violation has been timely filed pursuant to Section 7 of this administrative regulation, the finding in subparagraph 2 of this paragraph shall be omitted and the proposed penalty assessment shall be due and payable within thirty (30) days of the mailing of a final order affirming the fact of the violation.

(b) Assessment conference. Within thirty (30) days of service of the notice of proposed assessment or if the document is returned undeliverable, unclaimed or refused, thirty (30) days from the date of the return, the person to whom the notice of proposed penalty assessment was sent may request review of the penalty assessment by requesting in writing an assessment conference pursuant to Section 4 of this administrative regulation in which case payment of the proposed assessment into the cabinet's escrow account shall not be required; or

(c) Petition for administrative hearing. The person to whom a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance was issued may contest the proposed penalty assessment or the fact of the violation or both by submitting a petition for an administrative hearing in accordance with Section 6 of this administrative regulation. If an assessment conference has been held pursuant to Section 4 of this administrative regulation, the person may contest the amount assessed in the conference officer's report or the fact of the violation or both by submitting a petition for an administrative hearing in accordance with Section 6 of this administrative regulation. The fact of the violation may not be contested if it has been adjudicated by a final order of the secretary pursuant to an administrative hearing commenced under Section 7 of this administrative regulation. Nothing in this paragraph shall be construed as infringing upon any person's right to contest the fact of the violation without having to pay the proposed assessment into the cabinet's escrow account if such petition was timely filed in accordance with Section 7 of this administrative regulation.

Section 4. Procedures for Assessment Conference. (1) In general.

(a) Time for filing. Following issuance by the cabinet of a notice of proposed penalty assessment, the person to whom the notice was sent may request an assessment conference on the proposed penalty assessment. The request for an assessment conference shall be filed with the office within thirty (30) days of the date of receipt of the proposed penalty assessment or, if the document is returned undeliverable, unclaimed, or refused, thirty (30) days from the date of return.

(b) Waiver; final order to enter. Failure to timely request an assessment conference shall constitute a waiver of the right to a conference. If a petition for review of the proposed penalty assessment has not been timely filed under Section 6 of this administrative regulation a final order shall be entered in conformity with Section 6(1)(c) of this administrative regulation.

(c) Date of conference; failure to timely schedule; substantial prejudice. If an assessment conference is requested, it shall be scheduled for a date no later than sixty (60) days after the cabinet's receipt of the request. Failure by the cabinet to timely schedule an assessment conference shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed makes a timely objection on or before the date of the assessment conference and proves actual and substantial prejudice as a result of the delay. The scheduling of the assessment conference shall not operate as a stay of any notice or order.

(2) Service; public participation. Notice of the assessment conference shall be served under 405 KAR 7:091, Section 5 and a copy of the notice shall also be sent to any person who filed a report which led to the issuance of the notice or order being contested. The cabinet shall post notice of the assessment conference at the department's appropriate regional office at least five (5) days before the conference. Any person shall have the right to attend and participate in the assessment conference.

(3) Conference officer; requirements for administrative hearings not applicable. The office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by the requirements for administrative hearings or by the provisions of 400 KAR 1:040. (4) Report of conference officer. The conference officer shall consider all relevant information pertaining to the proposed assessment. Within thirty (30) days after the conference is held, the conference officer shall issue a report recommending to the secretary to either affirm, raise, lower, or dismiss the proposed penalty assessment.

(5) Service of report; documentation. The conference officer's report shall be promptly served by mail, postage prepaid, and shall include a worksheet if the penalty has been raised or lowered. The reasons underlying the conference officer's report shall be fully documented.

(6) Agreed order.

(a) Waiver of further review. If an agreed order is entered into, the person assessed shall be deemed to have waived all rights to further review of the fact of the violation and penalty in question. The agreed

order shall contain a clause that any petition for review of the fact of the violation filed in accordance with Section 7 of this administrative regulation shall be deemed withdrawn.

(b) Enforcement of agreed order. If full payment of the amount specified in the agreed order is not received by the cabinet within thirty (30) days after the date of the secretary's signature, the cabinet may take necessary steps to enforce the agreed order.

(7) Failure to attend; report to issue. If the person requesting an assessment conference fails to attend the scheduled conference, the assessment officer shall within thirty (30) days of the date of the scheduled conference issue a report to the secretary recommending that the proposed penalty assessment be affirmed.

(8) Statements not to be introduced at administrative hearings. In any administrative hearing commenced under Sections 6 or 7 of this administrative regulation no evidence as to statements made by one (1) party at a conference shall be introduced by another party as evidence or to impeach a witness.

(9) Administrative hearing; who may request. Any person issued a proposed penalty assessment may request under Section 6 of this administrative regulation an administrative hearing to contest the conference officer's recommended penalty. The cabinet may request under Section 5 of this administrative regulation an administrative hearing to contest the conference officer's recommended penalty.

(10) Failure to timely request; order to enter. If a request for an administrative hearing is not filed with the office within thirty (30) days of mailing of the conference officer's report, an order of the secretary shall be entered and mailed containing the following:

(a) That the person to whom the notice or order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment;

(b) That the fact of the violation is deemed admitted; and

(c) That the penalty assessment contained in the conference officer's report is deemed accepted and is due and payable to the cabinet within thirty (30) days after the entry of the final order. If a petition requesting a hearing as to the fact of the violation has been timely filed pursuant to Section 7 of this administrative regulation, the finding set forth in paragraph (b) of this subsection shall be omitted and the penalty assessment contained in the conference officer's report shall be due and payable within thirty (30) days of the mailing of the final order affirming the fact of a violation.

Section 5. Administrative Hearings Initiated by the Cabinet. (1) Criteria for filing.

(a) The cabinet may initiate an administrative hearing and may seek revocation of the permit and forfeiture of the bond or suspension of the permit whenever:

1. It has reason to believe that a violation of KRS Chapter 350; 405 KAR Chapters 7 through 24; or a permit condition has occurred or is occurring; or

2. A permittee, operator, or person has failed to pay a civil penalty assessed in a final order of the cabinet or to undertake remedial measures mandated by an order of the cabinet or to abate violations it was determined to have committed by a final order of the cabinet; or

3. The provisions of KRS 350.990(9) apply; or

4. The cabinet has reason to believe additional remedies should be sought or an order should be entered against any person to protect the environment or the health and safety of the public; or

5. The criteria of 405 KAR 10:050, Section 3(2) or (3) apply.

(b) The cabinet may initiate an administrative hearing to contest a conference officer's recommended penalty and seek any combination of the relief set forth in subsection (2) of this section, in which case prepayment of the proposed penalty assessment is not required.

(c) The cabinet shall initiate an administrative hearing and shall seek revocation of the permit and forfeiture of the bond or suspension of the permit whenever:

1. The permittee, operator, or person has willfully failed to comply with an order for cessation and immediate compliance; or

2. The criteria of 405 KAR 10:050, Section 3(1) apply.

(2) Remedies. In an administrative hearing initiated by the cabinet, the cabinet may seek a combination of the following:

(a) Permit suspension or revocation;

(b) Bond forfeiture;

(c) Civil penalties;

(d) A determination, pursuant to KRS 350.060, 350.085, and 350.130, that a person or persons shall not be eligible to receive another permit or conduct future operations;

(e) A determination, pursuant to KRS 350.990(9), that any director, officer, or agent of a corporation willfully and knowingly authorized, ordered, or carried out a violation or failed or refused to comply with any final order; or

(f) Any other relief to which it may be entitled by KRS Chapter 350.

(3) Procedures for administrative hearings initiated by the cabinet.

(a) Filing of administrative complaint. Contents. The cabinet shall initiate an administrative hearing by filing an administrative complaint with the office incorporating the following for each claim for relief:

1. A statement of facts entitling the cabinet to administrative relief;

2. A request for specific relief; and

3. A copy of any notice or order upon which relief is sought.

(b) Answer or responsive pleading. The person named in an administrative complaint shall file with the office an answer or responsive pleading within thirty (30) days of service of the administrative complaint which shall contain:

1. A statement specifically admitting or denying the alleged facts stated in the administrative complaint or amended administrative complaint; and

2. Any defenses to each claim for relief.

(c) Amendments. An administrative complaint may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion. The person named in the administrative complaint shall have ten (10) days from the filing of an administrative complaint amended as a matter of right or the time remaining for filing an answer to the original complaint, whichever is longer, to file an answer or responsive pleading. If the hearing officer grants a motion to amend the administrative complaint, the time for an answer to be filed shall be set forth in the order granting the motion.

(4) Burden of proof. If the cabinet initiates an administrative hearing, the cabinet shall have the ultimate burden of persuasion. The responding party shall have the burden of persuasion to establish an affirmative defense. A responding party claiming an exemption shall have the burden of persuasion to establish qualification for the exemption.

(5) Default.

(a) In a proceeding where the person against whom the administrative complaint is filed fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why a report and recommended order adverse to the person shall not be referred to the secretary.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

(c) If the person against whom the administrative complaint is filed fails to appear at an administrative hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with the relief requested by the cabinet in its administrative complaint.

Section 6. Administrative Hearing for Review of Proposed Assessment. (1) Filing petition; waiver. Any person issued a proposed penalty assessment may file with the office a petition for an administrative hearing to review the penalty.

(a) A petition for review of a proposed penalty assessment shall be filed in the office within thirty (30) days of service of the proposed assessment, or if the notice of proposed penalty assessment is returned undeliverable, unclaimed or refused, within thirty (30) days of the date of return; or

(b) If a timely request for an assessment conference has been

made pursuant to Section 4 of this administrative regulation, a petition for review must be filed in the office within thirty (30) days from mailing of the conference officer's report.

(c) An extension of time shall not be granted for filing a petition for review of a proposed penalty assessment as required by this section. If a petition for review is not timely filed, the petition, if any, shall be dismissed and a final order shall be entered which contains the following:

1. That the person to whom the notice **or** ~~[of]~~ order was issued has waived all rights to an administrative hearing on the amount of the proposed assessment or the assessment as amended by the conference officer;

2. The fact of the violation is deemed admitted; and

3. The proposed penalty assessment, or the assessment as amended by the conference officer is deemed admitted and shall be due and payable to the cabinet within thirty (30) days after the entry of the final order. If a petition requesting an administrative hearing on the fact of the violation has been timely filed under Section 7 of this administrative regulation, the finding set forth in subparagraph 2 of this paragraph shall be omitted and the penalty assessment shall be due and payable within thirty (30) days after the entry of a final order affirming the fact of the violation.

(2) Contents of petition; payment required.

(a) The petition shall include:

1. A short and plain statement indicating the reasons why either the amount of the penalty or the fact of the violation or both is being contested;

2. If the amount of penalty is being contested based upon a misapplication of the penalty formula, a statement indicating how the penalty formula contained in 405 KAR 7:095 was misapplied, along with a proposed penalty utilizing the penalty formula;

3. Identification by reference to the noncompliance or cessation order number of all violations being contested; and

4. The identifying number of the cashier's check, certified check, bank draft, or bank money order accompanying the petition.

(b) The petition shall be accompanied by full payment of the proposed penalty assessment, or the assessment as amended by the conference officer, in the form of a cashier's check, certified check, bank draft, or bank money order made payable to the Kentucky State Treasurer to be placed in an escrow account pending final determination of the assessment; and, on the face of the payment an identification, by reference to the noncompliance or cessation order identification number, of the violations for which payment is being tendered.

(c) An extension of time shall not be granted for full payment of the proposed assessment. If payment is not timely made, the petition shall be dismissed, and a final order shall be entered in conformity with subsection (1)(c) of this section.

(3) Answer or responsive pleading. The cabinet shall have thirty (30) days from service of a copy of the petition to file an answer or responsive pleading with the office. An answer shall contain a statement specifically admitting or denying the alleged errors stated in the petition and setting forth other matters to be considered on review.

(4) Amended petition. A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion. The cabinet shall have ten (10) days from the filing of a petition amended as a matter of right or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading. If the hearing officer grants a motion to amend a petition, the time for an answer to be filed shall be set forth in the order granting the motion.

(5) Notice of hearing. The parties and interested persons shall be given written notice of the time and place of the hearing at least twenty-one (21) days prior to the hearing unless the twenty-one (21) day period is waived in writing.

(6) Burden of proof. In administrative hearings under this section, the cabinet shall have the burden of going forward to establish a prima facie case as to the fact of the violation and the amount of the assessment and the ultimate burden of persuasion as to the amount of the assessment. The person who petitioned for review shall have the ultimate burden of persuasion as to the fact of the violation.

(7) Default.

(a) In a proposed penalty assessment proceeding if the person against whom the proposed penalty is assessed fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order in conformity with subsection 1(c) of this section.

(c) If the person against whom the proposed penalty is assessed fails to appear at a hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order in conformity with subsection 1(c) of this section.

(8) Hearing officer's report; contents. If an administrative hearing is conducted, the hearing officer shall incorporate in his report and recommended order concerning a civil penalty, findings of fact on each of the four (4), criteria set forth in 405 KAR 7:095, Section 3, and conclusions of law.

Section 7. Administrative Review of Notices of Noncompliance and Orders for Remedial Measures and Orders for Cessation and Immediate Compliance. (1) Who may file. A person issued a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance by the cabinet pursuant to the provisions of KRS Chapter 350 or administrative regulations or a person having an interest which is or may be adversely affected by such a notice or order may file a petition for review with the office.

(2) Time for filing.

(a) A person filing a petition for review under this section shall file in the office a petition within thirty (30) days of the receipt of a notice or order or within thirty (30) days of receipt of notice of modification, vacation, or termination of the notice or order or if any of the foregoing documents is returned as undeliverable, unclaimed or refused within thirty (30) days of the date of the return.

(b) An extension of time shall not be granted for filing a petition for review. If a petition for review is not timely filed, the petition shall be dismissed.

(c) Failure to file a petition for review of a notice of noncompliance and order for remedial measures or order for cessation and immediate compliance under this section shall not preclude challenging the fact of violation at an administrative hearing requested under Section 6 of this administrative regulation.

(3) Contents of petition. A person filing a petition for review shall incorporate in the petition regarding each claim for relief the following:

(a) A statement of facts entitling that person to administrative relief;

(b) A request for specific relief;

(c) A copy of the notice or order sought to be reviewed;

(d) A statement as to whether the person waives the opportunity for an evidentiary hearing; and

(e) Other relevant information.

(4) Answer or responsive pleading. The cabinet and interested parties shall have thirty (30) days from service of a copy of the petition within which to file an answer or other responsive pleading. The answer shall contain a statement specifically admitting or denying the alleged facts stated by the petitioner and setting forth other matters to be considered on review.

(5) Amended petition. A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion. The cabinet and other interested parties shall have ten (10) days from the filing of a petition amended as a matter of right or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading. If the hearing officer grants a motion to amend a petition, the time for an answer to be filed shall be set forth in the order granting the motion.

(6) A petitioner shall file a copy of any subsequent notice or order which modifies, vacates, or terminates the notice or order sought to be reviewed and shall file a copy of any subsequent order for

cessation and immediate compliance for failure to timely abate the violation which is the subject to the notice sought to be reviewed within ten (10) days of receipt of the notice or order. If a petitioner desires to challenge a subsequent notice or order, the petitioner must file a separate petition for review. Petitions for review of related notices or orders are subject to consolidation.

(7) Notice of hearing. The parties and interested persons shall be given written notice of the time and place of the hearing at least twenty-one (21) days prior to the hearing, unless the twenty-one (21) day period is waived in writing.

(8) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order affirming the notice or order and dismissing the petition.

(c) If the person requesting the administrative hearing fails to appear at a hearing, the person shall be deemed to have waived his right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order affirming the notice or order and dismissing the petition.

(9) Burden of proof. In review of notices of noncompliance and orders for remedial measures or orders for cessation and immediate compliance or the modification, vacation, or termination thereof under this section, the cabinet shall have the burden of going forward to establish a prima facie case as to the propriety of the notice, order, or modification, vacation, or termination thereof. The ultimate burden of persuasion shall rest with the petitioner.

Section 8. Request for Review of Permit Determinations. (1) Who may file. The permit applicant, permittee, or person having an interest which is or may be adversely affected by a permit determination of the cabinet may file a petition for review of the following:

(a) Applications for new permits;

(b) Applications for permit revisions and amendments, permit renewals, and the transfer, assignment, or sale of rights granted under permit;

(c) Permit revisions and amendments ordered by the cabinet, except challenges of permit revisions ordered as a remedial measure in a notice of noncompliance shall be reviewed in an administrative hearing pursuant to Section 6 or 7 of this administrative regulation; and

(d) Applications for coal exploration permits.

(2) Time to file; waiver. A petition for review shall be filed with the office within thirty (30) days from the date the person has actual notice of the determination or could reasonably have had notice. Failure to timely file a petition for review shall constitute a waiver of an administrative hearing and the petition shall be dismissed.

(3) Contents of the petition. The petition for review shall include:

(a) A clear statement of the facts entitling the one requesting review to administrative relief;

(b) An explanation of each specific alleged error in the cabinet 's decision, including reference to the statutory and regulatory provisions allegedly violated;

(c) A request for specific relief;

(d) A statement whether the person requests or waives the opportunity for an evidentiary hearing; and

(e) Other relevant information.

(4) Answer or responsive pleading. The cabinet and interested parties shall file an answer or responsive pleading within thirty (30) days of service of the petition. An answer shall contain a statement specifically admitting or denying facts or alleged errors stated in the petition and setting forth other matters to be considered on review.

(5) Amended petition. A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion. An interested party shall have ten (10) days from the filing of a petition amended as a matter of right or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer or responsive pleading. If the hearing officer grants a motion to amend a petition, the time for an answer to be filed shall be set forth in the order granting the motion.

(6) Notice of hearing. The parties and interested persons shall be given written notice of the time and place of the administrative hearing at least twenty-one (21) days prior to the hearing unless the twenty-one (21) day period is waived in writing.

(7) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(8) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why the person should not be deemed to have waived his right to an administrative hearing and why the petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(c) If the person requesting the administrative hearing fails to appear at a hearing, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(9) Burden of proof.

(a) In a proceeding to review a decision on an application for a new permit:

1. If the permit applicant is seeking review, he shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and administrative regulations or that the permit terms or conditions are improper.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations, or that the cabinet should have imposed certain terms or conditions on the permit that were not imposed.

(b) In a proceeding to review the approval or disapproval of an application for a permit renewal, those parties opposing renewal shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the renewal application should be disapproved or that the cabinet should have imposed certain terms or conditions on the renewal permit that were not imposed.

(c) In a proceeding to review the approval or disapproval of an application for a permit revision or amendment, or an application for the transfer, assignment, or sale of rights granted under permit:

1. If the permit applicant is seeking review, he shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and administrative regulations; and

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations.

(d) In a proceeding to review a permit revision or amendment ordered by the cabinet, the cabinet shall have the burden of going forward to establish a prima facie case that the permit should be revised or amended and the permittee shall have the ultimate burden of persuasion that the revision or amendment is not appropriate.

(e) In a proceeding to review a decision on an application for a coal exploration permit:

1. If the permit applicant is seeking review, he shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the permit application complies with the requirements of KRS Chapter 350 and administrative

regulations.

2. If a person other than the permit applicant is seeking review, the person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the application fails to comply with the requirements of KRS Chapter 350 or the administrative regulations.

Section 9. Review of Cabinet Determinations. (1) Who may file. A person who considers himself aggrieved by a determination of the cabinet for which an administrative hearing is not specifically provided in any other section of this administrative regulation may file a petition for review of the determination pursuant to this section.

(2) The petition for review shall be filed with the office within thirty (30) days after the petitioner has had actual notice of the determination complained of, or could reasonably have had notice. Failure to timely file a petition for review shall constitute a waiver of an administrative hearing and the petition shall be dismissed.

(3) Contents of petition. The petition for review shall contain:

(a) A statement of the facts entitling the one requesting review to administrative relief;

(b) An explanation of each specific alleged error in the cabinet's determination;

(c) A request for specific relief; and

(d) Other relevant information.

(4) Answer or responsive pleading. The cabinet and interested parties shall file an answer or other responsive pleading within thirty (30) days of **service** [~~receipt~~] of the petition specifically admitting or denying facts or alleged errors stated in the petition and setting forth any other matters to be considered on review.

(5) Amended petition. A petition may be amended once as a matter of right prior to the filing of an answer and thereafter by leave of the hearing officer upon proper motion. The cabinet and interested parties shall have ten (10) days from the filing of a petition amended as a matter of right or the time remaining for filing an answer to the original petition, whichever is longer, to file an answer. If the hearing officer grants a motion to amend a petition, the time for an answer to be filed shall be set forth in the order granting the motion.

(6) Notice of hearing. The parties and interested persons shall be given written notice of the time and place of the administrative hearing at least twenty-one (21) days prior to the hearing unless the twenty-one (21) days period is waived in writing.

(7) Effect of filing. The filing of a petition for review shall not stay the effectiveness of the cabinet's determination pending completion of administrative review.

(8) Default.

(a) If the petitioner fails to timely comply with a prehearing order of a hearing officer, the hearing officer shall issue an order to show cause why that person should not be deemed to have waived his right to an administrative hearing and why his petition should not be dismissed.

(b) If the order to show cause is not satisfied as required, the hearing officer shall recommend to the secretary the entry of a final order finding that the petitioner has waived his right to an administrative hearing and dismissing the petition.

(c) If the person requesting the administrative hearing fails to appear at a hearing, the person shall be deemed to have waived his right to a hearing and the hearing officer shall recommend to the secretary the entry of a final order finding that he has waived his right to an administrative hearing and dismissing the petition.

(9) Burden of proof. The petitioner shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the requested relief.

Section 10. Proceedings for Suspension or Revocation of Permits Because of Pattern of Violations. (1) Initiation of proceedings.

(a) A proceeding on a show cause order issued by the cabinet pursuant to KRS 350.028(4), 350.465(3)(f) and 405 KAR 12:020, Section 8, shall be initiated by the filing of a copy of the show cause order by the cabinet with the office at the same time the order is issued to the permittee.

(b) A show cause order shall set forth:

1. A list of the unwarranted or willful violations which contribute to a pattern of violations;

2. A copy of each order or notice which contains the violations listed as contributing to a pattern of violations;

3. The basis for determining the existence of a pattern of violations; and

4. Recommendations whether the permit should be suspended or revoked, including the length and terms of a suspension.

(2) Answer. The permittee shall have thirty (30) days from service of the show cause order within which to file an answer with the office which shall state:

(a) The reasons in detail why a pattern of violations, as described in 405 KAR 12:020, Section 8, does not exist or has not existed including all reasons for contesting:

1. The fact of the violations alleged by the cabinet as constituting a pattern of violations;

2. The willfulness of the violations; or

3. Whether the violations were caused by the unwarranted failure of the permittee;

(b) Mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension;

(c) Other alleged relevant facts; and

(d) Whether an evidentiary hearing on the show cause order is desired.

(3) Burden of proof. In a show cause proceeding, the cabinet shall have the burden of going forward to establish a prima facie case for suspension or revocation of the permit. The ultimate burden of persuasion that the permit should not be suspended or revoked shall rest with the permittee.

(4) Determination by the hearing officer .

(a) Upon a determination by the hearing officer pursuant to 405 KAR 12:020, Section 8, that a pattern of violations exists or has existed, the hearing officer shall recommend the permit either be suspended or revoked and the permittee directed to complete necessary remedial measures and reclamation operations. In making such a recommendation, the hearing officer need not find that all the violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern.

(b) If the permit is suspended, the hearing officer may recommend preconditions to be satisfied prior to the suspension being lifted.

(5) Default. If the permittee fails to timely file an answer or appear at the administrative hearing, the permittee shall be deemed to have waived his right to an administrative hearing and the hearing officer shall recommend to the secretary the entry of a final order containing the following:

(a) That each violation listed in the show cause order occurred;

(b) That the violations were caused by the permittee's unwarranted failure or were willfully caused;

(c) That a pattern of violations exists;

(d) That the permit shall be suspended or revoked in accordance with the recommendation contained in the show cause order.

Section 11. Procedures for Abate or Alleviate Orders. (1) In general. If pursuant to KRS 224.10-410, the secretary issues an order to abate or alleviate to a surface coal mining and reclamation operation, the cabinet shall provide the person to whom the order was issued an opportunity to be heard. The holding of an administrative hearing pursuant to this section shall not operate to terminate or stay the order or the affirmative obligations imposed on a person by the order, unless the hearing officer shall find on the record that the obligations have been met or that the order was improper or inappropriate.

(2) Notice.

(a) Upon issuance of an order to abate or alleviate under the provisions of KRS 224.10-410, the secretary shall file with the office a copy of the order.

(b) Upon filing an order to abate or alleviate, the office shall issue an administrative summons pursuant to 405 KAR 7:091, Section 6, and shall set the time and place for an administrative hearing to be held not less than ten (10) days from the date the order to abate or alleviate was signed by the secretary.

(3) Response.

(a) The person named in the order to abate or alleviate shall prior to or at the hearing file a response to the order specifically admitting or denying facts alleged in the order, setting forth other matters to be considered on review, and setting forth evidence, if any, that the condition or activity does not violate the provisions of KRS 224.10-410.

(b) In lieu of a response, the person named in the order to abate or alleviate may contact the office in writing or by other means and state that an administrative hearing is not needed, and that he does not desire to contest the order.

(4) Hearing procedure. The administrative hearing shall be held in accordance with 405 KAR 7:091, Section 3. In addition the hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the hearing which may be orally supplemented on the record at the hearing, or if written proposed findings of fact and conclusions of law have not been submitted at the hearing, they may be orally presented for the record at the administrative hearing.

(5) Burden of proof. The cabinet shall have the burden of going forward to establish a prima facie case as to **the propriety** [~~validity~~] of the order to abate or alleviate. The person named in the order to abate or alleviate shall have the ultimate burden of persuasion that the condition or activity does not violate KRS 224.10-410, or that the condition or activity has been discontinued, abated or alleviated.

(6) Default. Upon notification by the person named in the order to abate or alleviate that a hearing is not needed or upon failure of the person to appear at the administrative hearing, the hearing officer shall promptly prepare a report stating that the hearing has been waived and the order to abate or alleviate stands as issued.

(7) Effect of proceedings. The scheduling of an administrative hearing pursuant to this section shall not operate to terminate or stay the effect of the order or to relieve the person named in the order from performing the affirmative obligations imposed in the order to abate or alleviate.

Section 12. Temporary Relief. (1)**(a)** Pending the completion of the investigation and hearings provided for in this administrative regulation, a hearing officer may, subject to review by the secretary, grant temporary relief from a notice or order issued pursuant to KRS Chapter 350 or administrative regulations, or a permit or bond release decision of the cabinet.

(b) A petition for relief shall be in writing, **and filed with the office. The petition** shall contain:

1. A detailed statement **setting forth** [~~giving~~] reasons why such relief should be granted;

2. A showing that there is a substantial likelihood that the person requesting the relief will prevail on the merits of the final determination of the proceeding;

3. A statement that the relief sought will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources;

4. If the petition relates to an order for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4) or a decision to release a bond, a statement of whether the requirement for a decision on the petition within five (5) working days is waived; and

5. A statement of the specific relief requested. [~~and shall be filed with the office.~~]

(c) A hearing officer may grant temporary relief after making a written finding that relief is warranted, and shall state the reasons for the finding. A hearing officer shall grant or deny relief expeditiously; except if the person requests temporary relief from an order for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4), or from a bond release decision, a hearing officer shall grant or deny temporary relief within five (5) working days of receipt by the office of a request.

(2) A hearing officer may grant temporary relief from notices and orders of the cabinet issued pursuant to 405 KAR 12:020, Sections 2 and 3 under conditions as is deemed appropriate, if:

(a) An administrative hearing on the request for temporary relief has been held in the locality of the permit area, or at any other location acceptable to the cabinet and the person to whom the notice or order was issued, in which all parties were given an opportunity to be heard;

(b) The person requesting relief shows that there is substantial likelihood that the findings on the merits in an administrative hearing conducted by the cabinet will be favorable to the person; and

(c) The relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(3) If a person requests temporary relief from a permit or coal exploration determination, the hearing officer under conditions as may be prescribed pending final determination of the proceeding may grant temporary relief if:

(a) The parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(b) The person requesting the relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

(c) The relief will not affect adversely the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(d) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the cabinet, nor release of a bond when a bond release request has been denied.

(4) Determinations on petitions concerning orders for cessation and immediate compliance issued pursuant to KRS 350.130(1) or (4) or bond release decisions shall be handled as follows:

(a) If the five (5) day requirement set forth in subsection (1) of this section is waived, the hearing officer shall expeditiously conduct a hearing and render a decision on the petition.

(b) If a waiver of the five (5) day requirement set forth in subsection (1) is not made, the following shall apply:

1. The five (5) day time for decision shall not begin to run until the petition for temporary relief is filed with the office;

2. The petition shall identify the permit number, permittee, the date and number of the noncompliance or cessation order from which relief is requested, if applicable, and the name and telephone number of the petitioner;

3. In addition to the service requirements of 405 KAR 7:091, Section 5, the petitioner shall serve other parties with a copy of the petition simultaneously with the filing of the application. If service is accomplished by mail, the petitioner shall inform the other parties by telephone at the time of mailing that a petition is being filed and the contents of the petition;

4. The representative of the Department of Law and other parties may indicate their objection to the application by communicating the objection to the hearing officer and the applicant by telephone. However, ex parte communication as to the merits of the proceeding shall not be conducted with the hearing officer. The representative of Department of Law and other parties may simultaneously reduce their objections to writing. Written objections shall be immediately filed with the hearing officer and immediately served upon the petitioner;

5. Upon receipt of communication that there is an objection to the petition, the hearing officer shall immediately order a location, time and date for the administrative hearing by communicating the information to the Department of Law, other parties, and the petitioner by telephone. The hearing officer shall reduce the communications to writing in the form of a memorandum to the file;

6. If an evidentiary hearing is held:

a. The hearing officer may require the parties to submit proposed findings of fact and conclusions of law to be considered at the evidentiary hearing which may be orally supplemented on the record at the hearing or where written proposed findings of fact and conclusions of law have not been submitted at the hearing, they may be orally presented for the record at the hearing;

b. The hearing officer shall either rule from the bench on the petition, orally stating the reasons for his decision or shall within twenty-four (24) hours of completion of the hearing issue a written decision. If the hearing officer makes an oral ruling, he shall issue a written decision within three (3) working days; and

7. If at any time after the initiation of the expedited procedure, the petitioner requests a delay or acts in a manner so as to frustrate the expeditious nature of the proceeding or fails to supply the information required by the hearing officer, the action shall constitute a waiver of the five (5) day requirement.

Section 13. Penalties. (1) Any person who violates any of the provisions of KRS Chapter 350; 405 KAR Chapters 7 through 24; or a permit condition or who fails to perform the duties imposed by these provisions, except the refusal or failure to obtain a permit, exploration approval or other authorization or who violates any determination or order promulgated pursuant to those provisions, may be assessed a civil penalty of not more than $5,000 for each day during which the violation continues. A civil penalty of not more than $5,000 for each day shall be assessed against a person issued an order pursuant to KRS 350.130(4).

(2) If violation has not been abated during the abatement period set forth in a notice of noncompliance and order for remedial measures or in an order for cessation and immediate compliance, a civil penalty of not less than $750 shall be assessed for each day during which the failure to abate continues, up to a maximum of thirty (30) days, except that:

(a) A penalty for failure to abate the violation shall not be assessed for more than thirty (30) days for each violation. If the person has not abated the violation within the thirty (30) day period, the cabinet shall take appropriate action pursuant to KRS 350.990(3), (4), (9), or the pattern of violations provisions of KRS 350.028(4) within thirty (30) days to ensure that abatement occurs or to ensure that there will not be a recurrence of the failure to abate; and

(b) If the person to whom the notice or order was issued initiates review proceedings with respect to the violation, and the abatement requirements are suspended in a temporary relief proceeding pursuant to Section 12 of this administrative regulation, then the abatement period shall be extended until the date a final order concerning the violation in question is issued.

(3) A person who engages in surface coal mining and reclamation operations or coal exploration operations without first securing a permit or exploration approval according to KRS Chapter 350 and 405 KAR Chapters 7 through 24, shall be assessed a civil penalty of not less than $5,000 nor more than $25,000. Each day shall constitute a separate violation. However, the penalties provided in subsection (1) of this section shall apply in lieu of the penalties provided for in this subsection where a permittee through inadvertence has exceeded the boundaries of the permit in effect at that time.

(4) Whenever a corporate permittee violates any provision of KRS Chapter 350 or the administrative regulations or fails or refuses to comply with any final order issued by the secretary, any director, officer, or agent of the corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure or refusal shall be subject to the same civil penalties, fines, and imprisonment as may be imposed upon a person pursuant to this section.

(5) Penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky or the Natural Resources and Environmental Protection Cabinet by the cabinet's Department of Law, or upon the secretary's request, by the attorney general.

(6)(a) If any party seeks judicial review of a final order of the cabinet involving a penalty, the proposed penalty shall continue to be held in escrow until completion of the review. If judicial review is not sought, the escrowed funds shall be transferred to the cabinet for payment to the Kentucky State Treasurer as provided by law.

(b) If a final order of the secretary or final decision of a reviewing court results in the reduction or elimination of the proposed penalty, the cabinet shall within thirty (30) days of receipt of the order refund the appropriate amount with interest at the statutory rate from the date of payment into escrow.

(c) If a final order of the secretary or final decision of a reviewing court increases the penalty, the person to whom the notice or order was issued shall pay the difference to the cabinet within thirty (30) days after receipt of the order.

Section 14. Costs and Expenses. (1) Who may file. A person may file a petition for award of costs and expenses including attorneys' fees reasonably incurred as a result of the person's participation in a proceeding held pursuant to this administrative regulation which results in an order of the secretary. The petition for an award of costs and expenses, including attorneys' fees, shall be filed with the cabinet within forty-five (45) days of mailing of the final order. Failure to timely file the petition shall constitute a waiver of the right to an award.

(2) Contents of petition. A petition filed under this section shall include the name of the party from which costs and expenses are sought and the following shall be submitted in support of the petition:

(a) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

(b) Receipts or other evidence of the costs and expenses; and

(c) If attorneys' fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for the services in the area, and the experience, reputation and ability of the individual or individuals performing the services.

(3) Answer. A person served with a copy of the petition shall have thirty (30) days from service of the petition within which to file an answer or other responsive pleading specifically admitting or denying the allegations stated in the petition and setting forth other matters to be considered.

(4) Criteria for awarding of costs. Appropriate costs and expenses including attorneys' fees may be awarded as follows:

(a) To a person from the permittee, if the person initiates an administrative proceeding reviewing an enforcement action, upon a finding that, on or after May 18, 1982, a notice of noncompliance or order for cessation was issued for violations of KRS Chapter 350, 405 KAR or permit conditions or that an imminent hazard existed, or to a person who participates in an enforcement proceeding where such a finding is made, if the hearing officer finds and the secretary concurs that the person made a substantial contribution to the full and fair determination of the issues; or

(b) To a person other than a permittee or his representative from the cabinet, if the person initiates or participates in any proceeding under KRS Chapter 350 upon a finding that the person made a substantial contribution to a full and fair determination of the issues; or

(c) To a permittee from the cabinet when the permittee demonstrates that the cabinet issued an order of cessation or a notice of noncompliance or initiated an administrative hearing in bad faith and for the purpose of harassing or embarrassing the permittee; or

(d) To a permittee from a person where the permittee demonstrates that the person initiated an administrative hearing or conference under this administrative regulation or participated in an administrative hearing or conference in bad faith and for the purpose of harassing or embarrassing the permittee; or

(e) To the cabinet where it demonstrates that a person applied for review pursuant to this administrative regulation or that a party participated in an administrative hearing or conference in bad faith and for the purpose of harassing or embarrassing the cabinet or the Commonwealth.

(5) An award under this section may include reimbursement for:

(a) Costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation or participation or both in an administrative hearing or conference under this administrative regulation; and

(b) Costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award before the cabinet.

Section 15. Determinations as to Inability to Prepay. (1) Inability to pay. Notwithstanding the provisions of Section 6(2) of this administrative regulation, an individual, upon filing a petition for review pursuant to Section 6 of this administrative regulation, may, in lieu of paying into the cabinet's escrow account the amount of the proposed assessment, simultaneously submit a petition and affidavit requesting the office to accord the individual a waiver of the requirement to prepay.

(2) Contents of petition. The petition for waiver of prepayment

requirements shall set forth:

(a) A statement of facts underlying the request for a determination that the individual is unable to comply with Section 6(2) of this administrative regulation; and

(b) An affidavit, subject to penalties for perjury, setting forth the applicant's income, property owned, outstanding obligations, the number and age of dependents, and a copy of his most recent Kentucky and federal income tax returns.

(3) Response. Within fifteen (15) days of service of the petition, the cabinet may file an answer or responsive pleading admitting or denying the contents of the petition for waiver. Failure by the cabinet to submit an answer or responsive pleading shall not relieve the office from making an independent determination as to the validity of the contents of the petition for waiver, and whether the waiver should be given.

(4) Interim report. Within thirty (30) days of filing of the petition, the hearing officer [~~office~~] shall issue an interim report accepting or denying the petition for waiver. If the waiver is accepted, it shall be so noted in the record and shall remain in effect, subject to review upon proper motion. If the waiver is denied, the applicant shall be informed in writing and the applicant shall be given thirty (30) days from the mailing of the interim report to pay into the cabinet's escrow account the amount of the assessment as set forth in the notice of proposed assessment or as set forth by the conference officer under the provisions of Section 4 of this administrative regulation.

(5) Presumptions.

(a) It shall be prima facie evidence that the individual is unable to comply with Section 6(2) of this administrative regulation if the petition is accompanied by a certified copy of a petition for bankruptcy or the individual is receiving or is eligible to receive public assistance payments at the time a petition for waiver is filed.

(b) It shall be prima facie evidence a person is not eligible for a waiver if he owns real property; is not receiving, or is not eligible to receive, public assistance payments at the time the affidavit is submitted; or owns more than one (1) motor vehicle.

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: September 11, 1992
FILED WITH LRC: September 11, 1992 at 11 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement
(Amended After Hearing)

405 KAR 12:020. Enforcement.

RELATES TO: KRS 350.020, 350.028, 350.050, 350.085, 350.113, 350.130, 350.151, 350.465, 350.990, 30 CFR Parts 730-733, 735, 840.13-.14, 840.16, 843, 30 USC 1253, 1255, 1271

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.050, 350.130, 350.465, 30 CFR Parts 730-733, 735, 840.13-.14, 840.16, 843, 30 USC 1253, 1255, 1271

NECESSITY AND FUNCTION: KRS Chapter 350 in pertinent part directs the cabinet to rigidly enforce administrative regulations promulgated to control the injurious effects of surface coal mining and reclamation operations. This administrative regulation sets forth various kinds of notices and orders to be issued by authorized representatives of the cabinet. The administrative regulation directs that there be issued a notice of noncompliance and order for remedial measures. The administrative regulation requires that an order for cessation and immediate compliance be issued for failure to abate a violation during a specified abatement period or for situations of imminent harm. The administrative regulation sets forth the general form of the notices and orders and authority to vacate, modify, or terminate the [~~such~~] orders or notices. This administrative regulation sets forth procedures for an informal hearing. The administrative regulation sets forth requirements if a permit is suspended or revoked [~~procedures for suspension or revocation of a permit~~] and procedures for a determination of [~~whether~~] a pattern of violations [~~exists~~]. This administrative regulation contains a portion of 405 KAR 7:090 which has been repealed.

Section 1. General. (1) The secretary of the cabinet may from time to time or for a definite period designate, by written order or by other means appropriate under the circumstances, authorized representatives to perform duties pursuant to the administrative regulations contained in Title 405, Chapters 7 through 24.

(2) Subject to [~~Unless otherwise provided to the contrary in~~] Title 405, Chapters 7 through 24 or unless the secretary has made a written order contrary to the terms of this subsection, personnel authorized by the commissioner of the department [~~of Surface Mining Reclamation and Enforcement~~] are deemed the authorized representatives of the cabinet for the purposes of Sections 2, 3, and 4 of this administrative regulation.

Section 2. Notice of Noncompliance and Order for Remedial Measures. (1) Issuance. An authorized representative of the cabinet shall issue a notice of noncompliance and order for remedial measures if, on the basis of inspection, he [~~or she~~] finds a violation of KRS Chapter 350; Title 405, Chapters 7 through 24; any term or condition of a permit; any term or condition of approval (for coal exploration and reclamation operations requiring cabinet approval); or any other applicable requirement.

(2) Form and content. A notice of noncompliance and order for remedial measures issued pursuant to this section shall be in writing and shall be signed by the authorized representative of the cabinet who issued it. The notice shall set forth with reasonable specificity:

(a) The nature of the violation;

(b) The remedial action required, if any, which may include accomplishment of interim steps if appropriate;

(c) A reasonable time for remedial action, if any, which may include time for accomplishment of interim steps if appropriate; and

(d) A reasonable description of the portions of the surface coal mining and reclamation operations or coal exploration and reclamation operations to which the notice applies.

(3) Service. Service of a notice of noncompliance and order for remedial measures shall be in the manner set forth in Section 5 of this regulation.

(4) Extension. An authorized representative of the cabinet may, by written notice, extend the time set for remedial action or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the person to whom the notice of noncompliance and order for remedial measures was issued.

(a) The total time for remedial action under the [~~such~~] notice, including all extensions, shall not exceed ninety (90) days from the date of issuance of the notice except upon a showing by the permittee or the person conducting the coal exploration and reclamation operations that it is not feasible to abate the violation within ninety (90) calendar days due to one (1) or more of the circumstances set forth in paragraph (b) of this subsection. An abatement period exceeding ninety (90) days pursuant to this subsection shall not be granted for situations in which the permittee's failure or the failure of the person conducting the coal exploration and reclamation operations to abate within ninety (90) days has been caused by a lack of diligence or intentional delay by the permittee or the person conducting the coal exploration and reclamation operations in completing the remedial action required.

(b) The following circumstances [~~which~~] may qualify surface coal mining and reclamation operations or coal exploration and reclamation operations for an abatement period of more than ninety (90) days [~~are situations in which~~]:

1. The permittee of the ongoing surface coal mining and reclamation operations or the person conducting the coal exploration and reclamation operations has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans, but the [~~such~~] permit or approval, for reasons not within the control of the permittee or the person conducting the coal exploration and reclama-

tion operations, has not been and will not be issued prior to ninety (90) days after the valid permit or approval expires or is required;

2. There is a valid judicial order precluding abatement within ninety (90) days to which the permittee or the person conducting the coal exploration and reclamation operations has diligently pursued all rights of appeal and to which he [~~or she~~] has no other effective legal remedy;

3. The permittee or the person conducting the coal exploration and reclamation operations cannot abate within ninety (90) days due to a labor strike; or

4. Weather conditions preclude abatement within ninety (90) days; due to weather conditions abatement within ninety (90) days would clearly cause more environmental harm than it would prevent; or abatement within ninety (90) days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

(c) If [~~Whenever~~] an abatement period in excess of ninety (90) days is approved by the cabinet, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public and the environment.

(d) If any of the conditions in paragraph (b) of this subsection exist, the permittee or the person conducting the coal exploration and reclamation operations may request the authorized representative of the cabinet to grant an abatement period exceeding ninety (90) days. The authorized representative of the cabinet shall not grant such an abatement period without the approval of the Director of the Division of Field Services or his [~~or her~~] designee, and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee or the person conducting the coal exploration and reclamation operations shall have the burden of establishing by clear and convincing proof that he [~~or she~~] is entitled to an extension under the provisions of this subsection. In determining whether or not to grant an abatement period exceeding ninety (90) days, the authorized representative of the cabinet may consider [~~any~~] relevant written or oral information from the permittee, the person conducting the coal exploration and reclamation operations, and [~~any~~] other sources. The authorized representative of the cabinet shall promptly and fully document in the applicable file his [~~or her~~] recommendation for granting or denying the request and the reasons therefor. The authorized representative's immediate supervisor shall review this document before approving or disapproving the extended abatement period and shall promptly and fully document the reasons for his [~~or her~~] approval or disapproval in the applicable file.

(e) A [~~Any~~] determination made under paragraph (d) of this subsection shall be in writing and shall be subject to administrative and judicial review pursuant to 405 KAR 7:092 [~~7:090~~].

(f) No extension granted under this subsection may exceed ninety (90) days in length. In situations in which the condition or circumstance that prevented abatement within ninety (90) days exists at the expiration of the extension, the permittee or the person conducting the coal exploration and reclamation operations may request a further extension in accordance with the procedures of this subsection.

(5) Modification. An authorized representative of the cabinet may, by written notice, modify an order for remedial measures for good cause.

(6) Termination. An authorized representative of the cabinet shall, by issuance of a notice of inspection of noncompliance, provide written notice to the person to whom a notice of noncompliance and order for remedial measures has been issued that the [~~such~~] notice is terminated when the authorized representative of the cabinet determines that all violations listed therein have been corrected. The [~~Such~~] termination shall not affect the right of the cabinet to assess civil penalties for those violations pursuant to 405 KAR 7:092 [~~7:090~~] or to impose [~~any~~] other applicable sanctions as authorized by law.

(7) Vacation. Based upon the written recommendation of the regional administrator and the authorized representative of the cabinet who issued the notice of noncompliance and order for remedial measures, the Director of the Division of Field Services may vacate a notice of noncompliance and order for remedial measures determined to have been issued in error.

Section 3. Order for Cessation and Immediate Compliance. (1) Issuance.

(a) If the person to whom a notice of noncompliance and order for remedial measures has been issued fails to comply with the terms of the [~~such~~] notice within the time for remedial action established in the notice [~~therein~~] or as subsequently extended, an authorized representative of the cabinet shall immediately issue to the person an order for cessation and immediate compliance.

(b) An authorized representative of the cabinet shall immediately issue an order for cessation and immediate compliance if he [~~or she~~] finds, on the basis of an inspection, any condition or practice; any violation of KRS Chapter 350; any violation of Title 405, Chapters 7 through 24; or any violation of a term or condition of the applicable permit or exploration approval which:

1. Creates an imminent danger to the health or safety of the public; or

2. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(c) An authorized representative of the cabinet shall immediately issue an order for a cessation and immediate compliance if he [~~or she~~] finds, on the basis of an inspection, that surface coal mining and reclamation operations are being conducted by a person without a valid surface coal mining and reclamation operations permit for the activities or that coal exploration and reclamation operations are being conducted without proper notice of intention to explore or approval for the [~~such~~] operations, as applicable, in accordance with 405 KAR 8:020.

(2) Form and content.

(a) An order for cessation and immediate compliance shall be in writing and shall be signed by the authorized representative of the cabinet who issued it. The order shall set forth with reasonable specificity:

1. The nature of the violation;

2. A reasonable description of the portions of the operations in which it applies;

3. The remedial measures, if any, necessary to abate the violation in the most expeditious manner possible; and

4. The time established for abatement, if appropriate, including the time for complying with any interim steps.

(b) At the same time that the authorized representative of the cabinet issues an order for cessation and immediate compliance pursuant to subsection (1)(b) or (c) of this section, he [~~or she~~] shall also issue a notice of noncompliance and order for remedial measures.

(3) Service. Service of an order for cessation and immediate compliance shall be in the manner set forth in Section 5 of this administrative regulation.

(4) Effect.

(a) The order for cessation and immediate compliance shall require the cessation of all surface coal mining and reclamation operations, all coal exploration and reclamation operations, or the portions or operations thereof relevant to the condition, practice, or violation covered by the order. The order shall require the person to whom it is issued to take any affirmative steps which the authorized representative of the cabinet deems necessary to abate the condition, practice, or violation in the most expeditious manner possible. The order may require the use of existing or additional personnel and equipment.

(b) The order shall remain in effect until the condition, practice, or violation has been abated; until the order is vacated, modified, or terminated in writing pursuant to subsection (5) of this section; until it is vacated, modified, or terminated by a hearing officer pursuant to 405 KAR 7:092 [~~7:090~~]; or until the order expires pursuant to Section 6 of this administrative regulation.

(c) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless [~~otherwise provided in~~] the order states that the reclamation operations and other activities shall cease.

(5) Modification, extension, vacation, and termination.

(a) An authorized representative of the cabinet may, by written notice, modify or terminate an order for cessation and immediate

compliance issued under [~~pursuant to~~] this section for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued.

(b) The secretary or his [~~or her~~] authorized representative shall terminate an order for cessation and immediate compliance, by written notice to the person to whom the order was issued, when he [~~or she~~] determines that all conditions, practices, and violations listed in the order have been abated. Termination shall not affect the right of the cabinet to assess civil penalties for those violations under 405 KAR 7:092 [~~7:090~~] or to impose any other applicable sanctions as authorized by law.

(c) Based upon the written recommendations of the regional administrator and the authorized representative of the cabinet who issued the order for cessation and immediate compliance, the Director of the Division of Field Services may vacate an order for cessation and immediate compliance determined to have been issued in error.

(6) Within sixty (60) days after issuing an order for cessation and immediate compliance, the cabinet shall notify in writing a [~~any~~] person who has been identified under 405 KAR 8:010, Section 18(5) and either 405 KAR 8:030, Section 2(3) and (4) or 405 KAR 8:040, Section 2(3) and (4) as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

Section 4. Notice of Inspection and Noncompliance. (1) Issuance. If an authorized representative of the cabinet issues a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance, he [~~or she~~] shall reinspect the areas affected by the surface coal mining and reclamation operations or the coal exploration and reclamation operations on or soon after the date given in the notice or order for completion of remedial measures. At the time of reinspection, the authorized representative of the cabinet shall issue a notice of inspection of noncompliance.

(2) Form and content. The notice of inspection of noncompliance shall set forth whether:

(a) The remedial measures have been completed, and the notice or order is therefore terminated;

(b) The remedial measures have not been completed, but the notice or order is modified or extended for good cause; or

(c) The remedial measures have not been completed. Following such a determination, the cabinet shall:

1. For the situations in which the inspection was a reinspection of a notice of noncompliance and order for remedial measures, issue an order for cessation and immediate compliance; and

2. For situations in which the inspection was a reinspection of an order for cessation and immediate compliance and if the order for cessation and immediate compliance has not been abated [~~following the preliminary hearing~~], initiate an administrative [~~a formal~~] hearing for suspension or revocation of the permit or approval, initiate an administrative [~~a formal~~] hearing for bond forfeiture, or initiate administrative hearings [~~proceedings~~] for other appropriate relief.

(3) Service. Service of a notice of inspection for noncompliance shall be in the manner set forth in Section 5 of this regulation.

Section 5. Service of Notices and Orders. (1) A [~~Any~~] notice of noncompliance and order for remedial measures, order for cessation and immediate compliance, or notice of inspection of noncompliance shall be **promptly** served on the person to whom it is issued or the person's designated agent [~~promptly after issuance~~].

(2) Each notice of noncompliance and order for remedial measures, order for cessation and immediate compliance, and notice of inspection of noncompliance shall be served by hand, by certified mail (return receipt requested), or by registered mail to the person to whom the notice or order has been issued or to his [~~or her~~] designated agent for service. The notice or order shall also be served by hand to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge at the site of the surface coal mining and reclamation operations or coal exploration and reclamation operations referred to in the notice or order. If no such individual can be located at the site, a copy of the notice or order may be tendered to an [~~any~~] individual at the site who appears to be an employee or agent of the person to whom the notice or order has been issued. Service, whether by hand or by mail, shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept. For surface coal mining and reclamation operations, service by mail shall be addressed to the designated agent for service; to the permanent address of the permittee as identified on the permit or in the application; or, if no address is identified for the permittee in the application, to any [~~such~~] other address as is known to the cabinet. For coal exploration and reclamation operations, service by mail shall be addressed to the designated agent for service; to the permanent address of the person conducting the coal exploration and reclamation operations as identified in the notice of intention to explore or in the application for coal exploration and reclamation approval submitted pursuant to 405 KAR 8:020; or, if no address is identified for the person conducting the coal exploration and reclamation operations in the notice or the application submitted pursuant to 405 KAR 8:020, to any [~~such~~] other address as is known to the cabinet. If no person is present at the site of the surface coal mining and reclamation operations or the coal exploration and reclamation operations, service by mail shall by itself be sufficient notice.

(3) Designation by a [~~any~~] person of an agent for service of notices and orders issued pursuant to this administrative regulation and notices of hearing issued pursuant to 405 KAR 7:092 [~~7:090~~] shall be made a part of the applicable permit application, notice of intention to explore, or application for coal exploration and reclamation approval. The [~~Such~~] person shall continue as agent for service of process until [~~such time as~~] written revision of the permit, a notice of intention to explore, or coal exploration and reclamation approval is made which designates another person as agent.

(4) The cabinet may furnish copies of notices and orders to a [~~any~~] person having an interest which is or may be adversely affected by the coal exploration and reclamation operations or by the surface coal mining and reclamation operations and a [~~any~~] person having an interest in the permit or exploration area.

Section 6. Expiration. (1) Except as provided in subsection (2) of this section, if [~~When~~] a notice of noncompliance and order for remedial measures or an order for cessation and immediate compliance requires cessation of coal removal expressly or by implication, the [~~such~~] notice or order shall expire thirty (30) days after it is served unless an informal [a] hearing [~~pursuant to 405 KAR 7:090~~] is held at or near the mine site or the exploration site within that time except that [~~such~~] notices or [~~and~~] orders shall not expire if the condition, practice, or violation in question has been abated or if the person to whom the notice or order has been issued has waived the informal [~~preliminary~~] hearing or has agreed to its postponement. Expiration of the notice or order shall not affect the rights of the cabinet to assess appropriate penalties and to impose applicable sanctions with respect to the time period during which the notice or order was in effect for the violations for which the notice or order was issued. The granting or waiver of an informal public hearing shall not affect the right of a person to an administrative hearing.

(2)(a) The informal public hearing will be deemed waived if the person to whom the notice or order was issued is informed by written notice served in the manner provided in paragraph (b) of this subsection that he will be deemed to have waived an informal public hearing unless the hearing is requested within thirty (30) days after service of the notice, and an informal public hearing is not requested within that time.

(b) The written notice referred to in paragraph (a) of this subsection shall be delivered by an authorized representative or sent by certified mail, return receipt requested, no later than five (5) days after the notice or order is served.

(c) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if the request is received on or after the 21st day after service of the notice or order. The extension of time shall be equal to the number of days elapsed after the 21st day.

(3)(a) The cabinet shall give as much advance notice as is

practicable of the time, place, and subject matter of the informal public hearing to the person to whom the notice or order was issued, and a person who filed a report which led to the issuance of the notice or order.

(b) The cabinet shall also post notice of the informal public hearing at the department's regional office for the mine site and, if practicable, publish it in a newspaper of general circulation in the area of the mine.

(4) Requirements for administrative hearings shall not govern informal public hearings. An informal public hearing shall be conducted by a representative of the cabinet who may accept oral or written arguments and other relevant information from any person attending.

(5) Within five (5) days after the close of the informal public hearing, the cabinet shall affirm, modify, or vacate in writing the notice or order. The decision shall be sent to the person to whom the notice or order was issued, and any person who filed a report which led to the issuance of the notice or order.

(6) The person conducting the informal public hearing for the cabinet shall determine if the mine site shall be viewed during the informal public hearing. In making this determination the only consideration shall be whether viewing the mine site will assist the person conducting the informal public hearing in reviewing the appropriateness of the enforcement action or of the required remedial action.

Section 7. Suspension and Revocation of Permits and Exploration Approvals. (1) The cabinet may initiate administrative [~~formal~~] hearings for suspension or revocation of permits and coal exploration and reclamation approvals, may initiate administrative [~~formal~~] hearings for bond forfeitures, and may initiate administrative [~~formal~~] hearings or judicial proceedings for other appropriate relief [~~measures~~].

(2) If the cabinet revokes or suspends the permit or exploration approval, surface coal mining operations on the permit area or disturbances on the exploration area shall immediately cease, and the permittee or person conducting coal exploration operations shall:

(a) If the permit or exploration approval is revoked, complete reclamation within the time specified in the order; or

(b) If the permit or exploration approval is suspended, complete all affirmative obligations to abate all conditions, practices, and violations as specified in the order.

Section 8. Pattern of Violations. (1) If the cabinet determines that a pattern of violations of the requirements of KRS Chapter 350, the administrative regulations, or a permit condition imposed under KRS Chapter 350 or administrative regulations exists or has existed and that the violations are caused by the unwarranted failure of the permittee or were willful violations, the cabinet shall issue an order to the permittee to show cause why the permit should not be suspended or revoked.

(2) The cabinet may determine that a pattern of violations exists or has existed, based on two (2) or more inspections of the permit area within any twelve (12) month period, after considering the circumstances, including:

(a) The number of violations, cited on more than one (1) occasion, of the same or related requirements of KRS Chapter 350; KAR Title 405, Chapters 7 through 24; or permit conditions;

(b) The number of violations, cited on more than one (1) occasion, of different requirements of KRS Chapter 350; KAR Title 405, Chapters 7 through 24; or permit conditions; and

(c) The extent to which the violations were isolated departures from lawful conduct.

(3) The cabinet shall promptly review the history of violations of a permittee who has been cited for violations of the same or related requirements of KRS Chapter 350; KAR Title 405, Chapters 7 through 24 or permit conditions during three (3) or more inspections of the permit area within any twelve (12) month period. If after the review the cabinet determines that a pattern of violations exists or has existed, the cabinet shall issue a show cause order pursuant to this section and 405 KAR 7:092, Section 10.

(4) In determining the number of violations within any twelve (12) month period, the cabinet shall only consider violations cited as a result of inspections carried out on or after May 3, 1978.

(5) If a permittee fails to abate a violation cited in a notice of noncompliance or cessation order within the abatement period set in the notice of order or as subsequently extended, the cabinet shall review the permittee's history of violations to determine whether a pattern of violations exists or has existed pursuant to this section and shall initiate a show cause order as provided in this section and 405 KAR 7:092, Section 10.

Section 9. [~~8.~~] Inability to Comply. (1) No notice or order issued pursuant to the administrative regulations of this Title may be vacated because of inability to comply.

(2) Inability to comply may not be considered in determining whether a pattern of violations exists.

(3) Rapid compliance, good faith, diligence, and inability to comply may be considered in mitigation of proposed penalty assessments under 405 KAR 7:092 [~~7:090~~].

PHILLIP J. SHEPHERD, Secretary
JUDITH A. VILLINES, Commissioner
APPROVED BY AGENCY: September 11, 1992
FILED WITH LRC: September 11, 1992 at 11 a.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
Office of General Counsel
(Amended After Hearing)

601 KAR 40:020. Application for license to operate vehicles transporting municipal solid waste.

RELATES TO: KRS 174.450
STATUTORY AUTHORITY: KRS 174.450
NECESSITY AND FUNCTION: KRS 174.450(9) requires that the Transportation Cabinet promulgate administrative regulations to establish a municipal solid waste transportation licensing program by August 26, 1991, and that on or after November 26, 1991, that each vehicle being used to transport municipal solid waste be identified by the licensee.

Section 1. (1) An applicant for a license to operate municipal solid waste transportation vehicles within the Commonwealth of Kentucky, shall apply to the Transportation Cabinet, Office of General Counsel, 501 High Street, Frankfort, Kentucky 40622.

(2) The following information shall be provided in, or with, the application:

(a) Name in which license is sought. (NOTE: This name shall be identical to the motor carrier's current KYU number issued by the Department of Vehicle Regulation, if applicable. See question below relating to Kentucky Highway Use Tax Identification Number);

(b) Business address, including street address, city, state and zip code;

(c) Telephone number;

(d) Name of a natural person who is either the applicant, or an officer of the applicant, position of this person, Social Security number of this person and home address of this person:

(e) Number of vehicles which the licensee intends to operate;

(f) If the applicant is not a resident of Kentucky and anticipates transporting municipal solid waste from outside Kentucky to a municipal solid waste management facility in Kentucky, a copy of the applicant's "Consent to Service" document as required to be filed with the Natural Resources and Environmental Protection Cabinet;

(g) The applicant's highway use tax identification number, as required by KRS 138.665. (NOTE: If the applicant does not currently have a KYU number, it shall attach a statement of why its transportation operations do not fall within the purview of KRS 138.665);

(h) A statement that the applicant does now have, or is in the process of obtaining, liability insurance on each vehicle in the

amounts currently required by Kentucky law;

(i) A statement of whether the applicant or any corporate officer or principal stockholder thereof has ever been convicted of a felony; and

(j) If the applicant is a Kentucky corporation, a copy of the corporation's certificate of good standing from the Kentucky Secretary of State or, [in the jurisdiction in which it was incorporated and] if a foreign corporation, a certificate to do business in Kentucky from the Kentucky Secretary of State, shall be submitted with the application. [Neither of] These certificates shall not be more than thirty (30) days old at the time the application is submitted. However, all corporations, whether foreign or domestic, shall submit a list of persons who own ten (10) percent or more of the corporation's outstanding stock.

(k) If the applicant is doing business under an assumed name, it shall provide proof with the application that the assumed name has been registered with the appropriate county clerk's office.

(l) The Transportation Cabinet may require other proof of eligibility to do business in Kentucky or proof of safety fitness].

(3) The official signing on behalf of the applicant shall:

(a) Be sworn;

(b) State that he has the authority to represent the applicant;

(c) State that the information is true and correct to the best of his knowledge and belief; and

(d) Have his signature and oath notarized.

(4) The Transportation Cabinet shall make available a form listing the information required in subsections (2) and (3) of this section to any person wishing to apply for a license to operate municipal solid waste transportation vehicles. These forms may be obtained, inspected or copied at [from] the Office of General Counsel, 501 High Street, Frankfort, Kentucky 40622, or by telephoning 502/564-7650.

Section 2. (1) The Transportation Cabinet shall within thirty (30) days of receipt of an application: [either]

(a) Approve the application to operate municipal solid waste transportation vehicles;

(b) Disapprove the application; or

(c) Request additional information from the applicant.

(2) However, the Transportation Cabinet shall not issue a license to anyone who has not filed a fully completed application form.

Section 3. As soon as the applicant has been licensed to operate municipal solid waste transportation vehicles, the Transportation Cabinet shall provide a form to the licensee so that the individual municipal solid waste transportation vehicles used by that licensee can be identified. This form shall contain space for the licensee to submit the following information:

(1) The municipal solid waste transporter license number and name of the municipal solid waste transporter;

(2) KYU number (if applicable) of the licensee;

(3) Telephone number of the licensee;

(4) Address of the licensee;

(5) Licensee's contact person;

(6) A sworn and notarized statement made by an official of the licensee certifying that the named licensee has, and shall maintain, liability insurance on each vehicle operated under this license;

(7) An [In addition, the] official of the licensee shall state that the applicant has access to, and is familiar with, all applicable regulations of the United States Department of Transportation relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials, and that the applicant shall comply with these regulations;

(8) [(7)] Identification of each vehicle to be used to transport municipal solid waste which shall include the following:

(a) The vehicle's company unit number;

(b) The complete vehicle identification number (serial number);

(c) The make of vehicle;

(d) The year of manufacture of the vehicle;

(e) The declared gross weight of the vehicle;

(f) The type of truck; [and]

(g) The number of axles on the vehicle;

(h) The state of license of the vehicle;

(i) The license plate number [(]if the vehicle is Kentucky registered and licensed[)];

(j) The name of the lessor [(]if the vehicle is leased[)];

(k) The amount of the fee paid; and

(l) Whether it is a first or renewal registration of that individual vehicle.

(m) To identify the type of truck and number of axles, the licensee shall, for a straight truck, code the letters "ST", followed by the total number of axles. For a tractor-trailer, the licensee shall code the letters "TR", followed by the total number of axles.

Section 4. Municipal solid waste transporter vehicle identification cards shall expire at midnight of December 31 of each year.

Section 5. The fee for a municipal solid waste transporter vehicle identification card which shall become effective January 1, or a renewal of an identification card, shall be ten (10) dollars. If the newly-issued card becomes effective in a month other than January, the cost of the identification card shall be prorated by using the following schedule:

(1) February - $9.17;
(2) March - $8.34;
(3) April - $7.50;
(4) May - $6.67;
(5) June - $5.84;
(6) July - $5.00;
(7) August - $4.17;
(8) September - $3.34;
(9) October - $2.50;
(10) November - $1.67;
(11) December - $0.84.

Section 6. The original vehicle identification card shall be carried in the power unit of the vehicle for which it was issued. [No] Photocopies, reproductions or facsimiles shall not be allowed.

Section 7. Even though the Transportation Cabinet does not have the authority to issue temporary identification cards for municipal solid waste transportation vehicles, the cabinet shall promptly issue identification cards to a licensee who has properly applied for the identification cards.

[Section 8. The appropriate identification card shall be in the cab of each vehicle transporting municipal solid waste beginning March 1, 1992.]

Section 8. [9.] The Transportation Cabinet shall notify the Natural Resources and Environmental Protection Cabinet of all persons found to be transporting municipal solid waste either:

(1) Without a license to do so; or

(2) Without a vehicle identification card for the transportation of municipal solid waste.

Section 9. (1) A license to operate municipal solid waste vehicles shall not be transferred.

(a) If a licensee's assets are sold or transferred **to an entity who is not a current licensee,** [and the new owner intends to continue transporting municipal solid waste,] the new owner shall submit a new application pursuant to Section 1 of this administrative regulation. **Prior to beginning operation as a transporter of municipal solid waste, the entity shall be licensed by the Transportation Cabinet pursuant to this administrative regulation.**

(b) If the new owner holds a current license to operate as a transporter of municipal solid waste, it may operate the newly acquired motor vehicles under the provisions of its existing license as soon as a vehicle identification card is obtained in the name of the new owner.

(c) A licensee who discontinues operation as a transporter of municipal solid waste in Kentucky shall surrender his license to the Transportation Cabinet.

(2) The new owner of a municipal solid waste transportation

vehicle may apply to the Transportation Cabinet for transfer of the vehicle identification card on the motor vehicle if:

(a) The motor vehicle has a current municipal solid waste transportation identification card;

(b) There is at least one (1) month before the identification cared will expire;

(c) The new owner has been licensed by the Transportation Cabinet as a transporter of municipal solid waste;

(d) The new owner provides to the Transportation Cabinet a sworn statement that the licensee has and shall maintain liability insurance on the newly acquired motor vehicles; and

(e) The new owner shall state that it has access to and is familiar with all applicable regulations of the United States Department of Transportation relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials and that the new owner shall comply with these regulations.

(3) There shall not be a cost to the licensee for the transfer of the identification card as described in subsection (2) of this section. The new owner of the municipal solid waste transportation vehicle shall be responsible for the identification card fee beginning on January 1 of the following year.

NORRIS BECKLEY, Deputy Commissioner
DON C. KELLY, Secretary
APPROVED BY AGENCY: September 4, 1992
FILED WITH LRC: September 9, 1992 at 10 a.m.

TRANSPORTATION CABINET
Department of Highways
Division of Traffic
(Amended After Hearing)

603 KAR 3:060. Advertising devices on interstate parkway and federal-aid primary highways.

RELATES TO: KRS 177.830 to 177.890, 23 CFR
STATUTORY AUTHORITY: KRS 174.080, 177.860, 23 CFR
NECESSITY AND FUNCTION: KRS 177.860 authorizes the Department of Highways to establish reasonable standards for advertising devices on or visible from interstate, parkway and federal-aid primary highways. This administrative regulation is the means used by the Department of Highways to establish those standards. In addition KRS 177.867 requires the Department of Highways to pay just compensation for the removal of legally-erected advertising devices which are not in compliance with current state law or administrative regulation. This administrative regulation sets forth standards for determining when the Department of Highways shall pay just compensation. 23 CFR Part 661 establishes the Great River Road in extreme western Kentucky and determines that advertising devices along the road shall be controlled. This administrative regulation addresses advertising devices visible from the Great River Road.

Section 1. Agreement with FHWA. (1) The agreement entered into between the Department of Highways and the Federal Highway Administration on December 23, 1971 is incorporated by reference. This agreement is the one authorized by KRS 177.890 and 23 CFR Part 1.35 and required by 23 CFR Parts 190 and 750. It governs the erection and maintenance of advertising devices on interstate highways and federal-aid primary highways in the Commonwealth of Kentucky.

(2) Copies of this agreement may be viewed, copied or obtained from the Department of Highways, Division of Traffic, First Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number of the Division of Traffic is (502) 564-3020. Its hours of operation are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday except state holidays.

Section 2. Incorporation of Billboard Guidance Manual. (1) The "Outdoor Advertising" portion of the "Permits Policy Guidance Manual" Sections 99-20.0100 through 99-20.0800 as revised by the Transportation Cabinet in September [~~June~~], 1992 is hereby incorporated by reference as a part of this administrative regulation. It specifies the application and evaluation procedures for an advertising device permit. It also includes the provisions of 23 CFR 750 with which Kentucky shall comply.

(2) Copies of this manual may be viewed or copied from the Department of Highways, Division of Traffic, First Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. Copies of this manual may be purchased from the Department of Administrative Services, Division of Management Services, First Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number of the Division of Traffic is (502) 564-3020. The telephone number of the Division of Management Services is (502) 564-6927. Their hours of operation are 8 a.m. to 4:30 p.m. eastern time, Monday through Friday except state holidays.

Section 3. Great River Road. (1) The segments of highway in western Kentucky known as the Great River Road are the following:

(a) KY 94 from the Tennessee state line in Fulton County to KY 239 in Hickman County;

(b) KY 239 from KY 94 in Hickman County to KY 123 in Carlisle County;

(c) KY 123 from KY 239 to KY 1022 in Carlisle County;

(d) KY 1022 from KY 123 to US 51 in Carlisle County; and

(e) US 51 in Carlisle County to the Illinois state line.

(2) These road segments, regardless of normal federal classification, shall for the purpose of controlling advertising devices be considered the same as a federal-aid primary highway route.

Section 4. Scenic Byways. On any highway designated by the Transportation Cabinet or the Federal Highway Administration as a scenic byway, additional outdoor advertising devices shall not be erected, allowed or permitted after the date of this designation, regardless of the highway classification.

Section **5.** [~~4.~~] Repeal of Regulations. (1) 603 KAR 3:010, Interstate routes is repealed.

(2) 603 KAR 3:020, Federal-aid primary routes is repealed.

(3) 603 KAR 4:025, Advertising devices; just compensation is repealed.

J.M. YOWELL, State Highway Engineer
DON C. KELLY, P.E., Secretary/Commissioner
APPROVED BY AGENCY: September 1, 1992
FILED WITH LRC: September 10, 1992 at 10 a.m.

TRANSPORTATION CABINET
Department of Highways
Department of Vehicle Regulation
Division of Maintenance
Division of Motor Carriers
(Amended After Hearing)

603 KAR 5:110. Permits for moving overdimensional house trailers [~~mobile homes which do not exceed fourteen (14) feet in width~~].

RELATES TO: KRS 189.270
STATUTORY AUTHORITY: KRS 189.270
NECESSITY AND FUNCTION: KRS 189.270 authorizes the Department of Highways to issue permits for the movement of house trailers exceeding legal dimensions but which do not exceed sixteen (16) feet in width. This administrative regulation establishes for house trailers [~~which do not exceed fourteen (14) feet in width~~] the permit application procedures within the Transportation Cabinet and establishes movement requirements necessary in the interest of highway safety and convenience.

Section 1. Definitions. (1) "Daylight hours" means the period of a day from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset. However, it does not include any time when atmospheric conditions such as heavy rain, snow, sleet or fog render visibility lower than is ordinarily the case during that period of the day.

(2) "Fully-controlled limited access highway" means a highway which gives preference to through traffic and which shall have access only at selected public roads or streets and which shall not have an at-grade highway crossing or intersection. ["National holiday" means New Year's Day, Memorial Day (as observed on the last Monday in May), Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.]

(3) "House trailer" means a mobile home or manufactured home but does not mean a modular home.

(4) "National holiday" means the following:

(a) New Year's Day;

(b) Memorial Day (as observed on the last Monday in May);

(c) Independence Day;

(d) Labor Day;

(e) Thanksgiving Day; and

(f) Christmas Day.

(5) "Overdimensional" means that the towing motor vehicle combined with the house trailer exceeds the dimension limits set forth in 603 KAR 5:070.

(6) [(5)] "Paved or stabilized shoulder" means a shoulder or berm of a highway constructed of portland cement concrete, bituminous concrete, bituminous seal or crushed aggregate. It shall not include a shoulder constructed of earth, sod, grass or curb and gutters.

Section 2. Permit Application. (1) Application for a permit to move an overdimensional [a] house trailer on a Kentucky state-maintained highway shall only be made to the Department of Vehicle Regulation, Division of Motor Carriers, **501 High Street,** Frankfort, Kentucky **40622**.

(2) A single trip permit application or request shall specify the following:

(a) The year and make of the towing vehicle;

(b) The vehicle's license plate number;

(c) The maximum weight for which the vehicle is registered; [and]

(d) The state of registration of the vehicle;

(e) Name and address of the owner;

(f) The dates of travel;

(g) The serial number of the house trailer; and

(h) The specific routes of travel requested.

(3) If the towing vehicle for which a single trip permit is being applied is registered in a state other than Kentucky, the vehicle shall be either:

(a) Apportioned registered to operate in Kentucky; or

(b) In compliance with KRS 281.752.

(4) [(3)] An annual permit application or request shall in writing specify the following information relating to the motor vehicle:

(a) Year and make; [rated capacity;]

(b) Vehicle identification number;

(c) License plate number;

(d) The maximum weight for which it is registered; [and]

(e) The state of apportioned registration, if not registered in Kentucky; [and]

(f) Name and address of the motor carrier operating or the owner of the towing vehicle; and [. In addition, it shall specify]

(g) Whether the motor carrier operating the towing vehicle is a for-hire or private carrier [and the routes of travel requested].

(5) If the towing vehicle issued an annual permit is registered in a state other than Kentucky, the vehicle shall be apportioned registered to operate in Kentucky.

(6) The application for an annual permit shall contain a certification by the applicant that he is aware of the safety requirements in the movement of overdimensional house trailers and shall at all times comply with them.

Section 3. Permit Required. Until a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers under the provisions of this administrative regulation and KRS 189.270:

(1) A [No] house trailer of a width greater than eight and one-half (8 1/2) feet shall not be towed on any highway listed in 603 KAR 5:070, Section 2(2)(b);

(2) A [nor shall any] house trailer with a width greater than eight (8) feet shall not be towed on any state-maintained highway not listed in 603 KAR 5:070, Section 2(2)(b); and [other Kentucky highway unless, and until, a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers.]

(3) A [(2) No] house trailer with a combined length of house trailer and towing vehicle greater than **sixty-five (65)** [sixty (60)] feet shall be towed upon any Kentucky highway [unless, and until, a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers].

Section 4. Annual Permits. (1) A[n annual] permit shall not be issued for the movement of a house trailer in excess of sixteen (16) [twelve (12)] feet in width inclusive of the usual and ordinary overhang. Mirrors on the towing vehicle shall not be considered in making the determination of width.

(2) Prior to a movement of a house trailer under the provisions of an annual permit, the permit holder shall scout and evaluate the entire route proposed to be used for the movement of the overdimensional house trailer. The evaluation shall include, but not be limited to, the following:

(a) Highway width;

(b) Shoulder width and surface type;

(c) Bridge width;

(d) Curves;

(e) Turns to be negotiated;

(f) Construction zones;

(g) Obstructions;

(h) Access control;

(i) Traffic volume; and

(j) Other routes available which might be safer even if not as convenient.

(3) The permit holder shall use the results of the evaluation to determine the safest route available to transport the overdimensional house trailer, and if there would be any place on the proposed route which would be too narrow, have curves or turns too sharp or have other obstacles which would prevent the route from safely accommodating the move of the house trailer. The route selected by the permit holder shall be the safest available. [be on highways specified on the annual permit.]

(4) If there is any doubt about the adequacy of the highway to safely accommodate the overdimensional house trailer, the permit holder shall either:

(a) Select a different route; or

(b) Contact the appropriate highway district office for clearance to move that house trailer over that specific route.

(5) If the highway district office does not issue clearance for the use of a route whose adequacy is in doubt, that route shall not be used.

[(3) Annual permits for the movement of house trailers may be issued only to dealers and manufacturers located within the Commonwealth of Kentucky; to certificated motor carriers who are properly licensed as motor carriers by the Department of Vehicle Regulation; and to private owner residents of Kentucky for movements of their personally owned house trailers.

(4) Each towing vehicle for house trailers greater than the legal width shall be registered in Kentucky for a gross weight of not less than 22,000 pounds, have dual wheels on the rear and be rated at least one and one half (1 1/2) ton capacity.]

(6) [(5)] An annual permit shall not be issued or used for the movement of a house trailer:

(a) If the length of the house trailer [and towing unit combined] exceeds **eighty (80)** [ninety five (95)] feet in length; or

(b) If the height of the combination house trailer and towing vehicle exceeds thirteen and one-half (13.5) feet.

(7) Acceptance and use of the annual permit is the permit

holder's acceptance of the liability associated with the move of the overdimensional house trailer.

Section 5. Single Trip Permits. (1) A single trip permit shall **not** be valid for [~~no~~] more than ten (10) days.

(2) A single trip permit shall not be issued for any [~~unit, including towing vehicle and~~] house trailer [~~combined,~~] which exceeds **eighty (80)** [~~ninety-five (95)~~] feet in length or sixteen (16) [~~fourteen (14)~~] feet in width inclusive [~~exclusive~~] of the usual and ordinary overhang. Mirrors on the towing vehicle shall not be considered in making the determination of width.

(3) A single trip permit shall specify the highways to be used in the movement of the house trailer.

Section 6. Permit Costs. (1) The ~~.~~$500 issuance cost of an annual permit, the twenty (20) dollar cost of [~~or~~] a single trip permit for the movement of a house trailer with a width of fourteen (14) feet or less and the forty (40) dollar cost of a single trip permit for the movement of a house trailer which exceeds fourteen (14) feet in width, as set forth in KRS 189.270, shall apply to the towing vehicle; and

(2) The cost shall not be prorated.

Section 7. Escort Vehicles [~~and Lighting Requirements~~]. (1) When traveling under the provisions of either a single trip or annual permit, the permit holder shall provide escort vehicles as follows:

(a) On a highway of four (4) or more lanes:

1. If the house trailer exceeds twelve (12) feet in width and is fourteen (14) feet or less in width, he shall provide one (1) rear escort vehicle; or

2. If the house trailer exceeds fourteen (14) feet in width, he shall provide one (1) front and one (1) rear escort vehicles.

(b) **No more than one (1) mile after exiting a highway of four (4) or more lanes or** on a highway of less than four (4) lanes which has a total pavement width of twenty-four (24) or more feet [~~and paved or stabilized shoulders of four (4) or more feet~~]:

1. If the house trailer exceeds ten and one-half (10.5) feet in width and is twelve (12) feet or less in width, he shall provide one (1) front escort vehicle;

2. If the house trailer exceeds twelve (12) feet in width and is fourteen (14) feet or less in width, he shall provide one (1) rear and one (1) front escort vehicles; or

3. If the house trailer exceeds fourteen (14) feet in width, he shall provide two (2) front and one (1) rear escort vehicle. [~~One (1) lead escort vehicle is required for the movement of house trailers greater than the legal width but not exceeding twelve (12) feet wide on all two (2) lane highways.~~

~~(2) When a house trailer more than twelve (12) feet wide is moved, one (1) escort shall be required in the rear of each house trailer on highways with four (4) or more lanes. On highways of two (2) lanes, two (2) escort vehicles shall be required for each house trailer, one (1) in front and one (1) in the rear.~~

~~(3) Escort vehicles, both front and rear, shall be required where highway conditions dictate the need.~~]

(2)(a) On open highways escort vehicles shall be spaced approximately 300 feet from the towing vehicle and house trailer, except as provided in Section 8 of this regulation.

(b) In cities or congested areas this distance shall be shortened to protect other traffic.

(3) An escort vehicle's headlamps shall be lit at all times.

(4) The towing unit shall maintain radio contact with each required escort vehicle.

(5) Each required escort vehicle shall display one (1) of the following:

(a) An amber strobe or flashing light mounted on the roof of the escort vehicle; or

(b) A warning sign which:

1. Is clearly legible;

2. States "OVERSIZE LOAD" **or "WIDE LOAD"** in black letters on a yellow background; and

3. Is placed:

a. On the front of a front escort; **[~~or~~]**

b. On the rear of a rear escort; **or**

c. The top of the escort vehicle so that it is visible from both the front and rear.

Section 8. Traffic Control. (1) If a house trailer while crossing a bridge would encroach on any other lane of traffic:

(a) All approaching traffic shall be stopped; and

(b) All trailing traffic shall be prevented from attempting to pass the house trailer until the house trailer has cleared the bridge and has moved sufficiently to the right to safely allow following traffic to pass.

(2) When two (2) lead escort vehicles are required, the first lead escort vehicle shall be responsible for traffic control between the overdimensional house trailer and the next intersection. When the **highway is too narrow to allow the house trailer to be moved without encroaching on the approaching lane of traffic:**

(a) All approaching traffic shall be stopped by the first lead escort;

(b) The rear escort shall prevent trailing traffic from passing the house trailer until the house trailer can be moved sufficiently to the right to allow other traffic to move safely past the house trailer; and

(c) The [~~second lead escort~~] vehicle shall remain with the overdimensional house trailer as specified in Section 7 of this regulation **in order to control traffic entering from a side street.**

(3) When the highway and stabilized shoulder are sufficiently wide to allow approaching traffic to safely pass, the first lead escort shall remain just in front of the second lead escort in order not to confuse oncoming traffic.

(4) [~~(3)~~] An overdimensional house trailer shall slow the movement of other traffic as little as possible. If traffic backs up either behind or in front of the house trailer being moved, the escort vehicles and house trailer shall exit the highway wherever there is sufficient space to do so.

Section 9. Flags, Lights and Signs. (1)(a) [~~(4)~~] Red or orange fluorescent flags at least eighteen (18) inches square shall be displayed on both sides of the towing vehicle or house trailer at the widest extremity and two (2) more at the extreme rear of the house trailer to indicate maximum width.

(b) The flags shall be securely fastened to the house trailer by at least one (1) corner or securely mounted on a staff.

(2)(a) [~~(5)~~] Amber flashing lights may be used on both the escort and towing vehicles if the house trailer's [~~unit's~~] width does not exceed twelve (12) feet.

(b) If the house trailer exceeds twelve (12) feet in width, all escort vehicles and the towing vehicle shall have an amber flashing light on the roof.

(3) The house trailer shall be equipped with four (4) amber flashing lights.

(a) One (1) shall be located on each outermost front and each outermost rear corner of the house trailer spaced not less than six (6) feet above the roadway.

(b) The permit holder may locate the two (2) front amber flashing lights on the truck mirrors rather than the front outermost corners of the house trailer if the mirrors extend out as far as the outermost front corners of the house trailer.

(4) Each [~~(6) All~~] overdimensional house trailer [~~mobile homes~~] and towing vehicles shall be marked and lighted in accordance with those requirements set forth in 601 KAR 1:005. All running lights shall be on while the unit is in motion.

(5)(a) [~~(7)~~] Oversize load signs shall be placed on the front of the towing vehicle and the rear of the house trailer any time it is operating on a highway.

(b) Each warning sign:

1. Shall state in black letters on a yellow background, "OVERSIZE LOAD" **or "WIDE LOAD"**; and

2. Shall be at least seven (7) [~~six (6)~~] feet long and eighteen (18) inches high with a brush stroke of at least one and four-tenths (1.4) inches.

Section 10. [~~8.~~] Duplicate Permits. A duplicate permit which is

needed to replace a lost, stolen or destroyed annual permit or to transfer the annual permit to another towing vehicle may be obtained from the Division of Motor Carriers by the payment of ten (10) dollars. Only one (1) transfer per annual permit shall be allowed during the year of validity of the annual permit. Any additional transfer of the annual permit requested shall be subject to the fees set forth in KRS 189.270.

[~~Section 9. Route Deviation. Prior approval shall be secured from the Division of Motor Carriers for any house trailer hauled under an annual permit which deviates from the routes prescribed in the permit issued for the towing vehicle.~~]

Section 11. [~~10.~~] Presentation of Permits. (1) **The appropriate overdimensional permit** [~~Permits~~] shall be carried in the towing vehicles at all times. [~~and~~]

(2) The permit shall be presented, upon request, to any law enforcement officer or any authorized personnel of the Department of Vehicle Regulation for inspection.

(3) A **copy of an annual permit shall only be considered authenticated by the Department of Vehicle Regulation if it has been embossed with a stamp by the Department of Vehicle Regulation.**

(4) An unauthenticated photocopy of an annual permit shall not be valid.

Section 12. [~~11.~~] Permit Validity. (1) Permits shall be [~~are~~] valid during:

(a) [~~only~~] Daylight hours; and

(b) [~~as defined in Section 1 of this regulation,~~] From Monday through Saturday noon for house trailers twelve (12) feet wide or less. [~~, except for those periods before, during and after national holidays. In connection with these holidays,~~]

(2) Travel shall [~~is~~] not be permitted from noon of the day preceding a [~~the~~] national holiday until daylight of the next permissible day.

(3) If the national holiday occurs on Saturday, Sunday or Monday the restricted period shall extend from noon of the preceding Friday to daylight of the following Tuesday.

(4) [~~(2)~~] Permits used for the movement of house trailers more than twelve (12) feet in width shall [~~are~~] not be valid on Saturday or Sunday.

(5) In [~~addition, in~~] Jefferson, Fayette, Boone, Kenton and Campbell Counties permits used for the movement of house trailers fourteen (14) feet wide or less but more than twelve (12) feet wide shall [~~they are~~] only be valid between the hours of 9 a.m. and 3 p.m. and from 6 p.m. to **one-half (1/2) hour after** sundown, local prevailing time.

(6) Permits used for the movement of house trailers greater than fourteen (14) feet wide shall only be valid Monday through Friday between the hours of 9 a.m. and 3 p.m. **and between 6 p.m. and one-half (1/2) hour after sundown** local prevailing time.

(7) [~~(3)~~] If satisfactory proof of an emergency is furnished the Division of Motor Carriers, moves may be authorized during the restricted hours.

(8) A permit shall not be valid if the combined gross weight of the towing vehicle and house trailer exceeds the registered weight of the towing vehicle.

Section 13. [~~12.~~] Movement on Two (2) or Four (4) Lanes. Moves of house trailers more than twelve (12) feet wide shall be limited to highways of four (4) or more lanes and to the shortest and best two (2) lane route designated by the Department of Vehicle Regulation, Division of Motor Carriers to be used to the unit's ultimate destination. The department shall deny movements on any routes deemed unsuitable for move.

Section 14. [~~13.~~] Weather Conditions. (1) Moves of house trailers more than twelve (12) feet wide shall not [~~cannot~~] be made on any highway:

(a) When wind velocity exceeds twenty-five (25) MPH; or

(b) When adverse weather conditions would cause these moves to be dangerous;

(c) [~~. House trailers that exceed twelve (12) feet in width shall not be moved~~] When the road is partially or fully covered by sleet, snow, or ice; or

(d) When visibility is unduly impaired by rain, sleet, snow, fog, or other adverse weather condition [~~etc~~].

(2) Moves of house trailers which exceed fourteen (14) feet in width shall not be made:

(a) On two (2) lane highways when turf or dirt shoulders are soft or muddy; or

(b) On any wet highway.

Section 15. Brakes. (1) [~~14. Breaks.~~] The number, type, size and design of brake assemblies required to assist the towing vehicle in controlling and stopping a house trailer shall be sufficient to assure that the maximum stopping distance from an initial velocity of twenty (20) miles per hour does not exceed forty (40) feet.

(2) House trailers which are not equipped with brakes on all axles shall certify that the towing unit has sufficient brake assembles to meet the braking distance specified in this section.

(3) This certification shall be in the form of a manufacturer's statement, documented technical data, or adequate engineering analysis or its equivalent, specifying that the braking distance requirement has been met.

(4) This certificate shall be carried in the towing unit at all times and shall be presented upon request, to any law enforcement officer.

Section 16. [~~15.~~] Speed Limit. **[**~~(1)~~**]** The speed limit for the movement of house trailers greater than twelve (12) feet wide **shall be:**

(1) On interstate and other fully controlled limited access highways, **[**~~is~~**]** forty-five (45) MPH.

(2) On other highways, **[**~~the speed limit is~~**]** thirty-five (35) MPH, unless posted minimum speed exceeds this, then the speed limit may be increased to the minimum posted speed.

Section 17. Liability of the Permit Holder. The permit holder shall be responsible to pay for or replace any sign, traffic control device, guardrail or other property damaged or destroyed during the move of the house trailer.

Section 18. Repeal. 603 KAR 5:111, Permits for moving mobile homes in excess of fourteen (14) feet in width, is repealed.

NORRIS BECKLEY, Deputy Commissioner
DON C. KELLY, Secretary
J. M. YOWELL, State Highway Engineer
APPROVED BY AGENCY: September 4, 1992
FILED WITH LRC: September 10, 1992 at 11 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development
(Amended After Hearing)

704 KAR 3:345. Evaluation guidelines.

RELATES TO: KRS 156.101
STATUTORY AUTHORITY: KRS 156.070, 156.101
NECESSITY AND FUNCTION: KRS 156.101 requires the State Board for Elementary and Secondary Education **to develop written guidelines for local school districts to follow in developing and implementing an evaluation system** [~~to establish a statewide program for evaluation of certified school employees, including superintendents, and to develop guidelines for implementing the program and establishing the framework within which each local school district is to develop its own specific evaluation policies~~]. This regulation establishes the requirements for the evaluation programs and policies of local school districts.

Section 1. Definitions. (1) Teacher - any certified staff person who

directly instructs students.

(2) Administrator - any certified staff person other than the classroom teacher or librarian.

(3) Other support staff - any certified staff other than teacher or administrator.

(4) Evaluation - the process of assessing or determining the effectiveness of the performance of the certified employee in a given teaching and learning or leadership and management situation, based on predetermined criteria, through observation and other means of gathering information. Evaluation shall also include the establishment and monitoring of a professional growth plan.

(5) Formative evaluation - a continuous cycle of collecting evaluation information and interacting or providing feedback and suggestions regarding the certified employee's teaching or administrative performance.

(6) Summative evaluation - the summary of, and conclusions from, all evaluation data, including but not limited to the formative evaluation data. The summative evaluation occurs at the end of an evaluation cycle. Summative evaluation includes a conference involving the evaluator and the evaluated certified employee, and a written evaluation report.

(7) Observation - a process of gathering information, based on predetermined criteria in the district plan.

(8) Conference - a meeting involving the evaluator and the certified employee evaluated for the purpose of providing feedback from the evaluator, analyzing the results of observation(s) and other information to determine accomplishments and areas for growth leading to establishment or revision of a professional growth plan [~~strengths and weaknesses, to develop a plan for growth and follow up~~].

(9) Performance criteria - performance areas, skills, or outcomes on which the certified employee shall be evaluated based on the district plan.

(10) Indicators - measurable behaviors outcomes which demonstrate performance criteria.

(11) Standards of performance - acceptable qualitative or quantitative level of performance expected of effective teachers or administrators.

(12) Position - term used to signify a professional role in the school district (e.g., teacher, secondary principal, supervisor of instruction).

(13) Job category - term used to signify a group or class of positions with closely related functions (e.g., principal, coordinator, director).

(14) Professional growth plan - a plan whereby the evaluatee is given assistance for becoming more proficient as a teacher or administrator. The individualized plan includes [~~an~~] objectives, a plan for achieving the objectives and method for evaluating success. The individualized professional growth plan must be aligned with specific goals and objectives of the school improvement and professional development plans.

Section 2. Each local school district shall have an evaluation plan and procedures approved by the State Board for Elementary and Secondary Education. Approval of the plan and procedures shall be for the purpose of certification as to the compliance of each specific school district's evaluation plan with the broad guidelines set forth herein.

Section 3. The local school district shall have a written policy for the evaluation of all certified employees consistent with KRS 156.101. Strict compliance with the policy shall be required.

Section 4. (1) An evaluation [~~ad hoc~~] committee consisting of equal numbers of teachers and administrators shall develop evaluation procedures and forms.

(2) The procedures shall provide for both formative evaluation and summative evaluation and shall include, but not be limited to, the following elements:

(a) The immediate supervisor of the certified school employee shall be designated the primary evaluator. Additional trained administrative personnel may be used to observe and provide information to the primary evaluator.

(b) All monitoring or observations of performance of a certified employee shall be conducted openly and with the full knowledge of the teacher or administrator. The local district may determine the length and frequency and nature of observations conducted by an evaluator.

(c) The evaluation system shall include a professional growth plan aligned with specific goals and objectives of the school improvement and professional development plans and shall be reviewed annually.

(d) Evaluation shall include formative conferences between the evaluator and the person evaluated within one (1) work week following each observation. In addition, the summative conference shall be held at the end of the evaluation cycle and include all evaluation data.

(e) Evaluation with multiple observations shall occur annually for each nontenured certified employee. The formative data collected during the beginning teacher internship period may be utilized in summative evaluation of the intern.

(f) Multiple observations shall be conducted with certified employees whose [~~initial~~] observation results are unsatisfactory.

(g) Summative evaluation shall occur, but not be limited to, a minimum of once every three (3) year period for each tenured teacher.

(h) Summative evaluation shall occur annually for administrators, except for superintendents who shall be evaluated not less than every two (2) years.

(i) All evaluations of certified employees below the level of the district superintendent shall be in writing on an evaluation form and become a part of the official personnel record.

(j) All observations shall include documentation of information to be used in determining the performance of the evaluatee.

(k) The evaluation system shall provide an opportunity for a written response by the evaluatee.

(l) A copy of the evaluation shall be provided to the evaluatee.

Section 5. (1) The evaluation procedures and forms shall be designed to foster professional growth and to support individual personnel decisions.

(2) The evaluation forms shall include, but not limited to, a list of performance criteria characteristic of effective teaching or administrative practices. The performance criteria shall include, but not limited to the following:

(a) Performs professional responsibilities and duties as outlined in the job description including regular attendance and punctuality;

(b) Demonstrates effective classroom or staff management skills;

(c) Uses appropriate research-based instructional strategies and processes effectively;

(d) Demonstrates effective interpersonal, [~~and~~] communication, and collaboration skills among [~~with~~] peers, subordinates, students and parents;

(e) Demonstrates knowledge of subject matter or administrative techniques;

(f) Plans, implements, and evaluates instructional or administrative activities. Under each criterion, specific descriptors or indicators that can be measured and recorded shall be listed. In addition, standards of performance shall be established for each criterion;

(g) **Teaching consistent with** [~~Demonstrates willingness to support~~] missions to which school/councils, district boards of education, and the State Board for Elementary and Secondary Education are committed.

(3) All certified school personnel shall be made aware annually of the criteria on which they are to be evaluated at the beginning of the evaluation period.

(4) Evaluation forms or instruments shall be specific for each position or job category. Other forms for observation and pre- and postconferences may be used at the discretion of the local district.

Section 6. (1) All primary evaluators, with the exception of district board of education members, shall be trained, tested, and certified.

(2) Training shall:

(a) Include skill development in the use of the local evaluation process. Each local district shall conduct this training;

(b) Include skill development in the identification of effective teaching and management practices, effective observation and conferencing techniques, establishing and assisting with certified employee professional growth plans, and summative evaluation techniques relative to the valued outcomes. This training shall be conducted by providers who have been approved by the State Board for Elementary and Secondary Education as trainers for the Instructional Leadership Improvement Program;

(c) Be provided by the State Board for Elementary and Secondary Education for all new administrators who are designated as evaluators. Other administrators who have not received training in the skill areas listed in paragraph (b) of this subsection may participate also; and

(d) Be approved as a part of the evaluation plan and procedures submitted to the State Board for Elementary and Secondary Education.

(3) Testing shall:

(a) Include a cognitive test of research-based and professionally accepted teaching and management practices and effective evaluation techniques listed in subsection (2)(b) of this section; and

(b) Be conducted by the State Board for Elementary and Secondary Education or agencies approved by the State Department of Education.

(4) Initial certification as an evaluator shall be issued by the State Board for Elementary and Secondary Education upon completion of the required evaluation training program and successful completion of testing.

(5) Continued certification as an evaluator shall be contingent upon the completion of a minimum twelve (12) hours of evaluation training every two (2) years beginning July 1, 1988. This training shall be in any one, or a combination, of the following skill areas: use of the local evaluation process, identification of effective teaching and management practices; effective observation and conferencing techniques; establishing and assisting with certified employee professional growth plans; or summative evaluation techniques.

(a) Hours of training received in the use of the local evaluation process shall be certified by the local board of education with documentation available for review by the State Department of Education.

(b) Hours of training received in the other skill areas may compose part of the evaluator's required hours for the Instructional Leader Improvement Program.

(6) Each local district shall designate a contact person responsible for monitoring evaluation training and implementing the evaluation plan [~~as the contact person for the evaluation plan submitted by the local district~~].

Section 7. For appeals to the local evaluation appeals panel, each local evaluation plan shall provide for the following:

(1) Right to a hearing as to every appeal; and

(2) Opportunity reasonably in advance of the hearing for the evaluator and evaluatee to adequately review all documents that are to be presented to the evaluation appeals panel; and

(3) Right to presence of evaluatee's chosen representative.

Section 8. [~~7.~~] The local board of education shall annually review the evaluation plan to ensure compliance with KRS 156.101 and these regulations. If substantive changes are made to the evaluation plan, the local board of education shall utilize the evaluation [~~ad hoc~~] committee, as provided for in Section 4 of this regulation, in formulating the revisions. Examples of substantive change are, but are not limited to, change in cycle, observation frequency, forms, and appeals procedures. All revisions to the plan shall be reviewed and approved by the local board of education and submitted to the State Board for Elementary and Secondary Education for approval.

Section 9. [~~8.~~] (1) Any certified employee who feels that the local district is not implementing the evaluation plan according to the way it was approved by the State Board for Elementary and Secondary Education shall have the opportunity to appeal to the State Board for Elementary and Secondary Education.

(2) The appeal procedures shall be as follows:

(a) The State Board for Elementary and Secondary Education shall appoint a committee of three (3) board members to serve on the State Evaluation Appeals Panel. Said panel shall have no jurisdiction relative to complaints involving the professional judgmental conclusions of evaluations and its jurisdiction shall be limited to procedural matters already addressed by the local appeals panel required by KRS 156.101(10).

(b) The certified employee shall submit a written request to the chief state school officer for a hearing before the State Evaluation Appeals Panel. A specific description of the complaint and grounds for appeal shall be submitted with this request.

(c) The State Evaluation Appeals Panel, or the Department of Education at its direction shall review the complaint and investigate to determine if a hearing should be granted.

(d) If a hearing is granted, all involved parties shall have an opportunity to speak before the appeals panel.

(e) Any briefs, written statements, and other documents which a party wants considered by the State Evaluation Appeals Panel shall be filed with the panel and served on the opposing party at least ten (10) days prior to the scheduled hearing.

(f) [~~(e)~~] A decision of the appeals panel shall be rendered within fifteen (15) working days after a hearing.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: September 4, 1992
FILED WITH LRC: September 4, 1992 at 10 a.m.

WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation
(Amended After Hearing)

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.

RELATES TO: KRS 151B.190, 20 USC 706(8)(A)
STATUTORY AUTHORITY: KRS 151B.185, 151B.195
NECESSITY AND FUNCTION: KRS 151B.195 directs the Commissioner, Department of Vocational Rehabilitation to prescribe rules and regulations governing the services and administration of the Department of Vocational Rehabilitation. This **administrative** regulation sets forth when an order of selection and an economic need test will be applied to the provision of vocational rehabilitation services in order to distribute limited funds more equitably over the entire population of otherwise eligible clients.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(3) "Permanent functional limitation" means an impairment in activity or function imposed by a disability that is not readily amenable to - or likely to be corrected through - surgical intervention [~~and/~~] or medical treatment. Use of the term permanent functional limitation in the agency's order of selection seeks to differentiate between those mental or physical conditions that are usually remedied through the provision of a physical or mental restoration service(s) and those

other conditions or disabilities that impose or are likely to impose a permanent loss or substantial reduction in functioning regardless of surgical [~~and/~~] or medical intervention.

(4) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.

(5) "CARS" means Comprehensive Accounting and Reporting System. [~~"Competitive employment" means that an individual performs significant physical or mental activities in work for remuneration or profit in the public, private, or self-employment sector. Such employment will be the primary means of enabling an individual to remain or become financially self-sufficient.~~]

Section 2. Economic Need. Vocational rehabilitation services may be provided subject to economic need, as follows and with consideration of applicable comparable benefits as provided in 781 KAR 1:020, Section 2:

(1) An economic needs test shall be applied as a condition for furnishing the following vocational rehabilitation services:

(a) Physical and mental restoration services;

(b) Books, supplies, tools and equipment for vocational and other training;

(c) Maintenance other than diagnostic;

(d) Transportation other than diagnostic;

(e) Services, other than diagnostic, to members of an individual's family necessary to the adjustment or rehabilitation of the individual who is handicapped;

(f) Telecommunications, sensory, and other technological aids and devices;

(g) Occupational licenses, tools, equipment, and initial stock (including livestock) and supplies;

(h) Postemployment services;

(i) Tuition and initial registration fees for training beyond the baccalaureate level;

(j) Interpreter services for the deaf except as provided in subsection (2)(f) of this section;

(k) Reader services for the blind;

(l) Rehabilitation engineering except as provided in subsection (2)(e) and (f) of this section; and

(m) Other goods and services which can reasonably be expected to benefit an individual who is handicapped in terms of employability.

(2) The following services shall be excluded from an economic needs test:

(a) Diagnosis and evaluation of rehabilitation potential;

(b) Counseling and guidance;

(c) Services provided by staff at state-owned and operated rehabilitation facilities;

(d) Placement;

(e) Professional rehabilitation engineering services;

(f) Rehabilitation engineering devices necessary for evaluation of rehabilitation potential;

(g) Communication assistance in the individual's native language, including interpreters for individuals who are deaf for purposes of providing services set forth in paragraph (a), (b), (c), (d) or (e) of this subsection.

(h) Tuition and initial registration fees for vocational and college training up to and including the baccalaureate level;

(i) Adjustment training, driver training, on-the-job training; and

(j) Supported employment job coaching [~~services, except as provided in subsection (1) of this section~~].

(3) Except as provided in 781 KAR 1:060, [~~those~~] clients who do not meet total financial need criteria shall apply 100 percent of the monthly excess **household** income to their rehabilitation program.

(4) Ninety (90) percent of the 1990 Kentucky median gross income as adjusted to family size shall be used as the criterion for the agency economic needs test **in figuring the excess monthly household income**.

Section 3. Order of Selection. When the commissioner determines that the agency shall be unable to provide services to all eligible applicants [~~who are handicapped~~], the agency shall implement the order of selection.

(1) **A** [~~Any~~] agency previously declared eligible for vocational rehabilitation services shall **not** [~~in no way~~] be affected when the agency implements an order of selection.

(2) The order of selection shall not be applicable for clients whose needs are for nonpurchased services only (counseling, guidance, placement, referral services, coordination of comparable benefits, [~~and/~~] or third party payments).

(3) The order of selection shall not be applicable for clients whose needs are for services at agency owned and operated rehabilitation facilities or for services at CARS contracted private not-for-profit rehabilitation facilities.

(4) On implementation of the order of selection, the agency shall continue to accept referrals of and applications from persons with disabilities.

(5) The order of selection shall **not** [~~in no way~~] regulate the provision or authorization of diagnostic and evaluation services.

(6) All applicants shall be declared eligible or ineligible as appropriate on a timely basis.

(7) Any client entering accepted status after implementation of the order of selection shall be assigned to a priority category. If the priority category is open, the individual may be served. If, however, the priority category is closed, the individual's case shall be held in accepted status until such time as the priority category assigned is opened or the order of selection is lifted.

(8) The order of selection policy shall permit immediate reclassification into a higher priority category whenever circumstances justify the reclassification.

(9) If the agency is unable to provide services to all eligible clients with severe handicaps, eligible individuals with **the most** severe handicaps **shall** [~~will~~] be served. **If the department is unable to identify clients with the most severe handicaps, clients with severe handicaps shall be served** on a first-applied, first-served basis established by date of application.

(10) Clients with nonsevere handicaps who are receiving nonpurchased services and who, due to unanticipated events, need purchased services, shall receive the necessary purchased services.

(11) [~~(10)~~] [~~(9)~~] The order of selection described in this section shall be followed with the categories to be served designated at the time of implementation.

(12) [~~(11)~~] [~~(10)~~] The order of selection system shall have five (5) [~~four (4)~~] [~~six (6)~~] priority categories as follows:

(a) **Priority I - eligible clients with the most severe handicapping conditions.**

(b) Priority Category **II** [~~I~~] - eligible clients with a severe handicapping condition.

(c) [~~(b)~~] Priority Category **III** [~~II~~] - eligible public safety officers with a nonsevere handicap whose handicapping condition arose from disability sustained in the line of duty.

(d) [~~(c)~~] Priority Category **IV** [~~III~~] - eligible clients with a nonsevere handicap whose disability results in permanent functional limitations [~~and who will have a vocational objective of competitive employment~~].

(e) [~~(d)~~] Priority Category **V** [~~IV~~] - [~~all other eligible clients with a nonsevere handicap whose disability results in permanent functional limitations.~~

~~(e) Priority Category V - eligible clients with a nonsevere handicap whose disability limits or if not treated will limit one (1) or more major functional capacities.~~

~~(f) Priority Category VI -~~] any other eligible clients whose handicap is nonsevere.

CARROLL BURCHETT, Commissioner
APPROVED BY AGENCY: September 2, 1992
FILED WITH LRC: September 2, 1992 at noon

CABINET FOR HUMAN RESOURCES
Interim Office of Health Planning & Certification
(Amended After Hearing)

902 KAR 20:004. Certificate of need process.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2)
STATUTORY AUTHORITY: KRS 13A.350, 216B.040, 216B.075, Executive Orders 92-419, 92-540
NECESSITY AND FUNCTION: KRS 216B.040 and 216B.075 require the promulgation of administrative regulations relating to certificate of need applications and review procedures and requirements for batching, issuing advisory opinions, cost escalations and cost overruns and progress reports.

Section 1. Definitions. Except as otherwise provided, for purposes of this regulation, the following definitions shall apply:
(1) "Capital expenditure authorized" means the amount of the capital expenditure approved by the interim office to implement a proposal.
(2) "Cost escalation" means an increase in the capital expenditure authorized on a certificate of need which has not been obligated as prescribed in KRS 216B.015(28).
(3) "Cost overrun" means an increase in the capital expenditure authorized on a certificate of need which has been obligated without hearing officers' approval.
(4) "Hearing officers" means those persons appointed by the Secretary of the Cabinet for Human Resources to perform the adjudicatory and decision-making functions of the Interim Office of Health Planning and Certification.
(5) "Improvement" means change or addition to the premises of an existing facility so as to enhance its capability to deliver those services which it is authorized to offer under its existing license or under an outstanding certificate of need approval.
(6) "Interim office" means the Interim Office of Health Planning and Certification created by Executive Order 92-419, dated April 27, 1992, and any successor office or agency.
(7) "New construction" means building projects other than those which constitute the repair, renovation, alteration or improvement to the physical plant of an existing health facility.
(8) "Public information channels" means the Office of Communications in the Cabinet for Human Resources.
(9) "Review commences" means the date of public notice of the appropriate batching cycle for the particular application after it is deemed complete.

Section 2. Criteria. In determining whether to issue or deny a certificate of need the hearing officers shall utilize the following criteria:
(1) Consistency with plans. To determine conformance with this criterion, the applicant shall address and the hearing officers shall consider the relationship of the proposal to the state health plan.
(2) Need and accessibility. To determine conformance with this criterion, the applicant shall address and the hearing officers shall consider:
(a) The need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, handicapped persons and other underserved groups are likely to have access to those services.
(b) The contribution of the proposed service to meeting the health-related needs of members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services (for example, low income persons, racial and ethnic minorities, women and people with disabilities), particularly those needs identified in the state health plan. In this regard, the hearing officers shall consider:
1. The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations will use the proposed services if approved.
2. The extent to which the applicant offers alternative means, other than through admission by a physician, by which a person will have access to its services (e.g., admission through a clinic or emergency room).
(c) The effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area in which the services are to be provided.
(d) If proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes.
(e) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. These entities may include medical and other health professions schools, multidisciplinary clinics and specialty centers.
(f) Whether the approval of the proposal will adversely impact the public's access to needed services.
(3) Interrelationships and linkages. To determine conformance with this criterion the applicant shall address and the hearing officers shall consider:
(a) The relationship of the services to be provided to the existing health care system of the area in which the services are proposed to be provided.
(b) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.
(c) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed.
(4) Costs, economic feasibility, and resource availability. To determine conformance with this criterion the applicant shall address and the hearing officers shall consider:
(a) The availability of less costly or more effective alternative methods of providing the services to be offered, expanded or relocated.
(b) The immediate and long-term financial feasibility of the proposal, as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the service.
(c) The availability of resources (including health personnel, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the availability of alternative uses of these resources for the provision of other health services.
(d) The impact of the proposal on the financial resources of the overall health care delivery system.
(e) In the case of construction or renovation projects:
1. The costs and methods of the proposed construction or renovation, including the costs and methods of energy provision; and
2. The probable impact of the construction or renovation project reviewed on the costs of providing health services by the persons proposing the construction or renovation project and on the costs and charges to the public of providing health services by other persons.
(f) The effect of competition on the supply of the health services being reviewed, and whether the approval of the application will unnecessarily increase the cost of health care to the public.
(g) Improvements or innovations in the financing and delivery of health services which foster competition and serve to promote quality assurance and cost effectiveness.
(5) Quality of services. To determine conformance with this criterion the applicant shall address and the hearing officers shall consider the quality of care provided by the applicant in the past or the qualifications of the principals who will provide the health service which would assure that quality care will be provided and any perceivable detrimental effects of the proposal on the quality of similar services in the area.
(6) The hearing officers shall also consider:
(a) Whether the approval of the applicant's proposal will have an adverse impact on the quality of care provided by any person offering

the same or similar services in any portion of the applicant's proposed service area due to decreased volume or number of procedures.

(b) Whether the applicant will be able to comply with applicable licensure requirements.

Section 3. Proposed New Use. If a person acquires major medical equipment not located in a health facility without a certificate of need and proposes at any time to use that equipment to serve inpatients of a health care facility, the proposed new use must be reviewed unless the equipment will be used to provide services to inpatients of a health care facility only on a temporary basis in the case of an emergency, a natural disaster, a major accident, or an equipment failure. For the purposes of this section "temporary basis" means on an occasional and irregular basis or until the applicant's proposal for permanent acquisition or regular use by a health care facility is reviewed under the formal or nonsubstantive review process.

Section 4. Review Process. (1) Prior to submitting an application for certificate of need, applicants must first file a letter of intent with the interim office on a form prescribed by the interim office. Letters of intent must be filed at least thirty (30) days prior to filing an application for certificate of need. **Letters of intent are not required for requests for nonsubstantive review under Section 7 of this regulation.**

(2) A letter of intent is valid for a period of one (1) year. If an application is denied, a new letter of intent must be filed in order to resubmit the application. If an application is withdrawn prior to a final decision, a new letter of intent must be filed.

(3) Upon receipt of a letter of intent, the interim office shall acknowledge receipt of the letter of intent and shall provide the applicant with the appropriate certificate of need application forms and instruction sheets.

(4) An original certificate of need application and four (4) copies shall be filed with the interim office according to the timetable set out in subsection (9) of this section.

(5) Fifteen (15) days after receipt of the application, the interim office shall acknowledge receipt and shall notify the applicant whether or not the application is complete.

(6) If the application is not complete, the notice to the applicant shall give the applicant the option of completing the application by submitting additional information or of notifying the interim office that the applicant elects for the application to be processed as originally submitted.

(7) Upon receipt of the requested additional information or upon receipt of a letter from the applicant stating that he elects for the application to be processed as originally submitted, the interim office shall deem the application complete and shall give notice of the beginning of review. Applications must be declared complete at least six (6) working days prior to the date of public notice in order to be included in such notice. In order to submit additional information to be made a part of the record after the application has been declared complete, it must be introduced at a public hearing.

(8) The notice of completeness shall include the schedule for the review and the period in which a public hearing may be requested by the applicant and other affected persons. The notice to members of the public and third party payors shall be provided through public information channels. Notice to all other known affected persons shall be by mail.

(9) Batching review cycles shall be as follows:

TYPE OF PROPOSAL	Applications must be filed by third Wednesday of:	Month of public notice, ninety (90) days prior to decision date	Month of decision, third Wednesday of:
(a) Acute, psychiatric, rehab, chemical dependency facilities, psychiatric residential treatment facilities and other related components in the SHP (except specialized equipment and services) such as IC/CC, neonatal, and surgical services (including free-standing ambulatory surgical center) and birthing centers.	October, January, April, July	November, February, May, August	February, May, August, November
(b) Skilled nursing, nursing home, intermediate care, personal care, or nursing facility.	November	December	March
(c) Personal care or IC MR/DD	November, February, May, August	December, March, June, September	March, June, September, December
(d) Transplantation, magnetic resonance imaging, lithotripter, radiation therapy, C.T. scanner, cardiac catheterization, open heart surgery, and new technological developments.	December, June	January, July	April, October
(e) Day health care center, ambulatory care clinic, rehab agency, hospice, home health or home health/hospice.	October, January, May, July	November, February, June, August	February, May, September, November
(f) Ambulance, NE health transportation, and air ambulance services.	November, January, April, June, August	December, February, May, July, September	March, May, August, October, December
(g) All mobile services except those covered under specialized equipment and services.	October, December, February, April, June, August	November, January, March, May, July, September	February, April, June, August, October, December
(h) Any proposals not listed above will be placed in the most appropriate cycle as determined by the interim office.			
(i) Any proposals granted nonsubstantive review status as specified in KRS 216B.095(3)(a) (b)(c)(d)(e)(f) and (g), plus technical modifications			

(CON) will be processed in accordance with KRS 216B.095 (1).

(10) The interim office shall notify the applicant by certified mail and any party to the proceeding by regular mail of the hearing officers' final action on a certificate of need application.

(11) The written notification shall include:

(a) Verification that the criteria have been met or, if the application is inconsistent with any criteria, the reasons for approval notwithstanding the inconsistency;

(b) Amount of capital expenditure authorized, where applicable;

(c) If the application is disapproved, the reasons for the disapproval; and

(d) Notice of appeal rights.

(12) All applications not declared complete with a year from the date of filing shall expire and shall not be reviewed.

(13) If an application for certificate of need is disapproved, it may not be refiled for a period of twelve (12) months, absent a showing of a significant change in circumstances.

Section 5. Certificate of Need Hearings. (1) Notice of the date, time and location of the hearing shall be mailed to all known affected persons **(other than third party payors and members of the public)** at least ten (10) days before the date of the hearing. Notice to third party payors and members of the public shall be provided through public information channels.

(2) Hearing requests may be withdrawn by written requested filed at least three (3) working days in advance of the scheduled hearing date. In order for a public hearing to be cancelled, all persons who requested the hearing must agree in writing to cancellation.

(3) The hearing officers may conduct prehearing conferences to resolve issues not in dispute or not requiring an evidentiary record and may issue prehearing orders which shall determine the form and the manner in which the evidentiary hearing is conducted.

(4) The hearing officer may be prehearing order require the following to be filed with the interim office by all affected persons within a reasonable time prior to the public hearing:

(a) An entry of appearance on a form prescribed by the interim office.

(b) Witness lists on a form prescribed by the interim office.

(c) An exhibit list on a form prescribed by the interim office.

(d) One (1) copy of any exhibit that will be submitted for introduction into the record at the public hearing.

(5) The hearing officers may place reasonable time limits upon the presentation of testimony, evidence and argument, and may terminate or exclude irrelevant or redundant evidence, testimony or argument.

(6) There shall be no prehearing discovery allowed of any affected person by any affected person, other than the exchange of exhibits.

(7) The record on any certificate of need application shall be closed for evidentiary purposes upon completion of the public hearing and may be reopened only upon order of the hearing officers.

(8) Upon completion of a public hearing, parties to the proceedings may submit proposed findings of fact and conclusions of law for consideration by the hearing officers, within reasonable time limits set by the hearing officers.

Section 6. Request for Reconsideration. The hearing officers shall act upon request for reconsideration no later than thirty (30) days following receipt of such requests. If reconsideration is granted, a reconsideration hearing shall be held within thirty (30) days of the decision to grant reconsideration, and a final decision shall be made no later than thirty (30) days following the reconsideration hearing.

Section 7. Nonsubstantive Review. (1) In addition to the projects specified in KRS 216B.095(3)(a) through (f), if a proposal described below requires certificate of need approval, it will be granted nonsubstantive review status:

(a) Technical modifications to an approved certificate of need.

(b) Emergency circumstances which, if not promptly acted upon, would pose a threat to the life, health and safety of any citizen of the Commonwealth. Emergency circumstances shall include acts of God, fire, vandalism, structural or mechanical failure and other situations which pose a life, health or safety threatening circumstance. Any applicant acting under this subsection may proceed to relieve any of the above listed emergency circumstances provided the office is notified in writing prior to such action and provided the application is submitted within thirty (30) days of the occurrence of the emergency.

(c) New construction which does not involve a substantial change in **bed capacity** [~~beds~~], a substantial change in a health service, or the addition of major medical equipment.

(d) Applications proposing the use of existing mobile services and equipment to provide health care access in unserved geographic areas of the Commonwealth.

(e) Applications proposing the use of existing mobile services to provide health care access for which the Kentucky General Assembly has specifically appropriated funds.

(2) Procedures for nonsubstantive review shall be as follows:

(a) The original certificate of need application and four (4) copies, with a request for nonsubstantive review shall be submitted to the interim office.

(b) Within fifteen (15) days of the receipt of the application, the interim office shall acknowledge receipt of the application in writing to the applicant, and shall notify the applicant whether or not the application is complete.

(c) If the application is not complete, the notice to the applicant shall give the applicant the option of submitting the additional information or of notifying the interim office upon receipt of the request for additional information, that he elects for the application to be processed as originally submitted.

(d) Upon receipt of the requested additional information by the interim office, or upon receipt of a letter from the applicant that he elects for the application to be processed as originally submitted, the interim office shall declare the application to be deemed complete.

(e) The hearing officers' decision to grant or deny nonsubstantive review status shall be provided to the applicant and notice of the decision to conduct a nonsubstantive review shall be provided to other **known** affected persons **(other than members of the public and third party payors)** by mail no later than the tenth day after the application has been deemed complete. The notice of the review to members of the public and third party payors shall be provided through public information channels.

(f) If nonsubstantive review status is denied, the applicant may request a public hearing by filing a request with the interim office within ten (10) days of the notice to deny nonsubstantive review. As applicable, hearings shall be conducted as provided by KRS 216B.085.

(g) If a certificate of need is denied following a nonsubstantive review and a formal review is requested, no letter of intent shall be required, but the filing of the request for nonsubstantive review shall be considered compliance with any requirement for a letter of intent.

Section 8. Conditions Relative to a Certificate of Need. (1) No person shall transfer from one (1) legal applicant to another an approved certificate of need for the establishment of a new health facility or the replacement of an existing facility without first obtaining a certificate of need. All other certificates of need may be transferred to the new owner of the facility or service if a change of ownership occurs prior to the implementation of the project for which the certificate of need was issued.

(2) A certificate of need approved for establishment of a new health facility or the replacement of an existing facility is issued only for the location stated on the certificate.

(3) A certificate of need holder shall notify the interim office

of any reduction or termination of a health service or a reduction in bed capacity for an approved project no later than the first progress report after the decision to make the change has been determined.

Section 9. Administrative Cost Escalations and Overruns. (1) A certificate of need shall be required for an escalation or cost overrun of the capital expenditure authorized by an approved certificate of need in all instances where there is a substantial change in the project, or where the escalation or overrun exceeds the following limits:

(a) Twenty (20) percent of the capital expenditure authorized or $100,000, whichever is greater, in the case of projects with a capital expenditure of less than $500,000;

(b) Twenty (20) percent of the capital expenditure authorized, in the case of projects with a capital expenditure of $500,000 or greater, but less than $5,000,000;

(c) Ten (10) percent of the amount in excess of $5,000,000, plus $1,000,000, in the case of projects with a capital expenditure of $5,000,000 or greater, but less than $25,000,000;

(d) Five (5) percent of the amount in excess of $25,000,000, plus $3,000,000, in the case of projects with a capital expenditure of $25,000,000 or greater, but less than $50,000,000; or

(e) Two (2) percent of the amount in excess of $50,000,000, plus $4,250,000 in the case of projects with a capital expenditure of $50,000,000 or greater.

(2) Requests for administrative cost escalations or overruns shall be submitted to the interim office, on a form prescribed by the interim office. Such requests shall include the amount of the escalation of overrun, the factors causing the escalation or overrun, and information to assure that the scope of the project as originally approved has not changed. The hearing officers shall review all requests for administrative cost escalations and overruns and the interim office shall notify the certificate of need holder within thirty (30) days of receipt whether the requested escalation or overrun meets the requirements of subsection (1) of this section.

(3) The certificate of need holder shall submit any additional certificate of need application fee required by the increased capital expenditure pursuant to the requirements of 902 KAR 20:135.

(4) A certificate of need holder who obligates an amount exceeding the capital expenditure authorized without receiving an approved escalation per subsection (1) of this section is subject to the appropriate penalty per KRS 216B.990.

Section 10. Timetables and Standards for Implementation. (1) As one (1) of the conditions for issuance of a certificate of need, all certificate of need holders shall submit a report of progress on a form prescribed by the interim office according to the timetables and standards set forth below or more frequently if required by the interim office. The hearing officers may revoke the certificate of need, or portions thereof, for failure to submit reports as required.

(2) Certificate of need holders shall be sent notice specifying the date each progress report is due.

(3) The first progress report shall be due six (6) months from the date the certificate was issued and shall include the following:

(a) On all projects for purchase of equipment only, a copy of the purchase order.

(b) For all construction projects, a copy of the deed or the option to acquire the site.

(4) A second progress report shall be due twelve (12) months from the date of the certificate of need was issued and shall include documentation that:

(a) All projects for conversion of beds are complete;

(b) All projects for addition of new services, not involving construction, are complete;

(c) Schematic plans have been submitted to the Department of Housing, Buildings and Construction and the Cabinet for Human Resources for construction projects.

(5) The second progress report for all construction projects shall also include:

(a) Schedule for project completion with projected dates;

(b) Evidence of preliminary negotiation with financial agent;

(c) Evidence of preliminary negotiation with contractors.

(6) Within eighteen (18) months after a certificate of need has been issued, a third progress report shall be submitted which shall include the following information regarding all construction projects:

(a) Copy of deed or lease of land;

(b) Evidence that the holder has sufficient capital obligated to complete the project. If the source of capital is to be a financing agreement, the holder must have evidence that a final enforceable agreement or note has been executed;

(c) Documentation that final plans have been submitted to the Department of Housing, Buildings and Construction and the Cabinet for Human Resources;

(d) Enforceable contract with construction contractor;

(e) On all projects for purchase of equipment only, evidence that equipment has been installed.

(7) Within two (2) years after a certificate of need has been issued, a fourth six (6) month report shall be submitted which shall verify that all construction projects have the walls and roof up and plumbing roughed in.

(8) Within six (6) months following completion of a project for which a certificate of need has been issued for a specific service area, all certificate holders shall submit documentation that services are being provided to all of the licensed service area. Failure to provide such documentation shall constitute grounds for revocation of the certificate of need **and the license for those areas where service is not being provided** [~~as to those areas for which the holder has not been licensed~~].

Section 11. Advisory Opinions. The process for seeking an advisory opinion from the hearing officers shall be as follows:

(1) Requests for advisory opinions shall be made, in writing, on a form prescribed by the interim office.

(2) The hearing officers may require verification of information and may request additional documentation, if necessary.

(3) The hearing officers shall issue a written advisory opinion within thirty (30) days of receipt of a completed request for an opinion or of receipt of additional information.

(4) An affected party may request a public hearing regarding a written advisory opinion by requesting same from the interim office within thirty (30) days of the final determination.

Section 12. Final Decisions. All final decisions regarding certificate of need related matters will be decided by the individual hearing officer to whom that particular matter is assigned.

GREG LAWTHER, Acting Executive Director
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: September 3, 1992
FILED WITH LRC: September 4, 1992 at 11 a.m.

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

905 KAR 2:100. Certification of family child care homes.

RELATES TO: KRS 17.165, Senate Bill 211 1992 GA, 42 USC 602

STATUTORY AUTHORITY: KRS 194.050, Senate Bill 211 1992 GA

NECESSITY AND FUNCTION: KRS 194.050 provides that the Secretary for the Cabinet for Human Resources shall adopt administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. In compliance with SB 211, the Department for Social Services has established standards for the certification of family child care homes. These

standards are intended to protect the health, safety and welfare of children. This administrative regulation contains the substance of 905 KAR 2:070 which is herein repealed.

Section 1. Definitions. (1) "Assistant" means a person:

(a) Sixteen (16) years of age or older;

(b) Under direct supervision of a provider or substitute provider; and

(c) Has obtained a criminal records check and tuberculosis skin test.

(2) "Cabinet" means the Kentucky Cabinet for Human Resources.

(3) "Child" means a person under thirteen (13) years of age, or under eighteen (18) years of age if the person has been identified as having special child care needs.

(4) "Commissioner" means the Commissioner for the Department for Social Services.

(5) "Family child care home" as governed by SB 211 **and does not apply to providers who care for their own children, related children or children in legal custody of the provider and up to three (3) unrelated children**.

~~[(6) "Family child care" means the provision of regular care and supervision to six (6) or fewer children for part of a twenty four (24) hour period, in the caregiver's own home, as a supplement to regular parental care.]~~

(6) [~~(7)~~] "Home" means the private primary residence of the provider.

(7) [~~(8)~~] "Infant" means a child under one (1) year of age.

(8) [~~(9)~~] "Nighttime care" means family home child care in which a child receives regular full, or part-time care during the night, and beginning at 6 p.m.

(9) [~~(10)~~] "Provider" means a person providing care for preschool or school-age children or both inside his own home for less than twenty-four (24) hours a day, and who is not required to be licensed under 905 KAR 2:090.

(10) [~~(11)~~] "Provider's own child" means the providers's own children[~~, grandchildren, nieces, nephews,~~] and children in legal custody [~~under the age of six (6)~~].

(11) [~~(12)~~] "Regular" means the provision of child care services in the caregiver's home on more than one (1) day in one (1) week or more than ten (10) hours per week.

(12) "Related child" means a certified provider's grandchildren, nieces and nephews.

(13) "School-age child" shall be considered as one attending kindergarten or above.

(14) "Special needs child" means children who have multiple or severe problems and the Department for Social Service staff has confirmed the need for ongoing specialized care.

(15) "Substitute provider" means a person:

(a) Who is **eighteen (18)** [~~twenty one (21)~~] years of age;

(b) Has obtained a criminal records check and a tuberculosis skin test; and

(c) Is available to provide care in a family child care home.

(16) "Toddler" means a child between the age of twelve (12) months and twenty four (24) months.

Section 2. Certification Process. The department shall be responsible for the certification of family child care homes. Authorized representatives of the department have the authority to inspect premises, records required by this administrative regulation, and program of family child care homes. Inspections by the department shall be unannounced. A provider shall apply for certification if the provider is caring for four (4) to six (6) **unrelated** children and may apply if caring for three (3) or fewer children as governed by SB 211.

(1) A provider making application for certification shall:

(a) Complete the DSS-78, Application for Family Child Care Certification, incorporated by reference herein;

(b) Complete the DSS-79, Self-Check List, incorporated by reference herein;

(c) Meet the minimum requirements as governed by SB 211;

(d) Submit a criminal records check for adult persons living in the home;

(e) Comply with provisions set forth in Sections 3 and 4 of this regulation; and

(f) Within three (3) months of the date of preliminary permission to operate, demonstrate completion of training as governed by SB 211;

(g) [~~and~~] comply with deficiencies cited during the inspection of the home specified in subsection (2) of this section.

(2) Upon receipt of the application and fee:

(a) Staff shall review the application and, if acceptable, shall issue a written preliminary permission to operate; and

(b) An initial inspection of the home shall be made by a representative of the department as governed by SB 211.

(3) If the requirements have been met, the home shall be certified and a certificate shall be issued for a two (2) year period.

(a) The certificate shall be displayed where parents can read it and shall contain:

1. The name and address of the provider;
2. Limit of children to be served;
3. Identification number; and
4. Effective and expiration dates.

(b) The certification shall be valid for the certified caregiver and the address listed. A change of address or move change shall be reported to the Department for Social Services and an updated DSS-79 completed.

(4) If the provider does not wish or cannot comply with the standards set forth in this administrative regulation, within three (3) months of the initial inspection, then the application shall be denied.

(5) Renewal. The renewal certification process shall be repeated every two (2) years.

(6) The cabinet shall review and may deny, suspend, revoke or refuse certification:

(a) If the provider or an adult living in the provider's home:

1. Has been convicted of a crime related to abuse, neglect or exploitation of a child;
2. Refuses to provide a criminal records check; or

(b) If the family child care home fails to comply with certification standards set forth in this administrative regulation.

(7) Appeal.

(a) If the cabinet denies, suspends, revokes or refuses to renew a certification, the cabinet shall notify the provider in writing stating the reasons for the adverse action and the provider's right of appeal.

(b) If the provider feels an action of the Department for Social Services is unfair, without reason, or unwarranted, the provider may appeal the action, in writing, to the Commissioner of the Department for Social Services, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621, within fifteen (15) days after receiving the notice of the action from the cabinet.

(c) Upon receipt of the request for hearing, the commissioner, or commissioner's designee, shall notify the provider in writing within fifteen (15) days of the time and place of the hearing. The commissioner shall appoint a hearing officer to review the record, take additional evidence, and make recommendations upon the matter appealed.

(d) Based upon the record and upon the information obtained at the hearing, the hearing officer shall affirm or overturn the initial decision of negative action. The decision shall be final. The provider shall be notified in writing of the decision of the hearing officer.

(e) If certification, denial or revocation is upheld, the commissioner's notification shall specify the date by which the

family child care home shall close.

(f) A family child care home continuing to have four (4) to six (6) **unrelated** children in attendance after the closing date established by the commissioner shall be subject to legal action by the cabinet as provided by law.

Section 3. Standards for the Provider. (1) Qualifications of provider and staff:

(a) The provider shall be at least **eighteen (18)** [~~twenty-one (21)~~] years of age;

(b) The provider shall meet minimum requirements as governed by SB 211; and

(c) Beginning with the second year of operation, the provider shall participate annually in at least six (6) hours of training in child development approved by the Department for Social Services.

(2) Staff-child ratio.

(a) The certified provider shall have an assistant before additional children may be in care if more than four (4) infants are in care.

(b) Including the certified provider's own or related children, a certified provider shall not care for more than six (6) children under the age of six (6) years old.

(c) The maximum number of children in the care of a certified provider shall not exceed ten (10). [~~A certified provider may not care for more than six (6) children including the provider's own children under the age of six (6).~~

~~(a) If children under the age of two (2) are present, the limitation on the maximum number of children shall be as follows:~~

~~Number of Children Under the Age of Two Years~~	~~Maximum Total Number of Children*~~
~~0~~	~~6~~
~~1~~	~~6~~
~~2~~	~~6~~
~~3~~	~~5~~
~~4~~	~~5~~

~~*The total does not include the provider's own children six (6) years of age and older.~~

~~(b) If more than four (4) infants are in care, the provider shall have an assistant before additional children may be in care.~~]

(3) The family child care home environment. The provider's home and play areas used for child care shall be safe and have adequate heat, light and ventilation.

(a) Each floor level used for child care shall have at least one (1) unblocked exit and at least one (1) smoke detector and fire extinguisher.

(b) The home shall be free of hazards and the following items shall be kept inaccessible to children:

1. Medications and drugs;
2. Cleaning supplies, poisons and insecticides;
3. Guns, knives, scissors and sharp objects;
4. Power tools, lawn mowers, hand tools, nails and other equipment;
5. Matches, cigarettes, lighters and flammable liquids;
6. Alcoholic beverages;
7. Plastic bags; and
8. Litter and rubbish.

(c) Electrical outlets not in use shall be covered.

(d) Electric fans, floor furnaces, or freestanding heaters or fi replaces, shall be out of the reach of children or have a safety guard on them to protect children from injury.

(e) The home shall have at least one (1) telephone in working order with a list of emergency numbers posted by each telephone, including numbers for the:

1. Police;
2. Fire station;
3. Emergency medical care, rescue squad; and
4. Poison control center.

(f) Equipment and toys shall be developmentally appropriate for the ages and number of children in care and be kept in good repair.

(g) Stairs and steps used for children in care shall be solid, safe and railed. Indoor stairs with more than two (2) steps shall be blocked if children in care are infants or toddlers.

(h) The provider shall maintain first aid supplies that are easily accessible for use in an emergency, and shall wash superficial wounds with soap and water before bandaging. First aid supplies shall include a fully equipped first aid kit containing unexpired items approved by the American Red Cross.

(i) Indoor areas, including furnishings, used for child care shall contain a minimum of thirty-five (35) square feet per child for play and for activities which meet the development needs of the children in care.

(j) Outdoor play areas shall be free of hazards and shall be fenced or the provider shall make provisions to assure that the children are under direct supervision in outdoor play areas.

(k) Outdoor stationary play equipment shall be securely anchored.

(l) Practice fire and tornado drills shall be conducted with the children at least monthly and documented.

(m) Health and sanitation for the child care environment shall require that the provider:

1. Have a home that is kept clean, uncluttered and free of insects and rodents;
2. Have a water supply properly located, protected, adequate, and of a source approved by the local health department;
3. Have bathrooms, including toilets, sinks, and potty chairs that are sanitary and in good working condition;
4. Assure that a covered, leak-proof container which is emptied and cleaned daily is available for soiled diapers;
5. Refrigerate perishable food and beverages. The refrigerator shall be in working order and maintain a temperature of forty (40) degrees or below and frozen food shall be kept at temperatures to remain frozen, except if being thawed for preparation or use;
6. Label bottles for each individual child, except if there is only one (1) bottle-fed child in care;
7. Serve only pasteurized milk or milk products;
8. Screen windows and doors used for ventilation;
9. Have household pets vaccinated for rabies;
10. Store indoor and outdoor garbage in waterproof containers with tight-fitting covers;
11. Provide adequate space for a rest-time for each child in care for more than four (4) hours. Individual linens shall be provided for each child and shall be changed at least weekly or if they become soiled or wet.

(4) Program for children. A plan for daily activities and routines shall be established.

(5) Children shall be released from the family child care home to:

(a) The child's custodial parent;

(b) The person designated in writing by the parent to receive the child; and

(c) A person in an emergency designated over the telephone by the parent.

(6) Child health care. To assure a healthy environment, the provider shall:

(a) Maintain current immunizations certificates for each child within thirty (30) days of enrollment;

(b) Maintain for each child a health and emergency informa-

tion form completed and signed by the child's parent or guardian. The completed form shall be on file on the first day the child attends and includes the following information:

1. The child's name, address, and date of birth;
2. The names of individuals to whom the child may be released;
3. The general status of the child's health;
4. Allergies or restrictions on the child's participation in activities with specific instructions from the child's parent or physician;
5. The names and phone numbers of persons to be contacted in an emergency situation;
6. The name and phone number of the child's physician and preferred hospital; and
7. Authorization by the parent or guardian for the provider to seek emergency medical care in the parent's absence.

(c) Provide a quiet, separate area which can be easily supervised for children too sick to remain with other children;

(d) Prohibit prescription medications or aspirin to be administered to a child except as authorized by a licensed physician and with written daily request of the parent or guardian; and

(e) Administer nonprescription medication to a child only with written daily request of parent or guardian.

(7) Transportation. To assure the safety of children if transportation is provided or arranged by the provider, the provider shall:

(a) Have written permission from a parent or guardian to transport his child;

(b) Have a car or van equipped with seat belts which allows each child to be individually secured;

(c) Require that each child shall have a seat and remain seated while the vehicle is in motion. A child under four (4) years of age or under forty (40) inches in height shall be transported restrained in an approved safety seat;

(d) Have a valid driver's license issued by the Division of Motor Vehicles;

(e) Have emergency and identification information about each child in the vehicle whenever children are being transported; and

(f) Conform to state laws pertaining to vehicles, drivers license and insurance as governed by KRS 281.600, 138.655, and 186.020.

(8) Child records. The provider shall not disclose or knowingly permit the use of information concerning the child or family directly or indirectly except to representatives of the Cabinet for Human Resources or as governed by this administrative regulation.

(9) Provider and parent communication. The program shall ensure ongoing communication with a child's parent by:

(a) Developing written information about the service which specifies the charge for child care and the expected frequency of payment for the program;

(b) Make available a copy of the certification standards to each parent;

(c) Give each parent the name and address and telephone number of the cabinet, to register complaints if he believes the family child care home provider is not meeting the standards; and

(d) Post and provide to each parent copies of children and parent rights pursuant to SB 211.

Section 4. The provider shall comply with the following:

(1) Swimming or wading pools on the premises shall be maintained and supervised when in use in order to safeguard the lives and health of the children.

(2) Wash hands with soap and water before and after diapering a child.

(3) Use sanitary procedures when preparing and serving food.

(4) Assure that children shall not share cups, eating utensils, wash cloths or towels.

(5) The provider or other persons in the home shall not be under the influence of alcohol or drugs while children are in care except those drugs prescribed by a physician.

(6) Prohibit smoking in the presence of children in care.

(7) The provider or other person in the home shall not use physical punishment:

(a) A child shall not be:

1. Handled roughly in any way, including shaking, pushing, shoving, pinching, slapping, biting, kicking and spanking; or
2. Placed in a locked room, closet, box or other confined space;

(b) The provider or other person in the home shall not:

1. Use disciplinary methods which humiliate, shame or frighten the child; or
2. Use harsh or demeaning language in the presence of the children;

(c) Discipline shall not be:

1. Delegated to another child; or
2. Related to food, rest or toileting:

a. Food shall not be withheld or given as a means of discipline;

b. A child shall not be disciplined for lapses in toilet training; or

c. A child shall not be disciplined for not sleeping during rest time.

(8) In the absence of the provider, a substitute provider shall be physically present at the family child care home during hours of operation. The provider shall not be employed outside the home during regular hours of operation. Children are not permitted off the premises without the caregiver. An exception may be made for school-age children, as long as their whereabouts are known, and the parents have given written permission.

(9) An infant's formula shall be prepared and provided by the parent. An exception may be made for providers that provide formula as a fringe benefit to the parent.

(10) Infants in care shall be held during feeding and bottles shall never be propped.

(11) If overnight care is provided, the provider shall:

(a) Remain awake until every child in care is asleep;

(b) Sleep on the same level as infants and toddlers; and

(c) Provide comfortable, clean and safe bedding for each child.

(12) Serve meals which include a food from each of the four (4) basic food groups and snacks appropriate in amount and type of foods served for the ages of the children in care.

(13) Provide opportunities for outdoor play or fresh air.

(14) Be able to recognize symptoms of childhood illnesses.

(15) Visually supervise children who are awake and be able to respond to the children immediately.

(16) Be able to provide basic first aid.

(17) Never leave children in a vehicle unattended by an adult.

(18) Never use the back of pick-up trucks to transport children.

(19) Allow parents to visit and observe the program during the hours of operation and communicate with each child's parent about his child's development, activities, likes and dislikes.

Section 5. Incorporation by Reference. (1) Forms necessary for the implementation of the certification of family child care homes shall be herein incorporated by reference.

(2) Material incorporated by reference may be inspected or copied at the Department for Social Services, Cabinet for Human Resources Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

Section 6. Repeal. 905 KAR 2:070 is hereby repealed.

PEGGY WALLACE, Commissioner
LEONARD E. HELLER, Secretary

APPROVED BY AGENCY: September 4, 1992
FILED WITH LRC: September 4, 1992 at 11 a.m.

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

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

RELATES TO: KRS 205.520, 205.575, **1992 Acts c. 462, Part I.G.52.b.2.** [HB 468 part I.G. #52.b.2. of the 1992 GA]

STATUTORY AUTHORITY: KRS 194.050, **1992 Acts c. 462, Part I.G.52.b.2.** [HB 468 part I.G. #52.b.2. of the 1992 GA], 20 CFR 405.402 through 405.488, 42 CFR 440.10, 440.140, 447.250 through 447.280, 42 USC 1396a, b, d, r-4

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance. KRS 205.520 empowers the cabinet, by administrative 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. KRS 205.575 provides for hospital indigent care assurance program (HICAP) payments. This administrative regulation sets forth the method for determining amounts payable by the cabinet for hospital inpatient services.

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

Section 2. Establishment of Payment Rates. The policies, methods, and standards to be used by the cabinet in setting payment rates are specified in the cabinet's "Inpatient Hospital Reimbursement Manual" revised July 1, 1992 [1991], which is incorporated by reference in this administrative regulation. For any reimbursement issue or area not specified in the manual, the cabinet shall apply the Medicare standards and principles (excluding the Medicare inpatient routine nursing salary differential). The Kentucky Medical Assistance Program Inpatient Hospital Reimbursement Manual may be reviewed during regular working hours of [(]8 a.m. to 4:30 p.m.[)] eastern time 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 upon payment of an appropriate fee which shall not exceed approximate cost.

Section 3. General Description of the Payment System. (1)[(a)] Use of prospective rates. Each hospital shall be paid using a prospective payment rate based on allowable Medicaid costs and Medicaid inpatient days [except as otherwise provided for in this section]. The prospective rate shall be all inclusive in that both routine and ancillary cost shall be reimbursed through the rate. For universal rate years prior to January 1, 1985 the prospective rate shall not be subject to retroactive adjustment except to the extent that an audited cost report alters the basis for the prospective rate or the projected inflation index utilized in setting the individual rate is different from actual inflation as determined by the index being used. For universal rate years beginning on or after January 1, 1985, the prospective rate shall not be subject to retroactive adjustment except to the extent that facilities with a rate based on unaudited data shall have their rate appropriately revised for the rate year when the audited cost report is received from the fiscal intermediary. However, total prospective payments shall not exceed the total customary charges in the prospective year. Overpayments shall be recouped by payment from the provider to the cabinet of the amount of the overpayment, or alternatively, by the withholding of the overpayment amount by the cabinet from future payments otherwise due the provider.

[(b) Effective with regard to payments for services provided on or after July 1, 1992, an acute care hospital designated by the single state agency as a primary referral resource for the provision of indigent care shall be paid a negotiated rate so long as the negotiated rate is not less than the rate the hospital otherwise would be paid using usual program policy nor more than the hospital's usual and customary charges. The negotiated rate shall be in lieu of the usual basic rate, and the only additional payments that shall be made shall be adjustments for services to children under age six (6) (if the hospital is a disproportionate share hospital) or age one (1) (if the hospital is not a disproportionate share hospital), and any amounts payable under HICAP or the disproportionate share minimum adjustment amount if greater. If a designated hospital and the Department for Medicaid Services fail to agree on a negotiated rate the hospital shall be paid in accordance with usual policies and procedures.]

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

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

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

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

(6) Use of a minimum occupancy factor. A minimum occupancy factor shall be applied to capital costs attributable to

the Medicaid program. A sixty (60) percent occupancy factor shall apply to hospitals with 100 or fewer beds. A seventy-five (75) percent occupancy factor shall apply to facilities with 101 or more beds. Capital costs are interest and depreciation related to plant and equipment.

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

(8) Use of upper limits with regard to services provided on or after July 1, 1991.

(a) The following upper limits and payment principles shall apply to all hospitals [~~(unless the hospital is paid using a negotiated rate)~~] with other limitations for disproportionate share hospitals shown in paragraph (b) of this subsection.

1. For acute care hospitals, an upper limit shall be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in each peer group, using the most recent medicaid cost report available as of December 1 of each year. For mental hospitals, an upper limit shall be established on all costs (except Medicaid capital cost) at the weighted median per diem cost for hospitals in the array. A mental hospital designated by the cabinet as a primary referral and services resource for children in the custody of the cabinet shall be exempt from the upper limit for the array and shall be paid at actual projected cost with no year end settlement to actual cost; the projected cost may be adjusted for usual cost of living increases using the Data Resources, Incorporated Index. Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data; however the arrays or upper limits may be changed as a result of changes of agency policy. Hospitals participating in the Hospital Indigent Care Assurance Program (HICAP) shall also receive, in addition to regular program payments, amounts which are payable under HICAP. Effective with regard to payments for the quarter ending June 30, 1992 and thereafter, the HICAP payments shall be the product of the ratio of each hospital's Medicaid patient days compared to total Medicaid patient days as applied to total available HICAP funds (which are the amounts remaining, from the hospital assessments paid, for distribution to hospitals after exclusion of appropriate amounts for [~~minus~~] administrative expense, [~~hold harmless amounts, and~~] the contingency reserve amount, and amounts reserved for other program needs in accordance with budget commitments, obligations, and appropriations, and taking into consideration available federal Medicaid matching funds and upper limits on HICAP payments). The formula for determination of HICAP payment amounts is shown in the Reimbursement Manual at Section 102D.(b)(2), (3), (4), and (5). [~~For the quarters ending March 31, 1991 and June 30, 1991, no hospital participating in HICAP shall receive less than its assessment plus $100,000 annually ($25,000 quarterly). Effective with regard to services provided on and after July 1, 1991,~~] No hospital participating in HICAP shall receive on an annual basis less than five and one-quarter (5.25) percent of its operating costs, or five (5) percent of its annual operating costs plus $100,000, whichever amount is greater. [~~Hold harmless amounts are computed separately for the first twenty (20) percent of the fund, for the 21st through 60th percent of the fund, and 61st through 100th percent of the fund.~~] For hospitals which are disproportionate share hospitals the limitations shown in paragraph (b) of this subsection and subsection (9) of this section shall be applicable for HICAP payments. If a hospital which is a nondisproportionate share hospital is determined by the cabinet to be a nonparticipant in HICAP, the amounts otherwise payable under HICAP to the hospital shall not be made.

2. For medically necessary hospital inpatient services provided to infants under the age of one (1) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other infants are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the infants.

(b) The following upper limits and payment principles shall apply to disproportionate share hospitals as defined in subsection (9) of this section [~~(unless the hospital is paid using a negotiated rate)~~].

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher, and hospitals having twenty-five (25) percent or more nursing days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 120 percent of the weighted median per diem cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

2. Designated state teaching hospitals and major affiliated pediatric teaching hospitals (i.e., those affiliated with or a part of the University of Kentucky and the University of Louisville) shall have an upper limit set at 126 percent of the weighted median per diem cost for all other hospitals of comparable size (401 beds and up). The pediatric teaching hospitals shall also be paid, in addition to the facilities' base rate, an amount which is equal to two (2) percent of the base for each one (1) percent of Medicaid occupancy but this amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the facility. In addition to the per diem amount computed using the limits specified in this subparagraph, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

3. Mental hospitals with Medicaid utilization of thirty-five (35) percent or higher shall have an upper limit set at 115 percent of the weighted median per diem cost for hospitals in the array. The per diem amount shall be computed using this upper limit or by using the disproportionate share minimum payment amount shown in subsection (9)(b)1 of this section if doing so results in a higher per diem amount.

4. All other disproportionate share acute care hospitals shall have their upper limit set at the weighed median per diem of the cost for hospitals in the array. In addition to the per diem amount computed in this manner, the hospitals shall be paid (as appropriate) additional amounts for services to children under age six (6) (as shown in subsection (9)(b)2 of this section). The hospitals shall also be entitled to amounts payable under HICAP (as shown in subsection (9)(b)3 of this section) or the disproportionate share minimum adjustment amount shown in subsection (9)(b)1 of this section if greater.

(9) Disproportionate share hospitals.

(a) Disproportionate share hospitals are those hospitals meeting the criteria specified in 42 USC 1396r-4(b) and (d) and those hospitals which may not meet such criteria but meet the criteria specified in 42 USC 1396r-4(d) and meet this additional criteria:

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

2. Hospitals which are designated state teaching hospitals;

3. Hospitals which are designated major pediatric teaching hospitals;

4. Hospitals having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days; and

5. Effective with regard to services provided on or after July 1, 1990, hospitals not meeting the additional criteria specified in subparagraphs 1 through 4 of this paragraph but with Medicaid utilization of one-half (1/2) of one (1) percent or higher.

(b) The upper limit for payments for hospitals in Kentucky [~~(unless the hospital is paid on the basis of a negotiated rate)~~] shall be set at the lower of allowable Medicaid cost or the median of the facility array of allowable cost with payment adjustments allowed for hospitals deemed disproportionate share hospitals in accordance with subsections (8) and (9) of this section. For compliance with 42 USC 1396r-4(c), the minimum payment adjustment and actual payment adjustment shall be computed in the following manner:

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

2. Effective with regard to medically necessary hospital inpatient services provided by all Kentucky disproportionate share hospitals on or after July 1, 1991 to children under the age of six (6) with exceptionally high costs or long lengths of stay (defined as being those costs and days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days from the date of admission), the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the children.

3. Effective with regard to services provided on or after July 1, 1990 any hospital which is participating in the Hospital Indigent Care Assurance Program (HICAP) shall receive disproportionate share payments under HICAP. HICAP assessments and payments are described in 907 KAR 1:017, Hospital indigent care assurance program. If a hospital is determined by the cabinet to be a nonparticipant in the HICAP program, the hospital shall be entitled to the minimum adjustment shown in subparagraph 1 of this paragraph.

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

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

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

Section 4. Payments to Participating Out-of-state Hospitals. (1) Effective with regard to services provided on or after July 1, 1990 participating out-of-state hospitals shall be reimbursed for covered inpatient services rendered eligible Kentucky Medicaid recipients at the rate of seventy-five (75) percent of usual and customary charges, up to the in-state per diem upper limit for a comparable size hospital, except as specified in subsection (2) of this section.

(2) Effective with regard to medically necessary hospital inpatient services provided on or after July 1, 1991 to infants under the age of one (1), and for children under the age of six (6) in disproportionate share hospitals (determined in the same manner as for in-state hospitals except that out-of-state hospitals are not included in facility arrays), for days of stay which for newborns are after thirty (30) days beyond the date of discharge for the mother of the child and for all other children are after thirty (30) days from the date of admission, participating out-of-state hospitals shall be paid at the rate of eighty-five (85) percent of usual and customary actual billed charges up to 110 percent of the per diem upper limit for the in-state peer group for comparably sized hospitals in recognition of exceptionally high costs and lengths of stay related to infants under the age of one (1) and children under age six (6), without regard to length of stay or number of admissions of the infants and children.

(3) Effective with regard to services provided on or after February 1, 1991, professional costs (i.e., physician fees) for all covered days of stay shall be paid at seventy-five (75) percent of the usual and customary charges of the provider.

[~~Section 5. Implementation Date. Except as provided in Section 3(8) of this regulation, the amendments to this regulation shall be applicable with regard to services provided on or after July 1, 1991.~~]

ROY BUTLER, Commissioner
LEONARD E. HELLER, Secretary
APPROVED BY AGENCY: September 3, 1992
FILED WITH LRC: September 4, 1992 at 11 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, SEPTEMBER 15, 1992

PERSONNEL BOARD
(Proposed Amendment)

101 KAR 1:325. Probationary periods.

RELATES TO: KRS 18A.075, 18A.0751, 18A.111
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751
NECESSITY AND FUNCTION: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.111 relates specifically to probationary periods.

Section 1. Initial Probationary Period. (1) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth or 12th month, depending upon the length of initial probationary period, except as provided in KRS 18A.111.

(2) The following job classifications shall require an initial probationary period in excess of six (6) months:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
2001	Fish and Wildlife Conservation Officer Trainee	12 months
2112	DES Duty Officer	12 months
2113	DES Duty Officer Senior	12 months
2306	Park Ranger	12 months
2312	Park Ranger Captain	12 months
2408	MVE Trainee	12 months
2435	MVE Inspector Trainee	12 months
2480	Water Patrol Officer	12 months
2493	Mounted Security Office	12 months
2494	Mounted Security Sergeant	12 months
2495	Mounted Security Captain	12 months
2496	Mounted Security Officer Trainer	12 months
3254	Boiler Inspector Trainee	12 months
3416	Financial Institution Examiner Trainee	12 months
3601	Alcoholic Beverage Enforcement Officer	12 months
3734	Assessment Conference Officer	12 months
5141	Education Teacher Rank III	12 months
5142	Education Teacher Rank II	12 months
5143	Education Teacher Rank I	12 months
7203	Forest Guard	12 months
7205	Forest Ranger	12 months
7207	Forest Ranger Unit	12 months
7209	Forest Ranger District	12 months
7213	Forestry District Equipment Supervisor	12 months
7215	Nursery Foreman	12 months
7217	Nursery Superintendent	12 months
7221	Forester	12 months
7222	Forester Senior	12 months
7224	Forester Chief	12 months
7226	Forester District	12 months
7228	Forester Regional	12 months
7231	Rural Fire Suppression Technical Advisor	12 months
7232	Forestry Program Specialist	12 months
7233	Forestry Program Coordinator	12 months
7235	Forestry Program Manager	12 months
9859	Environmental Administrative Hearing Officer	12 months

(3) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall serve the shorter of the initial probationary periods. When the employee is appointed, the employee's appointing authority shall advise the employee of the period of his initial probation.

(4) When an employee is appointed to a position from a competitive register, such appointment shall be considered as an initial appointment.

(5) [~~(4)~~] Effective July 1, 1991, the following job classifications in the Department of Education shall require an initial probationary period in excess of six (6) months:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
5303	Exceptional Children Consultant I	12 months
5304	Exceptional Children Consultant II	12 months
5305	Exceptional Children Program Manager I	12 months
5306	Exceptional Children Program Manager II	12 months
5309	Education Academic Program Consultant I	12 months
5310	Education Academic Program Consultant II	12 months
5311	Education Academic Program Manager I	12 months
5312	Education Academic Program Manager II	12 months
5313	Education Administration Program Consultant I	12 months
5314	Education Administration Program Consultant II	12 months
5315	Education Administration Program Manager I	12 months
5316	Education Administration Program Manager II	12 months
5321	Education Facilities Program Consultant	12 months
5323	Education Facilities Program Manager	12 months
5324	Education Instructional Services Advisor	12 months
5325	School Accreditation Evaluator	12 months
5327	School Accreditation Evaluation Manager	12 months
5329	School Food Services Program Consultant	12 months
5330	School Food Services Program Coordinator	12 months
5331	School Food Services Program Manager	12 months
5337	Education Financial Analyst	12 months
5341	Education Health/P.E. Program Consultant I	12 months
5342	Education Health/P.E. Program Consultant II	12 months
5343	Education Reading Program Consultant I	12 months

5344	Education Reading Program Consultant II	12 months
5345	Education Social Studies Program Consultant I	12 months
5346	Education Social Studies Program Consultant II	12 months
5347	Education Science Program Consultant I	12 months
5348	Education Science Program Consultant II	12 months
5349	Education Language Arts Program Consultant I	12 months
5350	Education Language Arts Program Consultant II	12 months
5351	Education Math Program~~.~~ Consultant I	12 months
5352	Education Math Program Consultant II	12 months
5353	Education Primary Program Consultant I	12 months
5354	Education Primary Program Consultant II	12 months
5355	Education Vocational Program Consultant I	12 months
5356	Education Vocational Program Consultant II	12 months

Section 2. Promotional Probationary Period. (1) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(2) An employee who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or to a position in the same job classification as his former position. If an employee fails to satisfactorily complete a promotional probationary period, he shall be notified in writing at least ten (10) working days prior to the effective date of his reversion. The notification shall advise the employee of the effective date of reversion. When the employee is notified, copies of the notice of reversion shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

(3) The promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the sixth month following promotion, except as provided in KRS 18A.111.

Section 3. Probationary Period Upon Reinstatement. An employee who is reinstated, except an employee ordered reinstated pursuant to KRS 18A.111(3), to a position in the classified service no later than twelve (12) months after the beginning of a break in service shall be reinstated with status. An employee who is reinstated to the classified service more than twelve (12) months after a break in service, except an employee ordered reinstated pursuant to KRS 18A.111(3), shall serve an initial probationary period. [~~serve a promotional probationary period.~~]

JAMES M. SHAKE, Chairman

APPROVED BY AGENCY: August 14, 1992

FILED WITH LRC: August 17, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 27, 1992, at 9 a.m. at 5 Fountain Place, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 22, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Commonwealth of Kentucky, Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, (502)564-7830.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: R. Hanson Williams

(1) Type and number of entities affected: All state agencies with classified employees.

(a) Direct and indirect costs or savings to those affected: No appreciable changes.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs (note any effects upon competition): N/A

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: N/A

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(3) Assessment of anticipated effect on state and local revenues: N/A

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? No. This regulation must apply equally to all classified employees and all state agencies with classified employees.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:020. Reciprocal program between CERS, KERS, SPRS, TRS and Legislators' Retirement Plan.

RELATES TO: KRS 16.505 to 16.645, 61.510 to 61.700, 78.510 to 78.990

STATUTORY AUTHORITY: KRS 61.645(9)(e) [~~16.640, 61.645, 78.780~~]

NECESSITY AND FUNCTION: KRS 61.680 was amended by the 1974 and 1982 General Assembly to provide for an entirely new method of determining retirement benefits for public employees having a retirement account in more than one (1) of the following state administered retirement systems: County Employees Retirement System, Kentucky Employees Retirement System, Legislators Retirement Plan, State Police Retirement System and Teachers' Retirement System. An administrative regulation adopted by the Board of Trustees of Kentucky Retirement Systems is necessary to implement this new legislation.

Section 1. [~~Procedural Matters.~~] Upon death, disability or service retirement the following procedure shall be applicable in order to determine benefits for a member having an account in more than one (1) retirement system:

(1) Combine the members' service in all systems.

(2) Determine eligibility in each system based on combined service.

(3) If eligible in any system, determine benefits.

(4) Check for specific exceptions such as prior service, request for separate account or special death or disability exception.

(5) Each system shall pay the [pays] applicable percentage of total benefit unless a specific exception exists.

Section 2. [Service Retirement.] (1) A member eligible to retire who elects service retirement from one (1) system, shall be paid from all systems in which he has an account unless he requests that his accounts be separated.

(2) The "final compensation" will be calculated by using the five (5) highest fiscal years creditable compensation regardless of the system under which the service was earned.

(3) Each system will determine benefit payments on the basis of the final compensation but using only the service earned in that system. Payments shall [will] be made by each system in accordance with its usual procedures. If [, except where] an age requirement has not been met, benefits shall be actuarially reduced based on factors adopted by the respective retirement boards.

(4) The retiring member or beneficiary shall [will] be required to elect the same payment option in each system administered by the Kentucky Retirement Systems except that a state policeman or a member with hazardous service may select the "Ten Year for Certain" option set forth in KRS 16.576(5) irrespective of the option chosen for nonhazardous service.

(5) A retiring member may elect to have each system treat his service credit in that system without regard to any other service credit, by requesting that his accounts be separated. In such case, "final compensation" shall [would] be based on the creditable compensation earned under each system separately.

Section 3. [Disability Retirement.] (1)(a) If a contributing member of one (1) of the five (5) systems qualifies for disability benefits, all systems under which the combined service [would] meets service requirements shall [would] participate in benefit payments unless [(assuming] accounts are [not] separated by provisions of KRS 61.680(2)(b)[)].

(b) Each system shall calculate benefits using the formula in effect in that system.

(c) Service added to County Employees Retirement System, Kentucky Employees Retirement System and[/or] State Police Retirement System accounts in accordance with the appropriate disability formula shall be prorated between system accounts based on a percentage of actual earned service in each system unless such proration conflicts with maximum added service permitted by law governing each system.

(2) If the combined service of a member meets service requirements in only one (1) system then that system shall pay [only pays] benefits under the [their] disability formula and the other system shall pay [pays] as follows:

(a) Benefits based on separate accounts if [should] the member elects to maintain separate accounts; or

(b) An actuarial accrued benefit based on the member's age, service and final compensation; or

(c) A refund if requested by the member.

(3) The medical requirements for disability benefits shall [will] be those of the system to which the member last contributed [is currently contributing,] if combined service meets service requirements of that system. If service requirements are met in only one (1) system, the medical requirements of that system shall [will] prevail [regardless of current employment in another system].

Section 4. [Death and Survivor Benefits.] A member contributing to any of the five (5) retirement systems who has combined service sufficient to qualify for a death benefit shall [will] have his County Employees Retirement system, Kentucky Employees Retirement System or State Police Retirement system benefits computed under the regular death formula based on his service in each of the three (3) systems.

Section 5. [Military Service.] (1) A member having valid service credit in more than one (1) of the retirement systems may elect to purchase retirement credit for active duty time in one (1) system; or he may divide the service credit between the systems permitting [such] purchase. If service is to be divided, the following additional requirements shall [must] be met:

(a) The total service credit in all systems shall [may] not exceed six (6) years. Within County Employees Retirement System, Kentucky Employees Retirement System and State Police Retirement System a member shall [may] not purchase more than four (4) years active duty military service.

(b) The same years of active duty shall [may] not be used in more than one (1) system.

(c) Each system shall [will] calculate the costs of the [such] retirement credit in keeping with the statutes and regulations of that system.

(2) A contributing member of the Kentucky Employees Retirement System, County Employees Retirement System or State Police Retirement System who has service in any or all of these systems or previous service under the Teachers' Retirement System may purchase military service, under KRS 61.555(4), in the system under which he is working, either Kentucky Employees Retirement System, County Employees Retirement System or State Policy Retirement System provided his total service is sufficient to meet the statutory requirement.

(3) An employee participating in one (1) of the state administered retirement systems may purchase military service credit under KRS 61.555(6) in the Kentucky Employees Retirement System, County Employees Retirement System or State Police Retirement System if he has service in the system.

(4) A retired recipient who is reemployed under the system from which he retired and is making contributions to the system is eligible to purchase military service.

Section 6. (1) A retiring member with service in the Kentucky Teachers' Retirement System and one (1) or more of the three (3) systems administered by Kentucky Retirement Systems shall have his total service in all four (4) systems combined to determine his eligibility for medical insurance benefits. The systems shall share the cost of the member's premium under this section based on his combined service.

(2) If the member meets the minimum eligibility requirements, the member may elect to participate in the insurance program established under KRS 61.702 or 161.675. The premium paid from the insurance funds shall not be more than 100 percent of the single premium amount adopted by the respective boards of trustees or more than the maximum percentage payable under the program established under KRS 61.702 or 161.675.

(3)(a) If the member elects to participate in the program under KRS 61.702, the member's service in the systems shall be combined to determine the applicable percentage that shall be paid toward his individual coverage under KRS 61.702(3).

(b) The systems shall pay a pro rata share of the member's premium based on the service in each system expressed as a percentage of total service credit earned in all systems not to exceed the amount of the single premium cost adopted by the Board of Trustees of Kentucky Retirement Systems.

1. The amount paid by the Kentucky Teachers' Retirement System shall not exceed the amount of the single premium cost adopted by the Board of Trustees of the Kentucky Teachers' Retirement System.

2. The Kentucky Teachers' Retirement System shall not pay a percentage of the premium for the spouse and dependents.

(4)(a) If the member elects to participate in the program under KRS 161.675, the member's service in the systems shall be combined to determine the applicable percentage that shall be paid under KRS 161.675(3).

(b) The systems shall pay a pro rata share of the member's premium based on the service in each system expressed as a percentage of total service credit earned in all systems, including service in the Legislators' Retirement Plan and Judicial Retirement Plan, not to exceed the amount paid toward the monthly premium cost adopted by the Board of Trustees of Kentucky Teachers'

Retirement System.

1. The amount paid by the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System shall not exceed the amount of the single premium cost adopted by the Board of Trustees of the Kentucky Retirement Systems.

2. The Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System shall not pay a percentage of the premium for the spouse or dependents.

(5) Premiums payable under KRS 61.702 shall be paid by the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System and the Kentucky Teachers' Retirement System shall reimburse the systems for the portion of the premium attributable to service in that system. Premiums payable under KRS 161.675 shall be paid by the Kentucky Teachers' Retirement System and the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System shall reimburse the system for the portion of the premium attributable to service in those systems.

JOHN D. ROBEY, Board of Trustees

APPROVED BY AGENCY: August 20, 1992

FILED WITH LRC: August 25, 1992 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 26, 1992, at 9 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 October 21, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pamala S. Johnson

(1) Type and number of entities affected: This administrative regulation affects those members with an account in the Kentucky Teachers' Retirement System as well as one of the systems administered by the Kentucky Retirement Systems, approximately 550 currently.

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

1. First year: Retired member may have additional amounts paid toward their medical insurance benefit, depending on total service.

2. Continuing costs or savings: Benefit continues so long as the member participates in the insurance program.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No new forms are required.

(2) Effects on the promulgating administrative body: The cost associated with this regulation is dependent on the number of affected individuals who participate in an insurance program with Kentucky Teachers' Retirement System or Kentucky Retirement Systems. The cost will affect the actuarial liability of the insurance programs and will be dependent on actual experience.

(a) Direct and indirect costs or savings:

1. First year: Insufficient data to determine the actuarial cost. Administrative costs will increase due to additional accounting requirements.

2. Continuing costs or savings: This will be determined by future actuarial valuations and impact on the administrative budget.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The regulation will require additional accounting procedures to determine percentages payable, transfer the funds and balance the accounts.

(3) Assessment of anticipated effect on state and local revenues: This cannot be determined until the provision has been implemented.

(4) Assessment of alternate methods; reasons why alternatives were rejected: This administrative regulation implements the court's decision regarding 1990 House Bill 653 requiring full reciprocity between Kentucky Retirement Systems and Kentucky Teachers' Retirement System for medical insurance programs.

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

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. This regulation provides the member with a benefit based on his service and the system in which he chooses to receive his medical insurance benefit. In addition, it is tiered so that neither Kentucky Teachers' Retirement System nor Kentucky Retirement Systems will pay a greater amount than the systems would have paid if the member had all service in one system. This provides the member with the maximum benefit while minimizing the total impact on the systems.

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 participating agencies of the County Employees Retirement System (CERS) may be affected depending on the actuarial impact of the provisions of this administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation establishes the procedure for providing reciprocal medical insurance rights between members of the Kentucky Retirement Systems and the Kentucky Teachers' Retirement System (KTRS). This will impact local governments in that the reciprocal benefits will be applied to members of the CERS who have service in (KTRS).

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 impact on local governments will depend on the actuarial impact of this provision, which was required by 1990 HB 653 in accordance with the ruling of Franklin Circuit Court. This provision requires that a member's service in KTRS be combined with service in the systems administered by Kentucky Retirement Systems to determine the percentage payable toward the member's health insurance. Because this is a new benefit, it will increase these systems' medical insurance liabilities. The CERS employer contribution rate may increase depending on the number of members of CERS with service in KTRS who participate in the group medical insurance plan of one of the retirement systems. More than 100 current CERS retirees will be immediately eligible for the benefits of this provision.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:150. Installment purchase procedures.

RELATES TO: KRS 16.645(20), 61.552(16), 78.545(35)
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: The statute provides that an employee participating in the Kentucky Retirement Systems may purchase service credit by payroll deducted installments. This administrative regulation sets out the process and forms related to this option.

Section 1. Installment payment plans shall be allowed for the employees of an agency that has certified its willingness to deduct and remit installment payments on all employees participating in the Kentucky Retirement Systems. The certification shall be made on the Employer Certification Form, Form 113, dated June 1991, provided by the retirement system.

Section 2. The retirement system shall calculate the monthly payment necessary to pay the cost of the service being purchased. The employee may select a payment period of not less than one (1) year and not more than five (5) years in accordance with the statutory requirement. The retirement system shall provide an IPS Option Selection Form, Form 114, dated June 1991, to the employee showing his payment options and providing a space for selecting the option of his choice. The employee shall return the completed form to the retirement system by its due date. If the employee returns the form after the date, the cost shall be recalculated for a date not less than thirty (30) days following and returned to the employee.

Section 3. Upon receipt of the completed form, the retirement system shall print an Installment Service Purchase Agreement, Form 115, dated July 1992 [~~August 1989~~], and return the form to the employee. The agreement shall contain an authorization for withholding the installment payments and shall show the amount of the installment payment, the date the payments shall begin, the date the payments shall end, the total payments and the total service purchased. An amortization schedule shall be attached. The employee shall sign and return the agreement by its due date. The retirement system shall notify the employer of the date to begin deductions by providing a copy of the completed agreement.

Section 4. The employer shall remit the installments to the retirement system as required by the agreement, but shall be solely responsible for withholding sufficient amounts from the employee to allow the payment of the installments. The installments shall only be remitted to the retirement systems along with the employer's contribution report. If the employee is not employed twelve (12) months each year, the agency shall withhold sufficient funds to allow the agency to remit the required deductions with the contribution reports during any months in which the employee is not paid. The retirement system shall not accept personal checks from the employee as payment for these deductions.

Section 5. The amount required to purchase one (1) month of service credit shall be calculated by dividing the total of the installment payments due under the agreement by the number of months of service credit being purchased. Upon receipt of installment payments equal to this amount, the retirement system shall credit one (1) month of service credit to the member's account.

Section 6. The employee shall notify the retirement system in writing if he desires to terminate the installment agreement. Upon receipt of the notice from the employee, the retirement system shall notify the employee and his employer of the date to stop deductions.

Section 7. The retirement system may refuse to allow new installment agreements for employees of an agency which fails to deduct and remit the installment payments in accordance with the terms of this administrative regulation.

Section 8. The forms required by this administrative regulation are incorporated by reference and may be obtained from the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Board of Trustees
APPROVED BY AGENCY: August 20, 1992
FILED WITH LRC: August 25, 1992 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 26, 1992, at 9 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 October 21, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson
(1) Type and number of entities affected: 1,200 participating state and local government agencies with 111,000 contributing employees.
(a) Direct and indirect costs or savings to those affected: No cost is associated with this administrative regulation.
1. First Year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No increase in paperwork.
(2) Effects on the promulgating administrative body: No cost is associated with the administrative regulation.
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: No increase in paperwork.
(3) Assessment of anticipated effect on state and local revenues: This administrative regulation has no impact on local revenues.
(4) Assessment of alternate methods; reasons why alternatives were rejected: This regulation implements the change in KRS 61.552 allowing a longer period for terminated employees or beneficiaries of deceased employees to pay the remaining balance on an installment purchase agreement in order to receive the benefit of the purchase.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute or regulation is in 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 administrative regulation provides the same benefit to all affected members.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a

local government, including any service provided by that local government?
Yes X No__ (If yes, complete questions 2-4)
2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation relates to the retirement benefits of employees.
3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation provides a longer period of time following termination or death for the member or beneficiary to pay off an installment service purchase agreement.
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: This regulation does not impact the revenues of local government. It provides a benefit to the local government employees. Participation in the installment purchase program is voluntary for the employer and employees.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:160. Sick leave plans.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852
STATUTORY AUTHORITY: KRS 61.645(9)(e)
NECESSITY AND FUNCTION: KRS 78.616 provides for retirement service credit for unused sick leave for members of the County Employees Retirement System. This regulation provides the requirements for participation in the program by individual county agencies, the calculation of the service credit and the payment of the cost of the credit by the employer.

Section 1. Definitions. (1) "Alternate plan" means the sick leave program described in KRS 78.616(5).
(2) "Standard plan" means the sick leave program as described in KRS 78.616(1), (3) and (4).

Section 2. An agency participating in the County Employees Retirement System may provide a sick leave program under KRS 78.616 by adopting an order appropriate to the agency and by completing and filing the form for the sick leave program provided by the retirement system.
(1) Only one (1) sick leave program under KRS 78.616 shall be offered to the employees of an agency.
(2) The agency shall certify to the retirement system that the program shall be universally administered.
(3) The agency shall pay all costs of the program.
(4) The agency shall certify to the retirement system the number of hours that constitutes a regular working day for employees of the agency.
(5) If the agency has no retirement sick leave program, it may choose the standard plan or it may choose the alternate plan. If the agency adopted the standard plan prior to July 1988, it may choose to adopt the alternate plan. Once a sick leave program is adopted, the agency shall continue to offer a sick leave program to its employees.

Section 3. If the agency adopts the standard plan, upon a member's retirement:
(1) The agency shall certify the unused sick leave credit which the member has accumulated on the Sick Leave Authorization, Form 24, dated April 1984.
(2) The retirement system shall determine the number of days of credit and divide the number of days by twenty-one (21) which shall be the average number of working days in a month. If the remainder is equal to or greater than eleven (11), the member shall receive credit for an additional month. The cost of the credit, determined by the formula described in KRS 61.552(9), for up to six (6) months of service shall be paid by the agency within thirty (30) days of notification by the retirement system.
(3) If the total accumulated sick leave is greater than six (6) months, the member may purchase some or all of the additional months by paying the cost, determined by the formula described in KRS 61.552(9), to the retirement system before his retirement date.

Section 4. Agencies adopting the alternate plan, shall also certify the maximum number of sick leave days that an employee may accumulate prior to termination [~~retirement~~]. Upon a member's termination [~~retirement~~]:
(1) The agency shall compensate the member for all accumulated sick leave up to the maximum allowed. The rate of compensation for each day shall be based on the [~~daily salary rate calculated from the~~] member's current rate of pay.
(2) Each month [~~When notified by the retirement system~~], the agency shall withhold employer and employee contributions from the [~~member's~~] sick leave compensation of all employees who terminate and shall remit the contributions along with the Form 24-A, alternate sick leave certification dated August 1992, for each employee. The forms and contributions deducted during the month shall be sent to the retirement office within ten (10) days following the end of the month. [~~sick leave certification form.~~] The contributions and compensation shall not be reported with the regular payroll.
(3) If the member has one (1) or more months of service credit as determined in Section 3, the service shall be added to the member's total service credit.
(4) Compensation and service shall also be included in the member's final compensation as follows:
(a) The member's sick leave credit in months and the compensation for those months shall be included in the last fiscal year used in his final compensation until the service credit in the fiscal year has reached twelve (12) months.
(b) When service credit in the last fiscal year has reached twelve (12) months, the remaining months of service and compensation shall be included in the first fiscal year used in his final compensation until service credit in the fiscal year has reached twelve (12) months.
(c) When service credit in both the last and first fiscal years used in his final compensation have reached twelve (12) months, the remaining months and compensation shall be used in lieu of the member's service and salary in the first fiscal year of the members final compensation. The salary replaced shall be the monthly average of the member's actual salary in the fiscal year.

Section 5. The forms required by this administrative regulation are incorporated by reference and may be obtained from the retirement office at Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Board of Trustees
APPROVED BY AGENCY: August 20, 1992
FILED WITH LRC: August 25, 1992 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 26, 1992, at 9 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 October 21, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written

notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: 12 participating local government agencies with fewer than 10,000 contributing employees.

(a) Direct and indirect costs or savings to those affected: No new cost is associated with the regulation. This regulation changes the time of payment for the sick leave from the employee's retirement date to the employee's termination date.

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: Due to the timely billing for sick leave, employers will not have to maintain sick leave balance records on employees who terminate but who might retire years later. Paperwork required to report the sick leave is not increased.

(2) Effects on the promulgating administrative body: No new cost is associated with the administrative regulation.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The regulation does not increase paperwork.

(3) Assessment of anticipated effect on state and local revenues: This administrative regulation will have a minimal impact on local revenues due to the timing change in the payments.

(4) Assessment of alternate methods; reasons why alternatives were rejected: This regulation implements the change in KRS 78.616.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute or regulation is in 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 administrative regulation only affects participating CERS agencies which choose to offer the alternate sick leave program. It is a voluntary program.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes X No__ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation relates to the retirement benefits of employees.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment changes the date when payment is due under the alternate sick leave program from the member's retirement to the member's termination.

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: This regulation changes the payment date for sick leave credit. The cost in a particular year is dependent on the number of employees who terminate and who have sick leave. This regulation only impacts those agencies which voluntarily adopted the alternate sick leave program.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:180. Death before retirement procedures.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY AND FUNCTION: The statutes provide for the payment of certain benefits upon the death of a member prior to retirement. This administrative regulation sets out the procedures for issuance of benefits where death occurs prior to retirement.

Section 1. After learning of the death of a member prior to retirement, the retirement system shall contact the named beneficiary or estate of the deceased member. The retirement system shall require a Certification of Beneficiary, Form 7, dated July 1991, from the beneficiary named by the member.

Section 2. The following information shall be required before benefits shall be paid:

(1) A copy of the death certificate for the member.

(2) If a beneficiary is deceased, a copy of the death certificate for the beneficiary.

(3) If a beneficiary is a minor child, a copy of the child's birth certificate.

(4) If a beneficiary is a minor child of divorced parents, a copy of the court appointment of permanent guardianship, conservator or trustee.

(5) If a beneficiary is divorced from the member, a copy of the divorce decree.

(6) If monthly benefits are available to the beneficiary, copies of the birth certificates of the member and the beneficiary.

(7) If an estate is beneficiary, verification of the name of the individual authorized to manage the financial affairs of the deceased.

Section 3. If the death certificate shows the cause of death to be homicide or the subject of a pending investigation, the retirement office may require additional evidence relating to the cause of death or investigations and arrests by law enforcement agencies and may delay benefits until it deems the cause of death to be fully explained.

Section 4. Upon receipt of the death certificate, the retirement office shall provide to the beneficiary the monthly payment options available on the form Estimated Retirement Allowance, Form 6A, dated July 1991. If the member died in the same month as his effective retirement but prior to the drawing of the first check, the beneficiary shall also be offered the benefits payable to a beneficiary under the option the member selected. If a refund of the account is to be made, the beneficiary shall complete a Form 8, dated July 1992 [~~1991~~].

Section 5. No payment shall be made until all information, documents and forms required by the retirement system are received.

Section 6. The forms required by this administrative regulation are incorporated by reference and may be obtained from Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky, Monday through Friday between 8 a.m. and 4:30 p.m.

JOHN D. ROBEY, Board of Trustees

APPROVED BY AGENCY: August 20, 1992

FILED WITH LRC: August 25, 1992 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 26, 1992, at 9 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 October 21, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: Beneficiaries of members who die prior to retirement and who are not vested for a monthly benefit.

(a) Direct and indirect costs or savings to those affected: This regulation requires additional information on a for to speed processing of refunds to beneficiaries of deceased members. There is no cost.

1. First Year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The number of forms required is not increased.

(2) Effects on the promulgating administrative body: No new cost is associated with the administrative regulation.

(a) Direct and indirect costs or savings:

1. First year savings:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The regulation does not increase paperwork, but the improved form will speed processing of the beneficiaries' refunds.

(3) Assessment of anticipated effect on state and local revenues: This administrative regulation does not affect local or state agencies.

(4) Assessment of alternate methods; reasons why alternatives were rejected: The changes to the form were suggested to improve internal processing procedures.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute or regulation is in 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 administrative regulation improves internal processing and should speed the issuing of checks to those beneficiaries affected.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:210. Disability procedures.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY AND FUNCTION: The statutes provide for disability benefits to members of the retirement systems and for a process of appealing a denial of disability benefits. This administrative regulation describes those procedures.

Section 1. (1) Application for disability benefits shall be made on the Notification of Retirement, Form 6, dated January 1991.

(2) For members in nonhazardous positions, the application shall be received in the retirement office within [~~twelve (12) months of the employee's last day of paid employment, which shall consist of~~] 365 calendar days of the employee's last day of paid employment in a regular full-time position. The period [~~year~~] shall begin on the day after the last day of paid employment and shall end at close of business on the 365th day following. If the last day of the period is a Saturday, Sunday or holiday, then the application shall be valid if received in the retirement office by the close of the next business day following the weekend or holiday. The employer shall certify the last day of paid employment. The application may be submitted prior to the member's last day of paid employment.

(3) For members in hazardous positions, application shall be received prior to the member's date of termination of employment.

Section 2. If the member is eligible to begin drawing early retirement benefits, the member shall be notified of his right to a retirement allowance while his disability application is being processed. Election of early retirement by the member shall not affect his application for disability retirement.

Section 3. If the member is not in a hazardous position, a Job Description, dated August 1992 [~~1988~~], shall be completed by the member and by his employer and submitted to the retirement office. The descriptions shall be on the form provided by the retirement office. The retirement office may require additional details from the member and the employer on the member's job duties.

Section 4. The retirement office shall request the medical records of the member from the physicians or medical facilities named on the application. The member's physicians or medical facilities shall submit copies of all medical records, test results or other information applicable to the member to the retirement office. The member or his physicians may submit a current listing of the member's prescription medications. Statements by the physicians shall not be considered medical evidence unless accompanied by documented medical records or test results. The retirement office shall pay a reasonable fee for the copies. Amounts above that paid by the retirement office for the copies shall be the responsibility of the member.

Section 5. The member shall provide to the retirement system information concerning his status with regard to Workers' Compensation and Social Security disability benefits.

Section 6. When both of the job descriptions and all medical information from at least two (2) physicians or medical facilities that have treated or examined the member have been received, the information shall be submitted to the medical examiner.

Section 7. The medical examiner shall base his determination on the [~~medical~~] records contained in the member's retirement file. The medical examiner may contact the member or the member's physicians to request additional [~~medical~~] information.

Section 8. The time limits in KRS 61.665 for the member's actions in response to a denial, reduction or discontinuance of benefits shall be counted beginning on the day following receipt of notice by the member from the retirement office and shall continue until close of business on the date the member files the necessary action with the retirement office or the date the time period ends [~~elapses~~]. The period shall toll until the member is in receipt of written notice from the retirement office of further denial. The period to request a formal hearing shall not exceed the cumulative extension of time specified in KRS 61.665(2)(g). When the periods allowed under the statute have been exhausted, the member shall have no further right to appeal to the hearing officer.

Section 9. The member shall make a request for a formal [~~appeals~~] hearing in writing. If the member is unable to attend or desires to reschedule a formal [~~appeals~~] hearing, the member shall

send the retirement office a request in writing prior to the date of the hearing, and the hearing officer may reschedule the hearing upon a finding of good cause.

Section 10. The hearing officer may allow the member to introduce, among other evidence, the determination of Workers' Compensation or Social Security Administration awarding disability benefits to the member. The hearing officer shall only consider competent medical evidence within or attached to the determination and shall not consider any [~~preexisting illnesses or~~] vocational factors.

Section 11. The hearing officer may request a prehearing conference or may consider new medical evidence not already part of the member's retirement file.

Section 12. All parties shall have fourteen (14) calendar [~~seven (7) working~~] days to submit written exceptions to the hearing officer's findings and conclusions to the retirement office, beginning on the day following receipt of the hearing officer's recommended order.

Section 13. (1) If the member's application for disability is approved, the member's disability benefit shall be paid retroactive to the month following the month of the member's last day of paid employment.

(2) If the member did not receive early retirement benefits, upon the member's selection of a payment option, the retirement office shall pay the member the total monthly retirement allowances owed.

(3) If the member received early retirement benefits, the retirement office shall calculate and pay to the member the difference between the early retirement benefit which was paid to the member and the disability benefit. The member shall not change his payment option.

(4) Any increases provided to recipients under KRS 61.691 shall be applied to the member's disability benefit in determining the total retroactive payment owed to the member.

Section 14. The forms required by this administrative regulation are incorporated by reference and may be obtained from the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JOHN D. ROBEY, Board of Trustees

APPROVED BY AGENCY: August 20, 1992

FILED WITH LRC: August 25, 1992 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 26, 1992, at 9 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 October 21, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: Applicants for disability benefits are affected, approximately 25 per month.

(a) Direct and indirect costs or savings to those affected: There is no cost to those affected.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The number of forms required is not increased.

(2) Effects on the promulgating administrative body: No new cost is associated with the administrative regulation.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The regulation does not increase paperwork.

(3) Assessment of anticipated effect on state and local revenues: This administrative regulation does not affect local or state agencies.

(4) Assessment of alternate methods; reasons why alternatives were rejected: The amendments reflect technical changes in KRS 61.665.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute or regulation is in 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 administrative regulation makes technical changes aimed at clarifying the disability application process.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(Proposed Amendment)

105 KAR 1:215. Administrative hearing.

RELATES TO: KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852

STATUTORY AUTHORITY: KRS 61.645(16) [~~(9)(c)~~]

NECESSITY AND FUNCTION: The statutes provide that an affected person aggrieved by a decision of the Board of Trustees, which is not a determination relating to disability retirement benefits, may have the right to request an administrative hearing [~~appeal the decision to Franklin Circuit Court. There exists a need for an administrative appeal process for these individuals~~] prior to the filing of an appeal in court. This regulation establishes the administrative appeal process.

Section 1. Definition. "Affected person" means a member, retired member or recipient as defined in KRS 16.505, 61.510 and 78.510.

Section 2. When the system takes action which substantially impairs an affected person's benefits or rights under KRS 16.505 to 16.652, 61.510 to 61.705 or 78.510 to 78.852, except action which relates to entitlement to disability benefits, the system shall notify the affected person of the opportunity to request a hearing. The notification shall be contained in the notice of action. An affected person may request a hearing by submitting such request in writing within thirty (30) days after the date of the notice of the opportunity to request a hearing. The request for hearing shall be filed with the general manager of the system at its office in Frankfort. The request for hearing shall contain a short and plain statement of the basis for request.

Section 3. Failure of the affected person to request a formal hearing within the period of time specified shall preclude the affected person from requesting a hearing at a later time.

Section 4. Upon request, the system shall schedule a hearing to be held not more than sixty (60) days after the request for a hearing has been received by the system unless otherwise agreed. The notice

of hearing shall be served as described in Section 20 of this regulation and shall include a statement of the time, place and nature of the hearing.

Section 5. The system may, either through review of its records or conference with the affected person, recommend a favorable determination prior to scheduling a hearing. Upon notification of a favorable determination, the affected person may withdraw the hearing request or request that the hearing be scheduled.

Section 6. Any party to a hearing may be represented by counsel, make oral or written argument, offer testimony, orally or by deposition, cross-examine witnesses, introduce direct testimony from an expert approved by the hearing officer through a written report, or take any combination of these actions. Witness testimony may be given by deposition in lieu of personal appearance. An impartial hearing officer appointed and paid by the board shall preside at the hearing, keep order and conduct the hearing. Oaths and affirmations shall be administered by the hearing officer or court reporter. The hearing officer shall permit any party to represent himself. Failure to appear without good cause or failure to comply with any prehearing or interlocutory order of the hearing officer shall be grounds for a default.

Section 7. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs. Hearing officers shall give effect to the rules of privilege recognized by law. Objections may be made and shall be noted in the record. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Upon request, parties shall be given an opportunity to compare any copy with the original. A party may conduct cross-examinations required for a full and true disclosure of the facts. Notice may be taken of generally recognized technical or scientific facts within the system's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The system's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

Section 8. Each formal hearing shall be recorded, and a transcript made available on the motion of any party or by order of the hearing officer. Unless otherwise agreed, the party requesting the transcript shall provide payment for the original, and all others desiring copies shall pay the cost thereof. When certified as a true and correct copy of the testimony by the system, the transcript shall constitute the official transcript of the evidence.

Section 9. The hearing officer shall prepare findings of fact and conclusions of law based on the evidence appearing in the record as a whole and make a recommendation.

Section 10. The hearing officer shall, within thirty (30) days of the close of the formal hearing make a report and a recommended order to the board. The report and recommended order shall contain the appropriate findings of fact and conclusions of law. If the board finds upon written request of the hearing officer that additional time is needed, then the board may grant a reasonable extension. The hearing officer shall mail postage prepaid, a copy of his report and recommended order to all parties. The parties may file within fourteen (14) days of mailing of the hearing officer's report and recommended order exceptions to the report and recommended order. There shall be no other or further submissions.

Section 11. The board shall consider the report and recommended order and any exception filed and pass upon the case within a reasonable time. The board may remand the matter to the hearing officer, adopt the report and recommended order of the hearing officer as the board's [~~system's~~] final order, or issue their own final order.

Section 12. The system shall mail the final decision of the board to the affected person or his legal representative. If any extension of time is granted by the board for a hearing officer to complete his report, the system shall notify the affected person or his legal representative at the time of the granting of the extension.

Section 13. The board shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

Section 14. A final order of the board shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the board and the facts and law upon which the decision is based.

Section 15. There shall be no exparte communications between the parties or representatives of the parties and the hearing officer regarding an affected person.

Section 16. Formal hearings shall be held at the system's office in Frankfort unless another location is determined by the hearing officer.

Section 17. All requests for a hearing pursuant to this section shall be made in writing.

Section 18. The board may establish an appeals committee whose members shall be appointed by the chairman and who shall have the authority to act upon the recommendations and reports of the hearing officer pursuant to this section on behalf of the board.

Section 19. Any affected person aggrieved by a final order of the board may seek judicial review after all administrative appeals have been exhausted by filing suit in the Franklin Circuit Court within the time period prescribed in KRS 61.645(16) [~~(14)~~].

Section 20. Any proposed order or order shall be served by one (1) of the following methods:

(1) The system may place a copy of the document to be served in an envelope, and address the envelope to the affected person to be served at the address of the affected person existing in the system files or at the address set forth in written instructions furnished by the affected person or his legal representative. The system shall affix adequate postage and place the sealed envelope in the United States mail as certified mail return receipt requested. The system shall forthwith enter the fact of mailing in the record and make entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, that fact shall be entered in the record. The system shall file the return receipt or returned envelope in the record. Service by certified mail is complete upon delivery of the envelope. The return receipt shall be proof of the time, place, and manner of service.

(2) The system may cause the document, with necessary copies, to be transferred for service to any person authorized by the board or by any statute or rule to deliver them, who shall serve the documents, and the return endorsed thereon shall be proof of the time and manner of service.

(3) The methods of service specified herein shall be supplemental to and shall be accepted as an alternative to any other method of service specified by other applicable law.

JOHN D. ROBEY, Board of Trustees

APPROVED BY AGENCY: August 20, 1992

FILED WITH LRC: August 25, 1992 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 26, 1992, at 9 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 October 21, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: This administrative regulation affects those members, other than disability applicants, seeking an administrative appeal of a decision.

(a) Direct and indirect costs or savings to those affected: The cost is dependent on the number of members seeking an appeal. To date, there have been three.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body: The cost associated with this regulation is dependent on the number of affected parties seeking an administrative hearing.

(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 regulation does not increase paperwork.

(3) Assessment of anticipated effect on state and local revenues: This administrative regulation does not affect local or state agencies.

(4) Assessment of alternate methods; reasons why alternatives were rejected: The amendments reflect technical changes in KRS 61.645.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute or regulation is in 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 administrative regulation makes technical changes aimed at clarifying the administrative hearing process.

FINANCE AND ADMINISTRATION CABINET
Department for Administration
(Proposed Amendment)

200 KAR 2:006. Employees' reimbursement for travel.

RELATES TO: KRS Chapters 44, 45

STATUTORY AUTHORITY: KRS 44.060, 45.101

NECESSITY AND FUNCTION: The Finance and Administration Cabinet is directed by law to coordinate and supervise the fiscal affairs and procedures of the state and is authorized to adopt regulations for that purpose. The purpose of this regulation is to specify eligibility, requirements, rates and forms for reimbursement of travel expense and other official expenses out of the State Treasury. The amendments to this regulation: (1) defines the term "agency head" and the phase "others in the official service of the Commonwealth"; (2) clarifies those individuals eligible for travel reimbursement; (3) establishes the requirement that all out-of-state travel must be authorized in advance by the agency head and the Secretary of the Finance and Administration Cabinet or their designees; (4) establishes the requirement that travel outside the United States, its possessions and Canada shall be authorized by the agency head, the secretary and the Governor or the designated representatives; (5) clarifies the eligibility requirements for receiving subsistence while traveling in and outside Kentucky; (6) clarifies those persons eligible for reimbursement for actual and necessary expenses; and (7) establishes the documentation required to receive reimbursement for actual and necessary expenses. [~~This amendment revises the reimbursement rates for travel expenses, and incorporates the Finance and Administrative Cabinet's travel reimbursement forms by reference as provided in KRS 13A.224.~~]

Section 1. Definitions. As used in this regulation, unless the context requires otherwise:

(1) "Cabinet" means the Finance and Administration Cabinet.

(2) "Division" means the Division of Accounts of the Finance and Administration Cabinet.

(3) "High rate area" means a city or metropolitan area in which it has been recognized that higher meal costs and lodging rates have historically prevailed, and that has been designated by the Secretary of the Finance and Administration Cabinet as a high rate area. The cabinet's policies and procedures manual contains a list of "high rate areas".

(4) "Receipt" means any preprinted invoice, from a hotel, motel, restaurant or other establishment, showing the date of service, the amount charged for the service, the location where the service was performed and a description of the expenditure.

(5) "Secretary" means the Secretary of the Finance and Administration Cabinet.

(6) "Agency head" means elected or appointed head of a budget unit.

(7) "Others in the official service of the Commonwealth" means persons who are not state employees as defined in KRS Chapter 18A, but who are travelling on official business for the Commonwealth, or who officially represent a state agency, at the direction or request of a state official authorized to give the direction or make the request. This definition shall not include contractors who shall be entitled to reimbursement for travel and related expenses only as provided in their contracts with the Commonwealth.

(8) [~~(6)~~] "Subsistence" means amounts deemed to have been expended by a state officer, agent, employee, or other person authorized to receive reimbursement out of the State Treasury for meals, including tax and tips, while traveling on official state business, but shall not include any meals which may be included in charges for lodging or in registration fees paid by or on behalf of a state officer or employee.

Section 2. General. (1) Affected agencies. Except as otherwise provided by law, this regulation shall apply to all departments, agencies, boards, and commissions, and institutions of the Executive Branch of State Government. It shall not apply to the Legislative and Judicial branches and their employees.

(2) Enforcement.

(a) Each agency head is responsible for insuring that all travel expense from that agency is as economical as is feasible.

(b) All persons who travel on official state business shall state on the travel voucher the purpose of each trip, shall maintain records and receipts to support their claims and shall provide themselves with sufficient personal funds to defray their travel expense.

(c) All travel expense claims are to be submitted on the travel expense claim form prescribed by the cabinet (DOA-34 and DOA-35).

(d)1. The secretary is responsible for insuring that all travel reimbursement conforms to this regulation. The secretary or his designee may disallow, reduce or strike from travel vouchers any claims contrary to this regulation. The secretary or his designee may also require written justification from agency heads for amounts claimed by their agencies and employees.

2. The secretary or his designee may approve exceptions where he finds such exception in the best interest of the Commonwealth.

(3) Eligibility. Except as provided by state law or by this regulation, no reimbursement can be claimed for expenses of any person other than state officers, members of boards and commissions, employees, bona fide wards, or other persons in the official service of the Commonwealth. Only necessary expenses of official travel will be reimbursed.

(4) Interpretation. All final interpretations of this regulation shall be made by the secretary, and these [~~such~~] determination shall be final and conclusive.

Section 3. Definitions; Work Station. (1) The official work station of employees assigned to an office is the street address where the office is located.

(2) The official work station of field employees shall be established by the agency head, based solely on the best interests of the Commonwealth, not an employee's convenience. The designation of work station shall not be for the purpose of allowing additional mileage reimbursement for the employee.

(3) If an employee is permanently reassigned, or is stationed at a new place two (2) months, the new place immediately becomes that employee's official work station concerning travel expense.

Section 4. Authorizations. (1) No travel expense shall be reimbursed unless the travel was authorized in advance as follows:

(a) Travel in Kentucky [~~and within the other forty-nine (49) states and the District of Columbia and Canada~~] must be authorized by the agency head or a designated representative. [~~If four (4) or more persons are to travel to the same out of state destination the agency's request shall explain the necessity for the number of persons traveling and shall also be approved by the secretary or his designee.~~]

(b) Travel outside Kentucky, but within the other forty-nine (49) states, the District of Columbia, U.S. possessions, or Canada, must be authorized in advance by the agency head and the secretary, or by their designated representatives. (The Request for Authorization of Out-of-state Travel, Form DOA-28, shall be used.)

(c) [~~(b)~~] Travel outside the United States, its possessions, and Canada shall [~~must~~] be authorized in advance by the agency head, the secretary and the Governor, or by their designated representatives. (The Request for Authorization of Out-of-country Travel, Form DOA-28(A), shall be used.)

(2) Travel requests requiring approval by the secretary must reach the cabinet at least five (5) working days before the intended start of travel. [~~(Travel Authorization Forms DOA-28, for four (4) or more persons traveling out of state, and DOA-28(A), for out of country travel, shall be used.)~~]

Section 5. Transportation. (1) Economy required.

(a) State officers, agents, and employees traveling on state business shall use the most economical, standard transportation available and the most direct and usually-traveled routes. Expenses added by use of other transportation or routes must be assumed by the individual.

(b) Round-trip, excursion or other negotiated reduced-rate rail or plane fares shall be obtained if practical.

(2) State vehicles. State-owned vehicles with their credit cards should be used for state business travel when available and feasible. No mileage payment shall be claimed when state-owned vehicles are used.

(3) Privately-owned vehicles. Mileage claims for use of privately-owned vehicles may be disallowed if a state vehicle was available and feasible. No reimbursement shall be paid for travel between residence and work station.

(4) Buses, subways. For city travel, employees are encouraged to use buses and subways. Taxi fare may be allowed when more economical transportation is not feasible.

(5) Airline travel. Commercial airline travel shall be the lowest negotiated coach/tourist class. Additional expense for first-class travel will not be reimbursed by the state.

(6) Special transportation.

(a) The cost of hiring cars or other special conveyances in lieu of ordinary transportation will be allowed only with acceptable written justification from the agency head.

(b) Privately-owned aircraft may be used only when it is to the advantage of the state, measured both by travel costs and travel time.

Section 6. Accommodations. (1)(a) Economy required. Lodging costs should be the most economical that are consistent with the state's best interests. Facilities providing special government rates or commercial rates will be used where feasible.

(b) State-owned facilities shall be used for meetings and/or lodging where available, practicable and economical.

(2) Location. Cost for lodging within forty (40) miles of the claimant's official work station or home will not be reimbursed.

(3)(a) Group lodging, by contract. State agencies and institutions may contract with hotels, motels and other establishments for four (4) or more employees to use a room or rooms on official business. Group rates must be requested. The contract may also apply to meals and gratuities. The contract rates and the costs of rooms and meals per person shall not exceed limits set in Section 7 of this regulation. The agency shall certify that no employee is claiming individual reimbursement or subsistence for the same costs. The cabinet's Contract for Room and Meals [~~group accommodations travel form~~] (Form B120-16) shall be used.

(b) For payment, the agency shall forward a receiving report (Purchase Order Authorization for Payment Form DOA-19) with the vendor's bill, the names of affected employees and a copy of the contract to the division. The payment shall not include telephone expenses or personal charges of employees. The state's payment shall be made directly to the hotel, motel, or other establishment.

(c) Contracted group meeting rooms and lodging and meal charges are exempt from Kentucky sales tax and the agency sales-use tax number assigned by the Revenue Cabinet shall be specified on the payment document. Tax exempt numbers shall not be used by individual employees to avoid point of sale payment of Kentucky sales tax connected with lodging costs for which they will be reimbursed on Travel Voucher (DOA-34).

(4) State parks. A state agency or institution using state park facilities may pay for rooms and meals by interaccount bill, within the limits of this regulation, using preapproved Department of Parks Interaccount Authorization Form (P1-1).

Section 7. Reimbursement Rates. (1) Lodging plus subsistence and other expenses. Except for the Judicial and Legislative branches, their employees, the Governor, and others listed in subsection (2) of this section, and except where otherwise provided by law, the reimbursement for official travel expense shall be as follows:

(a) Lodging. A state officer, agent or employee shall be reimbursed for his actual cost of lodging, if the lodging is determined to be the most economical, and the state officer or employee attaches the hotel's or motel's receipt to his travel expense voucher. A state officer or employee shall not receive reimbursement for lodging that exceeds the cost of a single room rate.

(b) Subsistence.

1. To be eligible for subsistence for breakfast or lunch while traveling in Kentucky, a claimant's authorized work must require overnight absence at a destination more than forty (40) miles from both work station and home and must also require absence from work station and home during mealtime hours established by subparagraph 4 of this paragraph. (The claimant shall attach to his travel voucher either his lodging receipts or other credible documentation sufficient for audit.)

2. To be eligible for dinner while traveling in Kentucky, a claimant's authorized work must require absence at a destination of more than forty (40) miles from both home and work station during mealtime hours established by subparagraph 4 of this paragraph.

3. [~~2.~~] The requirements in subparagraphs 1 and 2 of this paragraph do not apply to travel [~~for dinner in Kentucky and for breakfast, lunch and dinner~~] outside of Kentucky.

4. [~~3.~~] Except for high rate areas, subsistence shall not exceed

reimbursement rates, and must be within inclusive time periods, as follows:

[4.] Breakfast (authorized travel must include 6:30 a.m. through 9 a.m.) - $4

Lunch (authorized travel must include 11 a.m. through 2 p.m.) - $5

Dinner (authorized travel must include 5 p.m. through 9 p.m.) - $11

5. For travel to high-rate areas established by the secretary, subsistence shall not exceed, and must be within the inclusive time periods, as follows:

Breakfast (authorized travel must include 6:30 a.m. through 9 a.m.) - $5

Lunch (authorized travel must include 11 a.m. through 2 p.m.) - $6

Dinner (authorized travel must include 5 p.m. through 9 p.m.) - $15

6. A state officer or an employee assigned to attend a function of an organization not under the state officer's control may be reimbursed for actual meal cost charged by the organization, instead of subsistence.

(c) Privately-owned vehicles. Reimbursement for official use of a privately-owned vehicle shall be twenty-two (22) cents per mile, and payment shall not exceed airplane coach fare.

(d) Commercial transportation. A state officer or employee shall be reimbursed for the actual cost of commercial transportation upon submission of receipts with a travel voucher.

(e) Privately-owned aircraft. Reimbursement for use of privately-owned aircraft must have prior approval [may be approved on an out-of-pocket basis] by the secretary or his designee upon the submission [to the cabinet prior to the travel] of written justification signed by the agency head.

(f) Camping vehicles. Claimants using camping vehicles for lodging shall be reimbursed not more than ten (10) dollars per night, for parking or camping charges. A receipt for parking or camping charges must be submitted with a travel voucher.

(g) Parking and tolls. Actual parking, bridge and toll charges are reimbursable. Toll receipts are not required for in-state travel by two (2) axle vehicles.

(h) Baggage charges. Reasonable expenses are allowed for baggage handling, for delivery to or from a common carrier or lodging and for storage. Charges for overweight baggage may be allowed if the excess was for official business.

(i) Registration fees. Registration fees required in official travel for admittance to meetings will be allowed. If the fee entitles registrants to meals, claims for subsistence shall be reduced accordingly.

(j) Telephone expenses. Telephone and telegraph costs for necessary official business will be allowed. For economy, calls to agency central offices shall be through agency 800 numbers or charged to a state government telephone credit card, if available. [Calls to agency central offices shall be made collect or through the state's toll free number.]

(k) Other. Where justified, other necessary miscellaneous expenses of official travel may be allowed by the secretary or his designee.

(2) Actual and necessary expense.

(a) Upon submission of receipts for items over two (2) dollars, the actual and necessary cost of official business travel (including lodging, meals, related taxes, gratuities and commercial transportation) may be reimbursed. Credit card receipts are only accepted for meals from those establishments that clearly identify the character of the expenditure. [to the following:]

(b) The following are eligible for actual and necessary expense:

1. Governor and Lieutenant Governor, other statewide elected Constitutional officials, cabinet secretaries, the Governor's staff, state employees traveling on assignment with the Governor or Lieutenant Governor, authorized persons traveling outside the United States and Canada and to members of statutory boards and commissions and other persons in the official service of the Commonwealth.

2. Reimbursement for official use of a privately-owned vehicle shall be twenty-two (22) cents per mile, and [such] payment shall not exceed airplane coach fare.

(c) [(b)] The Governor and cabinet secretaries may be reimbursed for their actual and necessary costs of entertaining official business guests and shall certify the [such] costs to the secretary or his designee.

(d) [(c)] With certification by the cabinet head, and upon submission of receipts, employees of the Economic Development and Tourism Cabinets may be reimbursed for their actual and necessary costs of entertaining the state's official business guests concerning economic development and industrial and travel promotion.

(e) [(d)] The secretary or his designee may question and reduce claims if amounts appear excessive.

Section 8. Forms. (1) Travel expense voucher (Form DOA-34).

(a) Use.

1. This form shall be used to claim all reimbursement for travel expense.

2. The voucher shall include the expense of only one (1) person except where an employee pays the expenses for a ward of the Commonwealth or other person for whom the claimant is officially responsible. The [Such] persons' names and status or official relationship to the claimant's agency shall be listed on the voucher.

3. A travel voucher shall ordinarily cover one (1) month or one (1) major trip. The purpose of each trip shall be shown on the voucher. If monthly expenses total less than ten (10) dollars, a voucher may cover as many as six (6) months within the same fiscal year.

4. Each travel expense voucher shall show the claimant's social security number.

(b) Preparation.

1. The travel voucher may be either typed or legibly prepared in ink. All receipts shall be stapled to the back at the upper left corner and shall be forwarded to the Finance and Administration Cabinet with the expense voucher.

2. If leave interrupts official travel, the travel voucher shall show the dates of leave.

(c) Computing mileage. Mileage for in-state travel will be based on Transportation Cabinet official mileage map or on the cabinet's mileage chart if the cabinet issues a map or chart [such]. Out-of-state mileage will be based on Rand McNally mileage maps. If point of origin is the claimant's residence, mileage will be paid between residence and travel destination or between work station and travel destination, whichever is shorter, except that commuting mileage between home and work station will not be paid.

(d) Vicinity travel. Vicinity travel and authorized travel within claimant's work station shall be listed on separate lines on the expense voucher.

(e) Signatures. Travel vouchers shall be signed and dated by the state officer or employee submitting the claim, the employee's supervisor and the agency head or authorized representative.

(f) Receipts. Except for mileage and subsistence, claimants shall furnish for each expenditure over two (2) dollars the preprinted, receipted bill from the hotel, motel, restaurant, or other establishment. The receipt must establish the amount, date, location and essential character of the expenditure.

(2) Authorization for out-of-state travel. Travel Authorization Forms DOA 28(A) and DOA 28 shall be used to request authorization for travel to foreign countries and for out-of-state travel [by groups of four (4) or more persons].

(3) The contract for rooms and meals (Form B120-16), [This form] shall be used for group accommodations as described in Section 6 of this regulation under "Accommodations."

(4) To reimburse nonstate employees, purchase order authorization for payment (DOA-19) shall be used, with a back-up document travel authorization form (DOA-34).

(5) [(4)] The travel reimbursement forms referenced in this regulation are hereby incorporated by reference. Copies of these forms will be available to the public Monday through Friday, excluding holidays, from 8 a.m. to 4:30 p.m. at the Division of Accounts, Finance and Administration Cabinet, [Room 330,] Capitol Annex Building, Frankfort, Kentucky.

JOSEPH W. PRATHER, Secretary

APPROVED BY AGENCY: September 15, 1992

FILED WITH LRC: September 15, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 22, 1992, at 10 a.m. in Room 285, Capitol Annex Building, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 16, 1992, 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: Don Speer, Commissioner, Department for Administration, 274 Capitol Annex Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don Speer

(1) Type and number of entities affected: All agencies in the executive branch.

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

1. First year: Reduction of out-of-state travel cost through more restrictive review and approval process.

2. Continuing costs or savings: Savings should continue as long as regulation remains as amended.

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Paperwork will increase for administering authority.

(2) Effects on the promulgating administrative body: Increased administrative expense (negligible).

(a) Direct and indirect costs or savings:

1. First year: Approximately $600,000 (15% of $4,000,000) (savings).

2. Continuing costs or savings: $600,000 annually.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: N/A

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. The amendment to these regulations have been narrowly tailored to apply to state employees and other persons in the official service of the Commonwealth.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:140. Seasons for wild turkey.

RELATES TO: KRS 150.010, 150.025, 150.092, 150.170, 150.175, 150.305, 150.320, 150.330, 150.360, 150.365, 150.390, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: This regulation pertains to seasons and limits for wild turkey. The commissioner with the concurrence of the commission finds this regulation necessary for the continued protection and conservation of wild turkey populations and to insure a permanent and continued supply for present and future residents of the state. The function of this regulation is to provide for the prudent taking of wild turkeys within reasonable limits based upon an adequate supply. This amendment is necessary to designate currently appropriate turkey hunting rules and seasons for specific counties and wildlife management areas.

Section 1. Seasons and Counties Open to Wild Turkey Hunting. Third Wednesday in April for fourteen (14) consecutive days in Adair except west of Highway 61, Allen east of Highway 31E, Anderson west of Highway 127, Ballard, Barren north of I-65, south of Highway 1297 and west of Highway 249, Bath south of I-64, Bell, Boone, Boyd south of I-64, Boyle south of Highway 37 and west of Carpenter Fork Road, Bracken, Breathitt east of Highway 15 and south of Highway 30, Breckinridge northwest of Highway 79, Bullitt south of Salt River, Butler, Caldwell, Calloway, Carlisle except south of Highway 62 and east of Highway 51, Carroll, Carter north of I-64, Casey west of Highway 127, Christian, Clark, Clinton north of Highway 90 and west of Highway 558, Crittenden south of Highway 120 and east of Highway 641, south of Highway 70, Cumberland, Daviess north of Highway 54, Edmonson, Elliott, Estill north of the Kentucky River, Floyd east of Highway 23, Franklin except south of Highway 12 and west of Kentucky River, Fulton, Gallatin, Grant north of Highway 22 and west of I-75, Graves, Grayson except east of Highway 259 and north of West Kentucky Parkway, Green north of Highway 569, Greenup west of Highway 7, Hancock southeast of Highway 1389, Hardin except north of Highway 86 and northwest of Highway 62, Harlan, Harrison east of Highway 27, Hart except east of Highway 31E and south of Green River, Henry, Henderson west of Highway 41, Hickman, Hopkins, Jackson north of Highway 30, Knott, Larue except south of Highway 61 and west of Highway 31E, Laurel west of I-75, Lawrence north of Highway 32, Letcher, Lewis east of Highway 59 and north of Highway 474, Lincoln east of Highway 27, Livingston, Logan except southeast of Highway 79 and southwest of Highway 100, Lyon, Madison east of I-75 and north of Highway 52, Magoffin south of Mountain Parkway west of Salyersville and south of Highway 114 east of Salyersville, Marion east of Highway 55 north of Lebanon and east of Highway 208 south of Lebanon, southwest of Highway 49 and west of Highway 55, Marshall, Martin south of Highway 40, Mason, McLean south of Highway 138 and west of Highway 81, McCracken, McCreary, Meade northwest of Highway 79, Menifee, Monroe south of Highway 100, Muhlenberg except north of Highway 70 between Highway 181 and Highway 431, Nelson west of Highway 31E north of Bardstown and west of Highway 49 south of Bardstown, Oldham north of I-71, Owen except south of Highway 22 and east of Highway 227, Owsley north of Highway 30 and west of Highway 399, Pendleton east of Highway 27 and south of Highway 22, Perry north of Highway 80 and east of Highway 15, Pike east of Highway 23, Powell, Pulaski south of the Cumberland River, south of Highway 80 and east of Buck Creek, Robertson, Rockcastle south of Highway 150 and west of I-75, east of Highway 1955, Rowan, Russell west of Highway 127 and south of Highway 92, Scott east of I-75, Shelby east of Highway 55 and north of Highway 12, Spencer west of Highway 55, Taylor north of Highway 70, south of Highway 70 and northeast of Highway 76, Todd, Trigg, Trimble east of Highway 421, Union, Warren southwest of the Green River Parkway and northwest of Highway 80, Washington east of Highway 55, Wayne southeast of Highway 90, and Whitley north of Highway 90 and west of Highway 25W. [~~Adair except west of Highway 61, Allen east of Highway 31E, Anderson west of Highway 127, Ballard, Bath south of I-64, Bell, Boyd south of I-64, Boyle south of Highway 37 and west of Carpenter Fork Road, Breathitt east of Highway 15 and south of Highway 30, Breckinridge northwest of Highway 79, Bullitt south of Salt River, Butler, Caldwell, Calloway, Carlisle except south of Highway 62 and east of Highway 51, Carroll, Carter north of I-64, Casey west of Highway 127, Clinton north of Highway 90 and west of Highway 558, Crittenden south of Highway 120 and east of Highway 641, Crittenden south of Highway 70, Christian, Cumberland, Edmonson, Franklin east of the Kentucky River, Fulton, Gallatin north of I-71, Graves, Grayson except east of Highway 250 and north of West Kentucky Parkway, Green north of Highway 569, Greenup west of Highway 7,~~

~~Hancock east of Highway 69, Hardin south of West Kentucky and Bluegrass Parkways, Harlan, Hart west of Highway 31E, Henry, Henderson west of Highway 41, Hickman, Hopkins south of Highway 70, Jackson north of Highway 30, Knott north of Highway 80, Larue northeast of Highway 210, Laurel west of I-75, Letcher, Lewis east of Highway 59, Livingston, Logan north of Highway 106, Lyon, Marion west of Highway 527, Marshall, Martin south of Highway 40, McCracken, McCreary south of Highway 92 and west of Highway 27, McCreary north of Highway 92, Meade northwest of Highway 79, Menifee except south of Highway 460 and east of Highway 77, Monroe south of Highway 100, Muhlenberg except north of Highway 70 and west of Highway 431, Nelson west of Highway 31E north of Bardstown and west of Highway 49 south of Bardstown, Owen west of Highway 127 north of Owenton and west of Highway 227 south of Owenton, Owsley north of Highway 30 and west of Highway 399, Perry north of Highway 80 and east of Highway 15, Pike south of Elkhorn Creek, Pulaski south of the Cumberland River, Pulaski south of Highway 80 and east of Buck Creek, Rowan north of I-64, Russell west of Highway 127 and south of Highway 92, Taylor northwest of gas lines at Saloma, Todd, Trimble east of Highway 421, Trigg south of Highway 68, Union, Warren southwest of the Green River Parkway and northwest of Highway 80, Wayne southeast of Highway 90 and northwest of Highway 92, Whitley north of Highway 90 and west of Highway 25W.]~~

(2) Fall either sex archery only season from October 1 through October 31 in Adair except west of Highway 61, Allen east of Highway 31E, Anderson west of Highway 127, Ballard, Bath south of I-64, Bell, Breckinridge northwest of Highway 79, Bullitt south of the Salt River, Butler, Caldwell, Calloway, Carroll, Christian, Crittenden south of Highway 120 and east of Highway 641, south of Highway 70, Cumberland, Edmonson, Gallatin, Graves, Grayson except east of Highway 259 and north of West Kentucky Parkway, Hardin south of West Kentucky and Bluegrass Parkways, Harlan, Hart except east of Highway 31E and south of Green River, Henry, Hickman, Hopkins, Jackson north of Highway 30, Larue except south of Highway 61 and west of Highway 31E, Letcher, Livingston, Logan except southeast of Highway 79 and southwest of Highway 100, Marion southwest of Highway 49 and west of Highway 55, Marshall, Martin south of Highway 40, McCracken, McCreary, Meade northwest of Highway 79, Menifee, Monroe south of Highway 100, Muhlenberg except north of Highway 70 between Highway 181 and Highway 431, Nelson west of Highway 31E north of Bardstown and west of Highway 49 south of Bardstown, Owen except south of Highway 22 and east of Highway 227, Taylor north of Highway 70, south of Highway 70 and northeast of Highway 76, Todd, Trigg, Warren southwest of the Green River Parkway and northwest of Highway 80, Wayne southeast of Highway 90. ~~[Ballard except Ballard Wildlife Management Area north of Terrell Landing Road, Bullitt south of the Salt River, Butler, Caldwell, Calloway, Christian, Hart west of Highway 31E, Hopkins south of Highway 70, Larue northeast of Highway 210, Logan north of Highway 106, Muhlenberg except north of Highway 70 and west of Highway 431, Nelson west of Highway 31E north of Bardstown and west of Highway 49 south of Bardstown, Todd, Trigg south of Highway 68.]~~

(3) All other counties and portions of counties are closed to wild turkey hunting except as specified in Section 4 of this regulation.

Section 2. Bag and Possession Limits. (1) No more than two (2) turkeys with visible beards per hunter per spring season shall be taken. No more than one (1) turkey per day shall be taken.

(2) No more than one (1) turkey shall be taken in the fall.

(3) No more than three (3) turkeys shall be taken in any calendar year.

Section 3. Requirements and Restrictions. (1) The use of dogs is prohibited.

(2) All turkey hunters shall have in their possession a valid wild turkey permit and, unless exempted by KRS 150.170(3), (5), (6), (7) or (8), a valid annual Kentucky hunting license~~[, unless exempted by KRS 150.170(3), (5), (6), (7), or (8)]~~.

(3) Turkey shall be taken only from one-half (1/2) hour before sunrise until 1 p.m. During fall seasons, turkey may be taken only during daylight hours. Shooting turkey while they are roosting is prohibited.

(4) Turkey may be taken with the aid of hand or mouth operated calls. Electronic calls are prohibited.

(5) Shotguns no larger than ten (10) gauge or no smaller than twenty (20) gauge are the only firearms which shall be used or possessed while turkey hunting. Only Number 4 shot or smaller shall be used. Shot larger than Number 4 or slugs shall not be possessed while turkey hunting.

(6) Longbows, recurve and compound bows which do not have devices to hold an arrow at full draw without human aid are the only archery equipment which shall be used. Only barbless arrows without chemical treatment or chemical attachments, with broadhead points at least seven-eighths (7/8) inch wide are permitted.

(7) The hunter shall attach the transportation tag to the turkey immediately after taking. Any hunter harvesting a wild turkey shall have it checked at the nearest check station or by the nearest available conservation officer on the day the turkey is taken except as required on specified wildlife management areas. The hunter shall fill out an official game check card and submit it to the check station operator or conservation officer. The hunter's portion of this card shall be retained in the hunter's possession until the turkey is processed. A completed state, Fort Campbell, or Land Between the Lakes game check card shall be attached to and remain with any turkey taken to a taxidermist. Turkeys shall be checked before being transported out of the state.

(8) Turkeys may be taken with the aid of decoys. Live turkeys shall not be used as decoys.

(9) Turkeys shall not be hunted on any baited area or be taken by the aid of baiting. A baited area means any area where feed, grains or any other substances capable of luring wild turkeys have been placed. Such areas shall be considered baited for thirty (30) ~~[ten (10)]~~ days following the complete removal of all bait. This does not prohibit hunting wild turkeys on any areas where grains, feed or other substances exist as the result of bona fide agricultural practices, or as the result of manipulating a crop for wildlife management purposes, provided that manipulation for wildlife management purposes does not include the placing or scattering of grain, feed or other substances once removed from or stored on the field where grown.

(10) Turkeys shall not be hunted from boats.

(11) All turkey hunters less than eighteen (18) years of age shall be accompanied by an adult who shall maintain reasonable control of the underage hunter at all times while hunting.

(12) Calling or attempting to call wild turkeys using any turkey call to mimic the sounds made by a wild turkey shall be prohibited from March 1 to the opening day of spring turkey season in any area open to turkey hunting. This shall not apply to places where turkeys are not reasonably expected to occur.

(13) Turkeys shall not be taken by any means other than those specified in this regulation.

Section 4. Seasons and Exceptions on Wildlife Management Areas. All provisions of this regulation apply unless otherwise specified in this section.

(1) Fort Knox Wildlife Management Area located in Hardin, Bullitt and Meade Counties.

(a) Season: all Saturdays and Sundays in April and the first two (2) Saturdays and Sundays in May.

(b) Hunters shall check turkeys by 2 p.m. on the day harvested.

(c) Bag limit: one (1) turkey per season. Turkeys taken on Fort Knox do not count against statewide limits and do not have to be tagged.

(d) Turkey hunters shall hunt in assigned area(s) only.

(2) Land Between the Lakes Wildlife Management Area located in Trigg and Lyon Counties.

(a) Season: April 21, 22, 24, 25, and 26 advanced application required. April 28 ~~[15, 16, 18, 19, 20, 22]~~ through May 11 ~~[6]~~.

(b) Wild turkey shall be taken only in designated areas.

(c) All hunters shall check in and out, shall check any turkey before leaving Land Between the Lakes and shall affix an LBL game

check card to the carcass. State game check cards are not required.

(d) Shooting hours: daylight hours only.

(e) Bag limit: one (1) turkey per season.

(3) Reelfoot National Wildlife Refuge located in Fulton County.

(a) Season: quota hunt April 2, 3, and 4 [~~3, 4, and 5~~].

(b) Bag limit: one (1) turkey per season.

(c) Permit: Reelfoot permit required.

(4) Fort Campbell Wildlife Management Area located in Christian and Trigg Counties.

(a) Season: First Saturday in April through the second Sunday in May with no hunting permitted on Tuesdays or Wednesdays.

(b) Permit. A post combination hunting-fishing permit is required.

(c) Shooting hours: daylight hours only.

(d) Bag limit: two (2) turkeys per spring season. Turkeys taken on Fort Campbell do not count against statewide limits and do not have to be tagged.

(e) A Fort Campbell game check card shall be attached to turkeys before leaving post and shall remain on the bird until processed. State game check cards are not required.

(5) Blue Grass Ordnance Depot Activity located in Madison County. Season: third Wednesday in April for fourteen (14) consecutive days.

(6) Ballard Wildlife Management Area in Ballard County north of Terrell Landing Road and Grayson Lake Wildlife Management Area in Carter County and that portion in Elliott County east of Bruin Creek.

(a) Quota youth hunt only: Saturday and Sunday preceding the third Wednesday in April.

(b) Bag limit: one (1) turkey per season.

(c) Shooting hours: one-half (1/2) hour before sunrise until noon. Hunters must check in and out daily.

(d) Hunting is restricted to persons at least ten (10) years of age but who have not reached their 16th birthday. Each youth shall be accompanied by an adult and hunt in assigned areas only.

(e) An in-person drawing will be held on the respective wildlife management area at 1 p.m. on the first Saturday in April to determine who will get to hunt.

[~~(6) Ballard Wildlife Management Area in Ballard County is closed to turkey hunting, except that portion south of Terrell Landing Road.~~]

(7) Swan Lake Wildlife Management Area in Ballard County is closed to turkey hunting.

(8) Higginson-Henry Wildlife Management Area located in Union County. Season: archery only. Third Wednesday in April for nineteen (19) consecutive days and either sex, October 1-31. Hunters must check in and check out daily.

(9) Robinson Forest Wildlife Management Area in Breathitt and Knott counties is closed to turkey hunting.

(10) West Kentucky Wildlife Management Area in McCracken County is closed to turkey hunting.

(11) Pioneer Weapons Wildlife Management Area in Bath and Menifee Counties. Weapons: Legal muzzle-loading shotguns only. Breech-loading shotguns are prohibited. legal archery equipment and crossbows with a working safety are permitted. [~~Longbows, recurve and compound bows, and crossbows of at least 100 pounds pull with a working safety are permitted.~~]

(12) Fishtrap Wildlife Management Area in Pike County is open to turkey hunting.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
CRIT LUALLEN, Secretary

APPROVED BY AGENCY: August 18, 1992

FILED WITH LRC: September 11, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 28, 1992 at 9 a.m. at the Kentucky Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky in the Commission Room. Individuals interested in attending this hearing shall notify this agency in writing by October 23, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Lauren E. Schaaf, Director, Wildlife Division, Kentucky Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: Approximately 13,000 persons will participate in the wild turkey hunting proposed by this regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license and a wild turkey permit. Indirect costs are determined by the individual hunter, depending on his level of participation.

1. First year: Persons participating in the hunting proposed for authorization by this regulation would be required to possess a valid hunting license, a spring wild turkey permit and a fall archery permit unless exempt by regulations.

2. Continuing costs or savings: Same as first year.

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

(b) Reporting and paperwork requirements: Hunters will be asked to check their turkey at a check station and fill out a tag denoting specific information about the turkey taken.

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, reporting on, and enforcing the proposed regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcing the regulation.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is $80,000.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: Approximately 13,000 turkey hunters may be expected to expend money for equipment, transportation, food and lodging. The annual expenditure for these items averages $46 per day of big game hunting according to the 1985 National Hunting and Fishing Survey. State and local revenues can be expected to be positively affected due to the necessary expenditures for the required licenses and taxes levied upon items purchased by hunters.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based on the wise use of renewable resources and the fact that wild turkey populations are at levels which can sustain a regulated harvest by Kentucky sportsmen.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Only one class of citizen, the hunter, is impacted by this regulation. However, wild turkey are unevenly distributed across the state of Kentucky and only certain counties have sufficiently large turkey populations to warrant hunting. This regulation recognizes the variations in turkey populations and only opens certain counties.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a

local government, including any service provided by that local government?

Yes___ No_X_ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. Only parts of local government will be affected.

3. State the aspect or service of local government to which this administrative regulation relates. The County Clerk's office serves as a distribution system for the hunting licenses required by this regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The County Clerk's office personnel are involved in the sale of hunting licenses and turkey tags. This office receives a $.75 fee for selling licenses and turkey tags. The County Circuit Courts are utilized for prosecution of cases made against violators of these regulations and recover their costs as the court cost portion of any levied fines.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 2:220. Hunting seasons for migratory birds.

RELATES TO: KRS 150.010, 150.015, 150.025, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 150.603, 150.630, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: This regulation pertains to the seasons and limits for the taking of specified migratory birds, to the associated permitting and harvest reporting requirements, and to restrictions in the use of blinds and pits. It is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource. The framework of this regulation falls within the seasons and bag limits prescribed by the U.S. Fish and Wildlife Service. The function of this regulation is to provide for the prudent taking of migratory birds within reasonable limits based upon an adequate supply. This amendment is necessary to change season dates and hunting rules.

Section 1. Definitions. (1) "Blind" means any form of concealing enclosure, including a pit or an anchored, stationary, or drifting boat from which hunting occurs.

(2) "Permanent blind" means any blind which is in place more than twenty-four (24) hours.

(3) "Commercial waterfowl hunting area" means any area of land or water used in whole or in part for the taking of migratory waterfowl where a monetary charge is made for hunting.

(4) "Commercial guide" means any individual who accepts monetary considerations for receipt of services in assisting another individual or group in the taking of fish or wildlife.

(5) "Noncommercial waterfowl hunting area" means any area used in whole or in part for the taking of migratory waterfowl where no monetary charge is made.

(6) "Waterfowl" means all species of ducks, coots, mergansers and geese.

Section 2. Seasons and Zones for Gun, Archery and Falconry. ~~[(1) Sora rails, Virginia rails, common moorhens, and purple gallinules: October 5 through October 28 and November 28 through January 5.]~~

(1) [~~(2)~~] Ducks, coots and mergansers:

(a) Eastern duck zone: November 26 through November 29 and December 23 through January 17 [~~December 7 through January 5~~] east of a boundary beginning at the Kentucky-Tennessee border along I-65 north to Bowling Green, northwest along the Green River Parkway to Owensboro, southwest along U. S. Bypass 60, north along U.S. 231 to the Indiana border.

(b) Western duck zone: November 26 through November 29 and December 16 through January 10 [~~November 28 through December 1 and December 11 through January 5~~]. This zone consists of the area to the west of the boundary described in paragraph (a) of this subsection.

(c) Falconry (eastern and western duck zones): November 3 [~~October 22~~] through January 31.

(2) [~~(3)~~] Geese.

(a) Eastern goose zone: December 13 through January 31, east of a boundary beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending north along the Purchase Parkway to I-24, East on I-24 to U.S. 641, north on U.S. 641 to U.S. 60, northeast on U.S. 60 to the Henderson County line then south, east and northerly along the Henderson County line to the Indiana border.

(b) Western goose zone: November 26 [~~28~~] through January 31, unless harvest quotas are met as described in subparagraphs 1 through 4 of this paragraph. This zone consists of the area to the west of the boundary described in paragraph (a) of this subsection. For the purpose of controlling the goose harvest, the western goose zone is subdivided into the Ballard reporting area and associated counties and the Henderson-Union reporting area and associated counties.

1. Ballard reporting area. This reporting area lies within the following boundary: starting at the northwest city limits of Wickliffe in Ballard County to the middle of the Mississippi River, and thence north along the Mississippi River to the low water mark of the Ohio River along the Illinois shore to the Ballard-McCracken County line; thence along the county line south to state road 358; thence south along state road 358 to its junction with U.S. Highway 60 at LaCenter; thence following U.S. 60 southwest to the northeast city limits of Wickliffe. Should it be determined that the quota of 14,600 [~~28,000~~] Canada geese will be filled prior to January 31, the goose hunting season shall close in the Ballard reporting area. Notice shall be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

2. Counties associated with the Ballard reporting area. The counties associated with the Ballard reporting area are those portions of Ballard (excluding Ballard reporting area), McCracken, Graves, Carlisle, Hickman, Fulton and Marshall counties in the western goose zone, shall remain open for seven (7) days after the closure of the Ballard reporting area or until January 31, whichever occurs first.

3. Henderson-Union reporting area. This reporting area includes Henderson County and that portion of Union County within the western goose zone. Should it be determined that the quota of 4,300 [~~8,200~~] Canada geese will be filled prior to January 31, the goose hunting season shall close in the Henderson-Union reporting area. Notice shall be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

4. Counties associated with the Henderson-Union reporting area. The counties associated with the Henderson-Union reporting area are those portions of Lyon, Crittenden and Livingston counties in the western goose zone shall remain open for seven (7) days after the closure of the Henderson-Union reporting area or until January 31, whichever occurs first.

(c) Falconry (eastern and western goose zones): November 3 through January 31.

~~[1. Fulton County: November 28 through February 15.~~
~~2. Remainder of state: October 22 through January 31.]~~

Section 3. Limits for Gun, Archery and Falconry.

(1) Gun and archery.

(a) Ducks. The daily bag limit is three (3) and shall include no more than two (2) mallards (no more than one (1) hen mallard), two (2) wood ducks, one (1) black duck, one (1) redhead, and one (1) pintail of either sex. No canvasbacks shall be taken. The possession limit is double the daily bag.

(b) Coots. The daily bag limit is fifteen (15) and the possession limit is thirty (30).

(c) Mergansers. The daily bag limit is five (5) of which no more than one (1) shall be a hooded merganser. Possession limit is double the daily bag limit.

(d) Geese: [.

~~1.~~] The bag limit is seven (7) with no more than two (2) [~~three (3)~~] Canada geese and two (2) white-fronted geese. The possession limit is double the daily bag limit. [~~in the western goose zone or two (2) Canada geese and two (2) white-fronted geese in the eastern goose zone.~~

~~2. The possession limit is double the daily bag limit.~~

~~(e) Sora and Virginia Rails. The bag and possession limits are twenty-five (25) singly or in the aggregate.~~

~~(f) Common Moorhens and Purple Gallinules. The bag and possession limits are fifteen (15) and thirty (30), respectively, singly or in the aggregate of the two (2) species.~~]

(2) Falconry. The bag and possession limits are three (3) and six (6) respectively, of any legal species listed in this regulation, singly or in aggregate.

Section 4. Hunting Hours. One-half (1/2) hour before sunrise to sunset for all species listed in this regulation except as specified in Section 7 of this regulation.

Section 5. Shotshell Restrictions. The following restrictions apply to species listed in this regulation. The possession and use of lead shot is prohibited for the taking of ducks, geese, coots and mergansers as listed in 301 KAR 2:044. No steel shot larger than F shall be in possession while hunting the species listed in this regulation.

Section 6. Wildlife Management Area Blind Regulations. The following restrictions apply to all wildlife management areas except those excluded in Section 7 of this regulation.

(1) Permanent blinds are not permitted. Decoys and temporary blinds shall be removed at the end of each hunting day.

(2) No blind shall be established less than 200 yards from any other blind or waterfowl refuge areas.

(3) No more than four (4) persons shall occupy a single blind at any one time.

(4) Designated recreation areas and access points are closed to hunting of all species listed in this regulation.

Section 7. Exceptions for Specified Wildlife Management Areas and Counties. Other sections or regulations apply unless specified below. Pit and blind restrictions described in this section and Section 10 of this regulation shall not apply to periods of the falconry season as described in Section 4 of this regulation that do not coincide with waterfowl gun hunting seasons.

(1) Ballard Wildlife Management Area, except the Miller Tract, located in Ballard County.

(a) Species, seasons and bag limits.

1. Geese: December 8 [~~10~~] through January 31 or until the Ballard Reporting Area quota is reached.

2. Ducks, coots and mergansers: December 16 [~~11~~] through January 10 [~~5~~].

3. Daily bag limits.

a. Canada geese. The daily bag limit on Ballard Wildlife Management Area is two (2) [~~three (3)~~] per day.

b. Ducks, coots and mergansers. Same as state bag limits.

4. No hunting is permitted on Sundays, Mondays, Christmas and New Year's day.

5. No more than three (3) persons shall occupy a single blind at the same time.

(b) General rules. Waterfowl hunters shall have no more than ten (10) shells in their possession. Any hunter under the age of eighteen (18) years shall be accompanied by an adult. Any person whose transportation to and from blinds is furnished by the department shall have his gun encased. Hunting shall be by advanced application or as otherwise authorized.

(c) Shooting hours: one-half (1/2) hour before sunrise to 12 noon.

(d) The Ohio River in the vicinity of the Ballard Wildlife Management Area located in Ballard County, from a point fifty (50) yards upstream from Dam 53, downstream to a point fifty (50) yards below the downstream boundary of Ballard Wildlife Management Area is closed to all species listed in this regulation from October 15 through March 15.

(2) Swan Lake Wildlife Management Area located in Ballard County.

(a) Closed areas. Swan Lake, adjacent wetlands and uplands as marked by signs are closed from October 15 through March 15 as described in 301 KAR 4:050.

(b) Open areas. The Upper Blenderman Tract, located to the north of Holloway Landing Road and marked by signs, is open to hunting of all legal species listed in this regulation.

(3) Paintsville Lake Wildlife Management Area in Johnson and Morgan counties and Dewey Lake wildlife Management Area in Floyd County are open to hunting of all legal species listed in this regulation.

(4) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.

(a) Closed areas. Long Creek Pond, the eastern one-third (1/3) of Smith Bay, and the eastern two-thirds (2/3) of Duncan Bay are closed to all activity from November 1 through March 15 as indicated by signs and buoys. The Environmental Education Center and Energy Lake are closed to hunting of all species listed in this regulation.

(b) LBL permit. An annual LBL hunting permit is required for hunting of all legal species listed in this regulation on all shoreline areas along Kentucky and Barkley Lakes from the water's edge to twenty-five (25) yards above elevation 359' and inland areas. Waterfowl hunting from shoreline areas along Lake Barkley is allowed according to subsection (4) of this section. No hunting of any species listed in this regulation is permitted on inland areas during quota gun deer hunt days as listed in 301 KAR 2:111. Permanent blinds are not permitted on inland areas nor along the Kentucky Lake shoreline area. Decoys and temporary blinds shall be removed at the end of each hunting day.

(5) Lake Barkley Wildlife Management Area located in Trigg, Lyon, and Livingston Counties.

(a) Closed areas. Refuge areas shall be closed to all hunting, fishing, boating and molesting of all species listed in this regulation during the dates designated in this subsection and on signs posted along the boundaries. Refuges and closing dates are as follows: November 1 through February 15 within an area including a row of islands on the west side of the main channel as marked by buoys and signs between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light), excluding Taylor and Jake Fork Bays as marked by buoys and signs. Within the refuge area, that area west of a line from the north point of the mouth of Fulton Bay to the south point of the mouth of Honker Bay will remain closed through March 15 as marked by buoys and signs. Boating is allowed but hunting is prohibited within 200 yards of the area surrounded by a levee and located between river mile 68.4 and river mile 70.4 from October 15 through March 15.

(b) Blinds. Permanent blinds shall remain within ten (10) yards of the assigned numbered blind marker within the two (2) areas described as follows:

1. Beginning at the mouth of Donaldson Creek and proceeding south along the east side of the old Cumberland River channel as marked by buoys, to a point due west of the boat ramp at Linton, then east to the Linton boat ramp, then north along the east shore of Barkley Lake to the mouth of Donaldson Creek;

2. Beginning at the Pryor's Creek Light extending south along the western shore of Barkley Lake to the boat ramp at the end of Land Between the Lakes Road 204 thence to the west side of the Cumberland River Channel, marked with buoys, to river mile 73.5, thence north along the west side of the Cumberland River channel, marked with buoys, to the Pryor Creek Light. All other blinds within this described area shall be temporary.

(6) Sloughs Wildlife Management Area located in Henderson and Union Counties.

(a) Grassy Pond-Powell's Lake Unit. Hunting is permitted only

from permanent blinds constructed by the department. Hunters shall remove all personal property from blinds or the vicinity of blinds daily.

(b) Jenny Hole-Highland Creek Unit. Hunting shall be allowed from permanent blinds constructed by the department and at any other above ground site provided there is a minimum of 200 yards between hunters or hunting parties. Hunters shall remove all personal property from blinds or the vicinity of blinds daily.

(c) Shooting hours: one-half (1/2) hour before sunrise to 2 p.m.

(d) When the Ohio River reaches a level that requires boat access to the units, hunting shall be allowed from boats spaced 200 yards apart, without regard to the department blinds.

(e) Sauerheber Unit.

1. On the Crenshaw and Duncan Tracts, waterfowl hunting shall be allowed only on Thursdays through Sundays and from permanent blinds constructed by the department. Use of the constructed blinds shall be by drawing unless the person(s) drawn do not occupy the blind by the opening of legal shooting hours.

2. Waterfowl hunting only shall be allowed on the Crenshaw and Duncan II tracts during the waterfowl season. The Crenshaw and Duncan II tracts shall be closed to all other hunting from October 15 through March 15.

3. Waterfowl hunters shall have no more than fifteen (15) shells in their possession when hunting on the Crenshaw and Duncan tracts.

(4) The remainder of the Sauerheber Unit, including the Wood Tract, located between mile marker four (4) and six (6) on state road 268 and bounded by the Ohio River on the north and Tram Road on the east is closed to all hunting, fishing, boating and trespassing from October 15 through March 15.

(7) Ohio River Waterfowl Refuge located in Livingston County shall be closed to all hunting from October 15 through March 15. This area includes the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a power line crossing the river at approximately river mile 911.5 and Stewart Island.

(8) Westvaco Wildlife Management Area located in Carlisle and Hickman Counties:

(a) The areas south of Highway 1217 (also known as Fish Lake or Lower River Road), the Brown and Morgan tracts east of Highway 1217, the Shadoan Tract north of the Brown Tract and the portion of the Jackson Tract south of the Westvaco access road as posted by signs, are closed from October 15, through March 15.

(b) Westvaco permit. An annual Westvaco Hunting Permit is required for hunting all legal species on the Westvaco Wildlife Management Area. [~~The portion of Westvaco Wildlife Management Area located in Carlisle and Hickman counties. The area south of Highway 1217 (also known as Fish Lake or Lower River Road) is closed from October 15 through March 15.~~]

(9) Hunting of all species listed in this regulation is not permitted on the following areas:

[~~(a) Ohio River in the vicinity of the Ballard Wildlife Management Area located in Ballard County, from a point fifty (50) yards upstream from Dam 53, downstream to a point fifty (50) yards below the downstream boundary of the Ballard Wildlife Management Area.~~]

(a) [~~(b)~~] The portion of Grayson Wildlife Management Area located in Carter and Elliott counties: within the no wake zone at the dam site marina, from the shores of Camp Webb and the state park and on Deer Creek Fork of Grayson Lake [~~the Camp Webb Refuge Area, the area north of Rosedale Point, Deer Creek Fork west of 1496, and within fifty (50) yards of the state park shoreline.~~] All other portions are open.

(b) [~~(c)~~] Beaver Creek Wildlife Management Area located in Pulaski and McCreary Counties.

(c) [~~(d)~~] Cane Creek Wildlife Management Area located in Laurel County.

(d) [~~(e)~~] Robinson Forest Wildlife Management Area located in Breathitt, Perry and Knott Counties.

(e) [~~(f)~~] Redbird Wildlife Management Area located in Leslie and Clay Counties.

(f) [~~(g)~~] Mill Creek Wildlife Management Area located in Jackson County.

(g) [~~(h)~~] Beech Creek Wildlife Management Area located in Clay County.

(10) Bath, Rowan, Menifee and Morgan Counties, including Cave Run Lake, are closed to goose hunting. Breech and muzzle-loading shotguns may be used for duck hunting along the shore line portion of Cave Run Lake bordering the Pioneer Weapons Wildlife Management Area.

(11) Ohio County south of Rough River, Muhlenburg County, except for the portion south of U.S. Highway 62 and west of State Route 181, Butler County west of State Route 79, Hopkins County north of State Route 70, south of U.S. Highway 41A, east of State Route 614 and State Route 109, and south of the Western Kentucky Parkway, Christian County north of State Route 80 are closed to Canada goose hunting. Bell County south of Route 119 and east of Route 25E, Pulaski and McCreary Counties east of U.S. Highway 27 and Laurel, Clay, Whitley, Perry, Knott and Breathitt Counties are closed to all goose hunting. In addition all designated goose refuge lakes within the western Kentucky coal fields are closed to all waterfowl hunting.

(12) Yellowbank Wildlife Management Area in Breckinridge County. A twenty-five (25) acre wetland designated by signs and painted boundary markers is closed to the public from October 15 through March 15.

(13) Lake Cumberland, Pulaski County.

(a) Wesley Bend, the area bounded to the north, west and south by Fishing Creek and to the east by Beech Grove Road and Fishing Creek Road is closed to the public from October 15 through March 15.

(b) Yellowhole, the area bounded to the east and north by Fishing Creek, to the west by Fishing Creek Road and the south by Hickory Nut Road is closed to the public from October 15 through March 15.

(14) Blind restrictions for Barkley Lake, Barren Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake, Buckhorn Lake and Taylorsville Lake Wildlife Management Areas.

(a) Permanent blinds shall be registered on a permit issued by the U.S. Army Corps of Engineers. Applicants may designate one (1) other person as a partner for registration. No more than two (2) nontransferable permits shall be issued for each permanent blind. Only one (1) permit shall be issued per hunter per area. Permittees who have not constructed a blind at the designated location by November 20 shall forfeit their permit.

(b) Blinds not occupied by permittees by the opening of shooting hours of any day shall be available for use by other hunters on a first come - first served basis for the remainder of that day.

(c) Permittees shall not lock blinds so as to prevent use by other hunters in the absence of the permittee.

(d) Permanent blinds shall be removed within thirty (30) days of the close of waterfowl season unless extension of that period is approved. Permittees who fail to remove their blind within thirty (30) days after the close of the waterfowl season forfeit the opportunity to obtain a blind on this area the following year.

(e) Permittees shall be selected by drawing at Barkley Lake, Barren Lake, Green River Lake, Paintsville Lake and Taylorsville Lake Wildlife Management Areas. Applicants for blind permits shall present a current Kentucky hunting license to the registration clerk at the time of the drawing. Sites which become available by forfeiture shall be assigned to another applicant according to the following procedure: five (5) additional names shall be drawn at each area (or the number of remaining names if less than five (5) are present) and any forfeited blinds shall be assigned to those people in the order they were drawn.

(15) Waterfowl shooting hours are from one-half (1/2) hour before sunrise to 2 p.m. on the following wildlife management areas: Green River in Adair and Taylor Counties, Kaler Bottoms in Graves County, Obion Creek in Hickman County, Westvaco in Carlisle County and White City in Hopkins County. [~~White City Wildlife Management Area located in Hopkins County. Waterfowl shooting hours are from one half (1/2) hour before sunrise to 2 p.m.~~]

(16) Taylorsville Lake Wildlife Management Area, located in Anderson, Nelson and Spencer Counties. That portion east of Van Buren Boat Ramp as marked by buoys and signs is closed to all hunting, fishing, boating, and trespassing during the period from the

first Monday following the quota deer hunt in November through March 1.

(17) Fulton County shall remain open to Canada goose hunting through February 12 [~~15, 1992~~], unless closed prior to this date under the provisions of Section 2 of this regulation.

Section 8. Ballard and Henderson-Union Reporting Area Waterfowl Hunting Permit Requirements. It is unlawful for any person to hunt waterfowl within the Ballard or Henderson-Union Reporting Areas without first obtaining the appropriate waterfowl hunting permit or waterfowl harvest register forms as specified in subsections (1), (2) and (3) of this section.

(1) Commercial waterfowl hunting areas.

(a) A commercial waterfowl hunting area permit issued by the department shall be obtained by any person operating a commercial waterfowl hunting area. An annual fee shall be charged for each commercial waterfowl hunting area permit. These permits shall expire at the end of waterfowl hunting season.

(b) Persons operating more than one (1) commercial waterfowl hunting area shall obtain a permit for each individual area. A land holding divided by a public road may be operated as a commercial waterfowl hunting area under one (1) permit. Whenever a farm unit is divided by land owned by others, a separate permit shall be required for each tract of land operated as a commercial waterfowl hunting area.

(2) Noncommercial waterfowl hunting areas.

(a) Any person controlling the waterfowl hunting rights and privileges on a noncommercial waterfowl hunting area shall obtain a free migratory waterfowl [~~goose~~] hunting area permit which shall expire at the end of waterfowl hunting season.

(b) The holder of a free migratory waterfowl [~~goose~~] hunting area permit may be the landowner, his tenant or any person to whom these individuals have assigned exclusive control of waterfowl [~~goose~~] hunting rights or privileges, in writing, on forms provided by the department.

(c) The permittee shall display the permit openly on the property for which it was issued and provide the permit for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(3) Ohio and Mississippi River waterfowl hunters. Persons hunting waterfowl [~~geese~~] on the Ohio or Mississippi Rivers or their overflow areas within the Ballard and Henderson-Union Reporting Areas shall carry on their person a waterfowl harvest register form provided by the department. When hunting in a party, one (1) hunter of the party may possess the waterfowl [~~goose~~] harvest reporting form provided the names of all members of the party are written on the form.

(4) Obtaining permits and harvest reporting forms. Persons desiring commercial waterfowl hunting area permits, migratory waterfowl [~~goose~~] hunting area permits, or a season supply of waterfowl harvest register forms for the Ballard Reporting Area may apply by writing to the Ballard County Wildlife Management Area, Route 1, LaCenter, Kentucky 42056, and for the Henderson- Union Reporting Area shall apply by writing to the Sloughs Wildlife Management Area, 9956 Hwy. 268, Corydon, Kentucky 42406.

Section 9. Ballard and Henderson-Union Reporting Area Recordkeeping and Reporting Requirements. (1) Commercial waterfowl hunting area permit holders.

(a) The permittee shall maintain and keep an accurate and complete daily hunter register and waterfowl harvest record in duplicate on the hunting area on forms provided by the department.

(b) The permittee shall, during the waterfowl season, close the register at the end of shooting hours each Wednesday and deliver by the following Monday either through mail or hand delivery the original completed daily register and waterfowl harvest record to the address indicated on the form. The permittee shall hold duplicate copies of these completed forms at the place of registration and make these and current register and harvest records available for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(c) A permittee is responsible for any violation of permit requirements or violations of other regulations committed on the premises under permit unless he immediately reports such violations to a conservation officer.

(2) Migratory waterfowl [~~goose~~] hunting area permit holders.

(a) At all times during the waterfowl season, the permittee shall make available on the premises under permit the daily hunter registration forms as provided by the department.

(b) The permittee shall require all waterfowl hunters to enter their names and the date on the register and report form prior to each time they hunt on any permit area and to record, prior to leaving the permitted premises, the numbers and kinds of waterfowl [~~geese~~] taken.

(c) The permittee shall, during the waterfowl season, close the register at the end of shooting hours each Wednesday and deliver by the following Monday either through mail or hand delivery the original completed daily register and waterfowl harvest record to the address indicated on the form. The permittee shall hold duplicate copies of the forms for a period of two (2) months after the end of the waterfowl season and make these and current register and harvest records available for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(3) Hunter requirements.

(a) Persons hunting waterfowl on commercial or noncommercial waterfowl hunting areas in the Ballard or Henderson- Union Reporting Areas shall:

1. Prior to hunting, enter their name, address, and the date of the hunt on the daily register form made available by the waterfowl hunting area operator.

2. Before leaving the premises, enter on the waterfowl harvest register form the numbers and kinds of waterfowl [~~geese~~] taken.

(b) Persons hunting waterfowl [~~geese~~] on the Ohio or Mississippi Rivers or their overflow areas within the Ballard and Henderson-Union Reporting Areas shall:

1. Prior to hunting, enter on the waterfowl harvest register form their name and address, or the names and addresses of all hunting party members if only one (1) hunter is carrying the form for the party, and the date.

2. At the end of each day's hunting, enter on the waterfowl harvest register form the number and kinds of waterfowl [~~geese~~] taken.

3. Mail or hand deliver the completed original waterfowl harvest register so it is received by no later than Monday of each week, to the address indicated on the form.

Section 10. General Rules Concerning Waterfowl Hunting in the Ballard Reporting Area.

(1) It is unlawful to hunt waterfowl except from a blind, unless waterfowl hunting is conducted in flooded, standing timber.

(2) It is unlawful to establish or use any blind within 100 yards of any other blind.

(3) It is unlawful to establish or locate any blind within fifty (50) yards of any property line.

(4) No more than five (5) persons shall occupy a single blind at the same time.

(5) A hunter shall possess only one (1) shotgun while occupying a blind.

Section 11. Waterfowl Stamp Requirements. Individuals hunting waterfowl shall possess appropriate state and federal waterfowl stamps as required by [~~stipulated in~~] KRS 150.330 and 150.603.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
CRIT LUALLEN, Secretary

APPROVED BY AGENCY: August 18, 1992

FILED WITH LRC: September 11, 1992 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 22, 1992 at 9 a.m. at the Kentucky Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky in the Commission Room. Individuals interested in attending this hearing shall notify this agency in writing by October 17, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing

is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Lauren E. Schaaf, Director, Wildlife Division, Kentucky Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick

(1) Type and number of entities affected: Approximately 14,000 persons will participate in the migratory bird hunting proposed by this regulation.

(a) Direct and indirect costs or savings to those affected: Direct costs involve the purchase of a state hunting license, a federal migratory bird hunting and conservation stamp, and a state duck stamp. Approximately 25 commercial waterfowl hunting area operators will be required to purchase a permit. Indirect costs are determined by the individual hunter, depending on his level of participation.

1. First year: Persons participating in the hunting proposed for authorization by this regulation would be required to possess a valid hunting license ($8.50 for residents) unless exempted by statute, a $15 migratory bird hunting and conservation stamp, and a $5.25 state duck stamp. Commercial waterfowl hunting operators will be required to purchase a $40 permit each.

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: Approximately 7,500 waterfowl hunters within the Ballard and Henderson-Union reporting areas will be required to register prior to hunting waterfowl and to report their harvest on forms provided by the department. The reporting frequency will be only half of what it has been due to a change requiring weekly rather than biweekly reporting.

(2) Effects on the promulgating administrative body: Requires time and effort in developing, publishing, report monitoring, and enforcing the proposed regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcing the regulation administering the harvest registration zones.

1. First year: The estimated cost associated with establishing and carrying out the provisions of this regulation is $275,000.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Monitoring of harvest on registration forms will involve tabulation of forms submitted in the Ballard and Henderson-Union reporting areas. Permits will be issued to approximately 500 individuals and landowners.

(3) Assessment of anticipated effect on state and local revenues: Approximately 14,000 waterfowl hunters may be expected to expend money for equipment, transportation, food and lodging. The average annual expenditure for these items is $216 per migratory bird hunter according to the National Hunting and Fishing Survey. State and local revenues can be expected to be positively affected due to the necessary expenditures for the required licenses and taxes levied upon items purchased by hunters.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest of migratory birds occur through a regulated hunting season that is held within a specific time frame. Therefore, the only available alternative to regulated hunting is closure of the season. This alternative was rejected as contrary to the conservation ethic which is based upon the wise use of renewable resources and the fact that the involved species populations are at levels which can sustain a regulated harvest by Kentucky sportsmen. The regulated hunting alternative selected is that which will provide the most opportunity to Kentucky waterfowl hunters while affording necessary protection to the waterfowl resource.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Only one class of citizen, the hunter, is impacted by this regulation. However, waterfowl are unevenly distributed across the state temporarily, spatially and according to species and/or population. This regulation recognizes the variations in waterfowl abundance and adjusts hunting seasons accordingly.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 57, No. 163, Friday, August 21, 1992.

2. State compliance standards. State seasons and bag limits are within the federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Ducks, coots and mergansers: Not more than a 30-day season between October 1, 1992 and January 20, 1993. The state may be split into two zones with no more than two segments in each zone. The daily bag limit of ducks is 3 and may include not more than 2 mallards (no more than 1 hen mallard), 1 black duck, 2 wood ducks, 1 redhead, and 1 pintail of either sex. There is a point system option in which hen mallard, black duck, pintail, redhead and hooded merganser are 100 point birds, mallard drake and wood duck are 50 point birds and all other species of ducks and mergansers are 35 points. The possession limit shall be twice the daily bag. The season on canvasbacks is closed. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit, except when the point system is chosen. Then mergansers are part of the point system.

Geese: Western zone season may extend for 79 days between September 26, 1992 and January 31, 1993, or until the harvest of 22,400 birds is taken, whichever occurs first. The daily bag limit shall be 7 geese, to include no more than 2 Canada geese and 2 white-fronted geese.

Eastern zone season may extend for 70 days with a daily bag limit of 1 Canada goose or for 50 days with a daily bag limit of two Canada geese between the Saturday nearest October 1, 1992 and January 31, 1993. Possession limit is twice the daily bag limit.

Shooting hours shall be 1/2 hour before sunrise until sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall between September 1, 1992 and March 10, 1993 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The goose season runs for 67 days rather than 79 days due to the paucity of birds wintering in Kentucky during the early parts of the framework. Exerting hunting pressure on so few birds could jeopardize long-term bird use in Kentucky. The Ballard Wildlife Management Area season is for 38 days or 29 days shorter than the western goose zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing historic use patterns.

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. Hunting encourages spending by hunters for local goods and services. Local tax revenues will increase slightly.
3. State the aspect or service of local government to which this administrative regulation relates. This activity relates to KRS Chapter 150.
4. 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: Hunting encourages spending by hunters for local goods and services. State tax revenues will increase slightly. Activities involving hunting will not increase state or local expenditures beyond those necessary to enforce laws.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Proposed Amendment)

301 KAR 4:020. Ballard Wildlife Management Area [~~Refuge~~] restrictions.

RELATES TO: KRS 150.010, 150.025, 150.300, 150.600
STATUTORY AUTHORITY: KRS 13A.350, 150.025
NECESSITY AND FUNCTION: This regulation pertains to entering upon the premises and disturbing or poaching waterfowl and other wildlife on Ballard Wildlife Management Area [~~and Refuge~~], located in Ballard County. This regulation is necessary to prevent disturbance of migratory waterfowl. The function of this regulation is to insure that migratory waterfowl and other wildlife are not disturbed or molested during specified periods or in places that are closed. The purpose of this amendment is to update terminology and clarify the regulation. [~~by hunters and other persons.~~]

Section 1. Trespass by Unauthorized Persons. No person, except bona fide department employees acting under the direction of the commissioner of the department, director of Wildlife Division, [~~game management or~~] wildlife management area manager, [~~and~~] U.S. Fish and Wildlife Service special agents and other authorized persons, shall enter upon the premises of the Ballard [~~Refuge and~~] Wildlife Management Area for any reason [~~other than assigned duties by the above mentioned supervisors~~] during the period October 15 through March 15.

Section 2. Carrying of Firearms [~~Weapons~~] or Accompanied by a Dog. No person, except bona fide employees and U.S. Fish and Wildlife Service special agents engaged in assigned duties, shall enter upon the premises of the Ballard [~~Refuge and~~] Wildlife Management Area while accompanied by a dog, or carrying any type of firearms, bow and arrows or crossbow upon or about his person or in a vehicle, except when permitted during any regular hunting season as authorized by regulation.

Section 3. Trespass by Boat. During periods of high water or flood, no unauthorized person[~~(s)~~] may enter upon the premises of the Ballard [~~Refuge and~~] Wildlife Management Area by boat for any purpose. High water or flood conditions do not affect or change the [~~refuge or~~] management area boundary which is marked by yellow signs.

DON R. McCORMICK, Commissioner
DAVID H. GODBY, Chairman
CRIT LUALLEN, Secretary
APPROVED BY AGENCY: August 18, 1992
FILED WITH LRC: September 11, 1992 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 22, 1992 at 2 p.m. at the Kentucky Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky in the Commission Room. Individuals interested in attending this hearing shall notify this agency in writing by October 17, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Lauren E. Schaaf, Director, Wildlife Division, Kentucky Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Don R. McCormick
(1) Type and number of entities affected: Approximately 3100 annually.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body: None in addition to those currently being conducted.
(a) Direct and indirect costs or savings: None in addition to those currently being incurred.
1. First year: None in addition to those currently being incurred.
2. Continuing costs or savings: None in addition to those currently being incurred.
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: This regulation has been in effect since 1974. This current amendment only clarifies the regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: Not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
(6) Any additional information or comments: None
TIERING: Was tiering applied? Yes. Ballard Wildlife Management is closed during a specified period of the year and during floods. The only persons allowed on the area during these times are agents of the department carrying out official duties and persons that have been drawn to hunt at specified times under controlled conditions. This regulation recognizes this class of citizen to allow for the necessary limited access during closed periods on the area.

JUSTICE CABINET
Department of Corrections
(Proposed Amendment)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind administrative 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 administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised September [~~July~~] 15, 1992, are incorporated by reference and shall be referred to as Kentucky State Reformatory Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.

KSR 01-00-09	Public Information and News Media Relations
KSR 01-00-10	Entry Authorization for All Cameras and Tape Recorders Brought into the Institution
KSR 01-00-14	Extraordinary Occurrence Report
KSR 01-00-15	Cooperation and Coordination with Oldham County Court
KSR 01-00-19	Personal Service Contract Personnel
KSR 01-00-20	Consent Decree Notification to Inmates
KSR 02-00-01	Inmate Canteen [~~(Revised 7/15/92)~~]
KSR 02-00-03	Screening Disbursements from Inmate Personal Accounts
KSR 02-00-11	Inmate Personal Accounts
KSR 02-00-12	Institutional Funds and Issuance of Checks
KSR 04-00-02	Staff Training and Development
KSR 05-00-01	Officers' Daily Housing Security and Safety Log
KSR 05-00-02	Research Activities
KSR 05-00-03	Management Information Systems
KSR 06-00-01	Inmate Master File
KSR 06-00-02	Records Audit
KSR 06-00-03	Kentucky Open Records Law and Release of Psychological/ Psychiatric Information
KSR 07-00-02	Institutional Tower Room Regulations
KSR 07-00-04	Handling of PCB Articles and Containers
KSR 07-00-05	Proper Removal of Transformers
KSR 07-00-06	Asbestos Abatement
KSR 07-00-07	Discharge Monitoring Report (DMR)
KSR 07-00-08	Control of Hazardous Energy (Lockout or Tagout)
KSR 07-00-09	Inventory Control of Underground Storage Tanks
KSR 08-00-07	Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family
KSR 08-00-08	Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery
KSR 08-00-10	Hazardous Chemicals and Material Safety Data Sheet
KSR 09-00-04	Horizontal Gates/Box 1 Entry and Exit Procedure
KSR 09-00-05	Gate I Entrance and Exit Procedure
KSR 09-00-09	Contraband, Dangerous Contraband and Search Policy
KSR 09-00-14	Use of Force
KSR 09-00-21	Crime Scene Camera
KSR 09-00-22	Collection, Preservation, and Identification of Physical Evidence
KSR 09-00-23	Drug Abuse Testing
KSR 09-00-25	Inmate Motor Vehicle Operator's License
KSR 09-00-26	Contraband Outside Institutional Perimeter
KSR 09-00-27	Construction Crew Entry/Exit
KSR 09-00-28	Restricted Areas
KSR 09-00-29	Transportation of Inmates
KSR 09-00-30	Parole Board
KSR 09-00-31	Forced Cell Move in Medium or Maximum Area
KSR 10-00-12	Unit D - Designated Staff Visits
KSR 10-00-13	Unit D - Property Room Access
KSR 10-01-01	Unit D - Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training and Evaluation, Time and Attendance, and Unit Personnel Records
KSR 10-01-02	Unit D - General Operational Procedures
KSR 10-01-03	Unit D - Inmate Tracking System and Records System
KSR 10-01-04	Unit D - Administrative Segregation
KSR 10-01-05	Unit D - Disciplinary Segregation
KSR 10-01-06	Unit D - Protective Custody
KSR 10-01-07	Unit D - Geriatrics
KSR 10-01-08	Unit D - Safekeepers
KSR 10-01-09	Unit D - Hold Ticket Residents
KSR 10-00-10	Unit D - and Unit E - Special Management Inmate Legal Access
KSR 10-01-11	Unit D - Behavior Problem Control
KSR 10-02-01	Mental Health Staffing Pattern
KSR 10-02-02	Unit E Designated Staff Visits
KSR 10-02-03	Unit E-1 Convalescent Care
KRS 10-02-04	Unit E-General Operating Procedures
KSR 11-00-01	Meal Planning for the General Population
KSR 11-00-02	Special Diets
KSR 11-00-03	Food Service Inspections
KSR 11-00-04	Dining Room Rules and Dress Code for Inmates
KSR 11-00-06	Health Standards/Regulations for Food Service Employees
KSR 11-00-07	Early Chow Line Passes for Medically Designated Inmates
KSR 12-00-01	Inmate Summer Dress Regulations
KSR 12-00-03	State Items Issued to Inmates
KSR 12-00-07	Regulations for Inmate Barbershop
KSR 12-00-09	Treatment of Inmates with Body Lice
KSR 13-00-02	Hospital Operations, Rules and Regulations
KSR 13-00-03	Medication for Inmates Leaving Institution Grounds
KSR 13-00-04	Medical and Dental Care
KSR 13-00-05	Medical Records
KSR 13-00-08	Institutional Laboratory Procedures
KSR 13-00-09	Institutional Pharmacy Procedures
KSR 13-00-10	Requirements for Medical Personnel
KSR 13-00-11	Health Evaluation
KSR 13-00-12	Vision Care/Optometry Services
KSR 13-00-14	Periodic Health Examinations for Inmates
KSR 13-00-15	Medical Alert System
KSR 13-00-16	Suicide Prevention and Intervention Program
KSR 13-00-17	Special Care
KSR 13-02-01	Mental Health Services
KSR 13-02-02	Mentally Retarded Inmates
KSR 13-02-03	Suicide Prevention and Intervention Program
KSR 13-02-04	Division of Mental Health's Residential Services
KSR 14-00-01	Inmate Rights
KSR 14-00-04	Inmate Grievance Procedure
KSR 15-00-02	Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s) [~~(Revised 7/15/92)~~]
KSR 15-00-05	Differential Status for SU (QUIT) Inmates
KSR 15-00-06	Inmate I.D. Cards [~~(Revised 7/15/92)~~]
KSR 15-00-07	Inmate Rules and Discipline - Adjustment Committee Procedures
KSR 15-00-08	Firehouse Living Area
KSR 15-00-10	Program Services for Special Housing Placement (Amended 9/15/92)
KSR 15-01-01	Operational Procedures and Rules and Regulations for Unit A, B & C: Functions of Assigned Personnel

KSR 15-01-02	Operational Procedures and Rules and Regulations for Unit A, B, & C: Staff Operational Procedures
KSR 15-01-03	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Rules and Regulations
KSR 15-01-04	Institutional Medical and Fire Safety Service: Unit Application [~~(Revised 7/15/92)~~]
KSR 15-01-05	Operational Procedures Rules and Regulations for Unit A, B, & C: Institutional Inmate Services
KSR 15-01-06	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Honor Housing Criteria and Regulations (Amended 9/15/92)
KSR 16-00-02	Inmate Correspondence and Mailroom Operations
KSR 16-00-03	Inmate Access to Telephones
KSR 16-01-01	Visiting Regulations
KSR 16-01-02	Lawn Visit Regulations
KSR 16-01-03	Night Visit Regulations
[~~KSR 17-00-03~~	~~Notifying Inmates' Families of Admission and Procedures for Mail and Visiting (Deleted 9/15/92)~~]
KSR 17-00-05	Dormitory 10 Operations
KSR 17-00-06	Identification Department Admission and Discharge Procedures
KSR 17-00-07	Inmate Personal Property
KSR 17-00-08	Repair of Inmate Owned Appliances by Outside Dealers
KSR 18-00-04	Returns from Other Institutions
KSR 18-00-05	Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill
KSR 18-00-06	Classification and Special Notice Form
KSR 18-00-07	Kentucky State Reformatory Placement Committee (Amended 9/15/92)
KSR 19-00-01	Inmate Work Incentives
KSR 19-00-02	On-the-job Training Program
KSR 19-00-03	Safety Inspections of Inmate Work Assignment Locations
KSR 19-00-05	Food Service On-The-Job Training and Workers Rules
KSR 20-00-01	Technical and Adult Basic Level Learning Center Programs
KSR 20-00-04	Criteria for Participation in A College Program
KSR 21-00-01	Legal Aide Office and Inmate Law Library Services and Supervision
KSR 21-00-02	Inmate Library Services
KSR 21-00-03	Library Services for Unit D
KSR 22-00-03	Inmate Organizations
KSR 22-00-07	Inmate Magazine
KSR 23-00-02	Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 23-00-03	Religious Programming
KSR 25-00-01	Discharge of Inmates to Hospital or Nursing Home
KSR 25-00-02	Violations of Law or Code of Conduct by Inmates on Parole Furlough
KSR 25-00-03	Preparole Progress Report

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: September 15, 1992

FILED WITH LRC: September 15, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 26, 1992 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron and Tom Campbell, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron

(1) Type and number of entities affected: 553 employees of the Kentucky State Reformatory, 1390 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. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET
Department of Corrections
(Proposed Amendment)

501 KAR 6:060. Northpoint Training Center.

RELATES TO: KRS Chapters 196, 197, 439

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

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the commissioner [~~secretary~~] to adopt, amend or rescind administrative 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 administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised September 15 [~~August 14~~], 1992, are incorporated by reference and shall be referred to as Northpoint Training Center Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, 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.

NTC 01-05-01	Extraordinary Occurrence Reports
NTC 01-10-01	Legal Assistance for Staff
NTC 01-11-01	Political Activities of Merit Employees
NTC 01-15-01	Establishment of the Warden as Chief Executive Officer
NTC 01-17-01	Relationships with Public, Media and Other Agencies
NTC 02-02-02	Warden's Participation in the Agency Budgeting Process
NTC 02-03-01	Fiscal Management: Audits
NTC 02-04-01	Internal Control and Monitoring of Accounting Procedures

NTC 02-07-02 Chapel Fund
NTC 02-08-01 Inmate Canteen
NTC 02-10-01 Insurance Coverage
NTC 02-12-01 Inmate Personal Accounts
NTC 04-01-01 Training and Staff Development
NTC 04-04-01 Firearms and Chemical Agents Training
NTC 06-01-01 Offender Records
NTC 06-01-02 Records - Release of Information
NTC 06-01-03 Taking Offender Record Folders onto the Yard
NTC 08-05-01 The Fire and Safety Officer
NTC 08-05-02 Fire Procedures
NTC 08-05-03 Fire Prevention
NTC 08-05-04 Storage of Flammables and Dangerous Chemicals and Their Use
NTC 08-07-01 Safety Standards
NTC 10-01-01 Special Management Unit
NTC 10-02-01 Protective Custody Unit
NTC 10-03-01 Protective Custody
NTC 11-03-01 Food Services: General Guidelines
NTC 11-04-01 Food Service: Meals
NTC 11-04-02 Menu, Nutrition and Special Diets
NTC 11-05-02 Health Standards and Regulations for Food Service Employees
NTC 11-06-01 Inspection and Sanitation
NTC 11-07-01 Purchasing and Storage of Food Products
NTC 12-01-01 Institutional Inspection
NTC 12-02-01 Personal Hygiene for Inmates; Clothing and Linens
NTC 12-02-02 Issuance of Personal Hygiene Products
NTC 13-01-01 Emergency Medical Care Plan
NTC 13-01-02 Emergency and Specialized Health Services
NTC 13-02-01 Administration and Authority for Health Services
NTC 13-03-01 Sick Call and Pill Call
NTC 13-04-01 Utilization of Pharmaceutical Products
NTC 13-05-01 Dental Services
NTC 13-05-02 Health Maintenance Dental Services
NTC 13-05-03 Dental Radiation Levels
NTC 13-05-04 Attest Steam Incubator
NTC 13-06-01 Licensure and Training Standards
NTC 13-07-01 Provisions for Health Care Delivery
NTC 13-08-01 Medical and Dental Records
NTC 13-09-01 Special Diets
NTC 13-11-01 Inmate Health Screening and Evaluation
NTC 13-12-01 Special Health Care Programs
NTC 13-17-01 Inmates Assigned to Health Services
NTC 13-19-01 Mental Health Care Program
NTC 13-19-03 Suicide Prevention and Intervention Program
NTC 13-20-01 Infectious Disease
NTC 13-20-02 Infection Control
NTC 13-20-03 Disposal of Biohazard Waste
NTC 13-21-01 Vision Care and Optometry Services
NTC 13-22-01 Informed Consent
NTC 13-23-01 Special Needs Inmates
NTC 14-01-01 Legal Services Program
NTC 14-01-02 Receiving, Viewing, Handling and Storage of Video Tapes
NTC 14-02-01 Inmate Grievance Procedure
NTC 14-03-01 Inmate Rights and Responsibilities
NTC 14-03-02 Board of Claims
NTC 15-01-01 Restoration of Forfeited Good Time
NTC 15-02-01 Due Process/Disciplinary Procedures
NTC 15-02-02 Extra Duty Assignments
NTC 15-02-03 Hearing Officer
NTC 15-03-01 Rules for Inmates Assigned to Outside Detail
NTC 15-03-02 Rules and Regulations for General Population Dormitories
NTC 15-04-01 Inmate Identification
NTC 16-01-01 Mail Regulations
NTC 16-02-01 Visiting
NTC 16-02-02 Extended and Special Visits
NTC 16-02-03 Honor Dorm Visiting
NTC 16-03-01 Inmate Furloughs
NTC 16-05-01 Telephone Use and Control
NTC 17-01-01 Personal Property Control
NTC 17-01-02 Authorized Inmate Personal Property [~~(Revised 8-14-92)~~]
NTC 17-01-03 Unauthorized Inmate Property [~~(Revised 8-14-92)~~]
NTC 17-01-04 Disposition of Unauthorized Property [~~(Revised 8-14-92)~~]
NTC 17-01-05 State Issue and Required Inmate Clothing [~~(Revised 8-14-92)~~]
NTC 17-03-01 Assessment/Orientation [~~(Revised 8-14-92)~~]
NTC 18-01-01 Preparole Progress Report [~~(Revised 8-14-92)~~]
NTC 18-02-01 Classification [~~(Revised 8-14-92)~~]
NTC 18-02-02 Classification - 48 Hour Notification [~~(Revised 8-14-92)~~]
NTC 18-03-01 Special Notice Form [~~(Revised 8-14-92)~~]
NTC 18-05-01 Transfers of Inmates [~~(Revised 8-14-92)~~]
NTC 18-05-02 Transfer of Inmates to Kentucky Correctional Psychiatric Center [~~(Revised 8-14-92)~~]
NTC 19-01-01 Inmate Work Program
NTC 19-01-03 Temporary Leave from Job Assignment [~~(Revised 8-14-92)~~]
NTC 19-02-01 Correctional Industries [~~(Revised 8-14-92)~~]
NTC 19-02-02 Guidelines for Correctional Industries [~~(Revised 8-14-92)~~]
NTC 20-01-01 Academic School Program
NTC 20-02-01 Vocational School
NTC 20-02-02 Live Work Projects in Vocational School Classes [~~(Revised 8-14-92)~~]
NTC 21-01-01 Library Services [~~(Revised 8-14-92)~~]
NTC 22-03-01 Conducting Inmate Organizational Meetings and Programs (Amended 9/15/92)
NTC 23-01-01 Religious Services (Amended 9/15/92)
NTC 23-03-01 Marriage of Inmates (Amended 9/15/92)
NTC 24-04-01 Honor Status (Amended 9/15/92)
NTC 24-05-01 Unit Management (Amended 9/15/92)
NTC 25-01-01 Release Preparation Program (Amended 9/15/92)
NTC 25-01-02 Temporary Release/Community Center Release (Amended 9/15/92)
NTC 25-01-03 Graduated Release (Amended 9/15/92)
NTC 25-02-01 Funeral Trips and Bedside Visits (Amended 9/15/92)
NTC 25-03-01 Inmate Release Procedure
NTC 26-01-01 Citizen Involvement and Volunteer Services Program (Amended 9/15/92)

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: September 15, 1992
FILED WITH LRC: September 15, 1992 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 26, 1992, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack T. Damron and Tom Campbell, Department of Corrections, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 274 employees of the Northpoint Training Center, 917 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. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET
Department of Corrections
(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 commissioner [~~secretary~~] to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department [~~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 administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised September [~~July~~] 15, 1992, are incorporated by reference and 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, Department of Corrections, 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 (Deleted 9/15/92)~~]
KCIW 01-08-01 News Media Access
KCIW 02-01-01 Comprehensive Insurance Coverage [~~(Revised 7/15/92)~~]
KCIW 02-02-01 Fiscal Management: Audits [~~(Revised 7/15/92)~~]
[~~KCIW 02-02-03 Fiscal Management: Checks (Deleted 9/15/92)~~]
KCIW 02-02-04 Institution Purchasing Procedures
KCIW 02-03-01 Inventory Control of Nonexpendable Personal Property (Amended 9/15/92)
KCIW 02-03-02 Inventory and Control of Stores
KCIW 02-04-01 Accounting Procedures
KCIW 02-05-01 Inmate Canteen and Staff Canteen
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
KCIW 10-01-02 Special Management Unit Programs, Placement and Review
KCIW 10-01-04 Special Security
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 and Clothing Issuance
KCIW 12-02-03 Donated Items
KCIW 12-04-01 Sanitation and General Living Conditions
KCIW 12-04-02 Hair Care Services
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 13-04-01 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 Examination for 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 14-04-01 Inmate Grievance Procedure
[~~KCIW 15-01-02 Adjustment Committee Procedures and Programs (Deleted 9/15/92)~~]
KCIW 15-03-01 Inmate Rule Book
KCIW 15-06-01 Restriction Guidelines
KCIW 16-01-01 Inmate Correspondence
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 (Amended 9/15/92)
KCIW 16-04-01 Inmate Indigent Fund
KCIW 16-05-01 Inmate Packages
KCIW 17-01-01 Assessment Center Operation and Reception Programs [~~(Revised 7/15/92)~~]
KCIW 17-01-02 Assessment/Classification Center Operations, Rules and Regulations (Amended 9/15/92)
KCIW 17-01-03 Assessment and Classification Unit Property Guidelines
KCIW 17-02-01 Identification Department Admissions
KCIW 17-05-01 Inmate Personal Property Guidelines
KCIW 18-01-02 Institutional Housing Assignments
KCIW 18-01-03 Honor Program [~~(Added 7/15/92)~~]
KCIW 18-02-01 Classification Procedures
KCIW 18-05-01 Special Needs Inmates
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 [~~(Revised 7/15/92)~~]
KCIW 25-03-01 Escorted Community Leave

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: September 15, 1992
FILED WITH LRC: September 15, 1992 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 26, 1992, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron or Tom Campbell, Corrections Cabinet, 5th 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, 331 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. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET
Department of Corrections
(Proposed Amendment)

501 KAR 6:120. Blackburn 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 commissioner [~~secretary~~] to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department [~~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 administrative regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Department of Corrections [~~Cabinet~~] the following policies and procedures are incorporated by reference on September 15 [~~July 13~~], 1990 and hereinafter should be referred to as Blackburn Correctional Complex and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections [~~Cabinet~~], State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel weekdays 8 a.m. to 4:30 p.m.

BCC 01-05-01 Duty Officer and Acting Warden (Amended 9/15/92)
BCC 01-07-01 Extraordinary Occurrence Reports (Amended 9/15/92)
BCC 01-09-01 Legal Assistance for Staff (Amended 9/15/92)
BCC 01-11-01 Roles of Consultants, Contract Employees, Volunteers and Employees of Other Agencies (Amended 9/15/92)
BCC 01-13-01 Relationships with Public, Media, and Other Agencies (Amended 9/15/92)
BCC 01-15-01 Internal Affairs Office (Amended 9/15/92)
BCC 01-16-01 Tours of Blackburn Correctional Complex (Amended 9/15/92)
BCC 01-19-01 Inmate Access to BCC Staff (Amended 9/15/92)
BCC 02-01-01 Inmate Canteen
BCC 02-02-01 Fiscal Responsibility
BCC 02-02-02 Fiscal Management: Accounting Procedures
BCC 02-02-03 Fiscal Management: Checks [~~(Amended 7/13/90)~~]
BCC 02-02-04 Fiscal Management: Budget
BCC 02-02-05 Fiscal Management: Insurance
BCC 02-02-06 Fiscal Management: Audits
BCC 02-04-01 Billing Method for Health Services Staff Paid by Personal Service Contract
BCC 02-05-01 Property Inventory
BCC 02-06-01 Purchasing
BCC 02-07-01 Inmate Personal Accounts
BCC 04-02-01 Firearms Training
BCC 04-03-01 Educational Assistance Program
BCC 05-01-01 Inmate Participation in Authorized Research
BCC 06-01-01 Storage of Expunged Records
BCC 06-02-01 Records - Release of Information
BCC 06-02-02 Offender Records [~~(Amended 7/13/90)~~]
BCC 06-03-01 Reporting Inmate Misconduct Following Favorable Recommendation by the Parole Board
BCC 08-02-01 Natural Disaster Plan (Tornado)
BCC 08-03-01 Emergency Preparedness Plan Manual
BCC 08-04-01 Fire Safety Plan, Drills and Related Staff Duties
BCC 08-04-02 Immediate Release of Inmates from Locked Areas
BCC 08-05-01 Duties of Fire Safety Officer
BCC 08-06-01 Storage Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials
BCC 08-07-01 Facility Furnishings: Exit and Emergency Lights and Noncombustible Containers
BCC 09-01-01 Inclement Weather/Emergency Condition Operation
BCC 09-02-01 Restricted Areas
BCC 09-02-02 Inmate Pass System to Restricted Areas
BCC 09-02-03 Regulation of Inmate Movement
BCC 09-02-04 Radio Escorted Yard Movement During Daylight Savings Time (November 1 - April 30)
BCC 09-03-01 Inmate Identification
BCC 09-04-02 Complex Entry & Exit
BCC 09-05-01 Key Control
BCC 09-06-02 Transportation to Courts
BCC 09-07-01 Drug Abuse and Intoxicants Testing
BCC 09-08-02 Use of Restraints

BCC 09-09-01 Population Counts and Count Documentation
BCC 09-10-03 Development of Institutional Post Orders
BCC 09-10-04 Governmental Services, Study Release Officer Post Orders
BCC 09-10-05 Unit A-1 Post Orders
BCC 09-10-06 Recreation Post Orders: Observation
BCC 09-10-07 Entrance Gate Post Orders
BCC 09-10-08 Visiting Area Post Orders
BCC 09-10-09 Security Staff General Orders
BCC 09-10-10 Dining Room Officer Post Orders
BCC 09-12-01 Use of Physical Force; Prohibition of Personal Abuse and Corporal Punishment
BCC 09-13-01 Perimeter Patrol
BCC 09-14-01 Prohibiting Inmate Authority Over Other Inmates
BCC 09-15-01 Search Policy/Disposition of Contraband [~~(Amended 7/13/90)~~]
BCC 09-16-01 Security Activity Logs
BCC 09-17-01 Institutional Supervisor Inspections
BCC 09-18-01 Use of State Vehicles and Staff Owned Vehicles
BCC 09-19-01 Duties and Responsibilities of the Institutional Captain
BCC 09-19-02 Duties and Responsibilities of the Shift Supervisor
BCC 09-20-01 Inmate Death
BCC 09-21-01 Tool Control
BCC 09-22-01 Emergency Communication System
BCC 10-01-01 Special Management Inmates
BCC 10-01-02 Short-Term Administrative Segregation Holding Area
BCC 11-01-01 Menu and Special Diets
BCC 11-02-01 Food Service: Inspection, Health Protection and Sanitation
BCC 11-03-01 Food Service: Meals
BCC 11-04-01 Dining Room Guidelines
BCC 11-05-01 Food Service Security: Knife & Other Sharp Instrument/Utensil Control
BCC 11-06-01 Purchasing, Storage and Farm Products
BCC 11-07-01 Food Service Operations Manual
BCC 12-02-01 Personal Hygiene Items
BCC 12-02-02 Personal Hygiene for Inmates: Clothing, Linens and Shower Facilities
BCC 12-05-01 Barber Shop Services
BCC 12-06-01 BCC Housekeeping Plan
BCC 13-01-01 Sick Call and Pill Call
BCC 13-02-01 Administration and Authority for Health Services
BCC 13-03-01 Provisions of Health Care Delivery
BCC 13-04-01 Licensure and Training Standards
BCC 13-05-01 Medical Alert System
BCC 13-06-01 Health Care Practices
BCC 13-07-01 Emergency Medical Care Plan
BCC 13-07-02 Emergency and Specialized Health Services
BCC 13-07-03 Immediate Medical Treatment for Person's Injured by Weapon or Chemical Agent
BCC 13-08-01 Inmate Health Screening and Evaluation
BCC 13-09-01 Prohibition on Medical Experimentation
BCC 13-10-01 Dental Services
BCC 13-11-01 Suicide Prevention and Intervention Program
BCC 13-12-01 Use of Pharmaceutical Products
BCC 13-12-02 Parenteral Administration of Medications and Use of Psychotropic Drugs
BCC 13-13-01 Inmate Health Education
BCC 13-14-01 Management of Serious and Infectious Diseases
BCC 13-15-01 Informed Consent
BCC 13-16-01 Health Records
BCC 13-17-01 Notification of Inmate Family in the Event of Serious Illness, Injury or Surgery
BCC 13-19-01 Physicians Referrals/Continuity of Care
BCC 13-20-01 Chronic and Convalescent Care
BCC 13-22-01 Psychiatric and Psychological Services, Handling of Mentally Retarded Inmates and Transfers
BCC 13-23-01 First Aid Kits
BCC 14-01-01 Office of Public Advocacy Attorney Visits
BCC 14-02-01 Law Library
BCC 14-03-01 Inmate Grievance Procedure
BCC 14-04-01 Inmate Rights and Responsibilities
BCC 14-05-01 Inmate Claims
BCC 14-06-01 Legal and Support Services for Indigent Inmates
BCC 15-02-01 Meritorious Living Unit (B-1)
BCC 15-02-02 Room Assignment
BCC 15-03-01 Rules and Regulations for Dormitories
BCC 15-04-01 Restoration of Forfeited Good Time
BCC 15-05-01 Extra Duty Assignments
BCC 15-06-01 Due Process/Disciplinary Procedures
BCC 16-01-01 Inmate Furloughs
BCC 16-02-01 Visiting [~~(Amended 7/13/90)~~]
BCC 16-03-01 Inmate Packages
BCC 16-03-02 Outgoing Inmate Packages
BCC 16-03-03 Inmate Correspondence [~~(Amended 7/13/90)~~]
BCC 17-02-01 Authorized Inmate Personal Property
BCC 17-03-01 Processing of New Inmates From Local Jails
BCC 18-01-01 Classification: Institutional Classification and Reclassification
BCC 18-02-01 Racial Balance in Living Areas
BCC 19-01-01 Inmate Work Programs [~~(Amended 7/13/90)~~]
BCC 19-02-01 Classification of Inmates to Governmental Service Program
BCC 19-03-01 Correctional Industries
BCC 20-01-01 Academic and Vocational School [~~(Amended 7/13/90)~~]
BCC 20-02-01 College Programs
BCC 20-04-01 Educational Program Evaluation
BCC 20-05-01 Educational Program Planning [~~(Amended 7/13/90)~~]
BCC 20-06-01 Academic and Vocational Curriculum [~~(Amended 7/13/90)~~]
BCC 21-01-01 Library Services [~~(Amended 7/13/90)~~]
BCC 22-01-01 Arts and Crafts/Production and Sale of Items
BCC 22-02-01 Privileged Trips
BCC 22-03-01 Recreational Employees
BCC 22-04-01 Recreation and Inmate Activities
BCC 22-04-02 Inmate Clubs and Organizations
BCC 22-04-03 Conducting Inmate Organizational Meetings and Programs
BCC 22-04-04 Recreation Program Availability
BCC 22-04-05 Supervision of Leisure-time Craft Club Activities and Materials
BCC 22-06-01 Music Club
BCC 22-08-01 Unit Recreation Program
BCC 22-09-01 Use of Inmates in Recreation Programs
BCC 23-01-01 Religious Services [~~(Amended 7/13/90)~~]
BCC 24-01-01 Duties and Responsibilities of Classification and Treatment Officers
BCC 24-02-01 Duties and Responsibilities of the Unit Director and Assistant to Unit Director
BCC 24-03-01 Social Services [~~(Amended 7/13/90)~~]
BCC 25-01-01 Inmate Check Out Procedure
BCC 25-02-02 Temporary Release/Community Center Release
BCC 25-05-01 Supplemental Preparole Progress Reports
BCC 26-01-01 Citizen Involvement and Volunteer Service Program

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: September 15, 1992
FILED WITH LRC: September 15, 1992 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 26, 1992 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Jack Damron or Tom Campbell, 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: 90 employees of the Blackburn Correctional Complex, 384 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. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET
Department of Corrections
(Proposed Amendment)

501 KAR 6:160. Correctional Industries.

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 commissioner [~~secretary~~] to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the department [~~cabinet~~] or any division therein.

Section 1. Pursuant to the authority vested in the Department of Corrections [~~Cabinet~~] the following policies and procedures revised September [~~January~~] 15, 1992 are incorporated by reference and shall be referred to as Correctional Industries Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of 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.

CI 01-01-01	Establishment and Issuance of Policies and Procedures (Amended 9/15/92)
CI 01-01-02	Administration and Use of the Policy and Procedures Manual, Including Issuance, Revision and Dissemination (Amended 9/15/92)
CI 01-02-01	Organization of Correctional Industries
CI 01-03-01	Annual Planning Document (Amended 9/15/92)
CI 01-04-01	Personnel Records
CI 01-04-04	New Employee Orientation
CI 02-01-01	Budgeting (Amended 9/15/92)
CI 02-02-01	Purchasing (Amended 9/15/92)
CI 02-03-01	Equipment Inventory and Other Nonexpendable Items (Amended 9/15/92)
CI 02-04-01	Accounts Receivable (Amended 9/15/92)
CI 03-01-01	Raw Material and Work In-Process Inventory
CI 03-01-02	Finished Goods Inventory (Amended 9/15/92)
CI 03-01-03	Stocking of Warehouse
CI 03-02-01	Delivery of Goods and Services
CI 03-02-02	Pickup of Reupholstery and Repair Items
CI 04-01-01	Marketing
CI 04-02-01	Advertising Correctional Industry Products and Services
CI 04-02-02	Correctional Industries Catalog
CI 04-02-03	Prototypes and Samples Not For Sale
CI 04-03-01	Pricing of Correctional Industries Products
CI 04-03-02	Preparation of Bids
CI 04-03-03	Customer Orders
CI 04-03-04	Sale of Industry Products to Private Individuals (Amended 9/15/92)
CI 04-03-05	Sales and Sales Reporting
CI 04-04-02	Warranty of Products
CI 05-01-01	Inmate Job Descriptions
CI 05-01-02	Equal Opportunity Employment
CI 05-01-03	Job Performance Evaluations
CI 05-01-04	Inmate Compensation [~~(Revised 1/15/92)~~]
CI 05-01-05	Job Assignments
CI 05-02-01	Inmate Orientation
CI 05-03-01	Standards for Working in Correctional Industries Plants
CI 06-01-01	Safety and Working Conditions
CI 06-02-01	Key and Tool Control
CI 06-02-02	Searches
CI 06-02-03	Use of State Vehicles
CI 06-03-01	Inmate Supervision
CI 07-01-01	Production Scheduling
CI 07-01-02	New Production Development (Amended 9/15/92)
CI 07-02-01	Quality Control

JACK C. LEWIS, Commissioner
APPROVED BY AGENCY: September 15, 1992
FILED WITH LRC: September 15, 1992 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for October 26, 1992, at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Tom Campbell or Jack Damron, Department of Adult Institutions, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jack Damron
(1) Type and number of entities affected: 59 employees, 525 inmates and all visitors of Correctional Industries.
(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. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of School Administration and Finance
(Proposed Amendment)

702 KAR 5:080. Bus drivers' qualifications; responsibilities.

RELATES TO: KRS 156.160, 189.540

STATUTORY AUTHORITY: KRS 156.160, 189.540

NECESSITY AND FUNCTION: KRS 156.160 requires the State Board for Elementary and Secondary Education to adopt regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children; and KRS 189.540 requires the state board to adopt regulations to govern the design and operation of school buses. This regulation implements those duties relative to the qualifications and responsibilities of the school bus driver.

Section 1. All local boards of education shall require annual medical examination of each school bus driver and drivers of special vehicles used to transport school children to and from school and such events related to such schools. The medical examination shall include tests for hearing and vision disorders, emotional instability, and for serious medical conditions including diabetes, epilepsy, heart disease, and other chronic or communicable diseases if indicated in the opinion of the examining physician. The examination shall include tests for tuberculosis upon initial employment and positive reactors shall be required to have further evaluations. All medical examinations of the school bus drivers shall be reported on a form prescribed by the State Department of Education and submitted to the local superintendent. The form, TC 94-35, July 1990, and Supplement to TC 94-35, is incorporated by reference may be obtained from the Division of Pupil Transportation, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

Section 2. (1) Prior to initial employment or after any break in service (excluding summers), a criminal records and driving history check on all new school bus drivers shall be performed by local districts. Employment shall be contingent upon such a check. A school bus driver shall immediately report to the local superintendent or his designee any revocation of his driver's license or conviction for DUI or reckless driving.

(2) Drug tests shall be a condition of initial employment for Kentucky school bus drivers, school bus mechanics, and any other local school district personnel who drive a school bus, in accordance with the Kentucky Department of Education, Division of Pupil Transportation drug testing procedures. Drug tests in accordance with the drug testing procedures shall also be required of any school bus driver or school bus mechanic who is involved in a vehicle accident resulting in bodily injury or property damage over $1,000, except an accident in which the district's vehicle is struck while legally parked. The drug testing procedures KDE-1530, July 1992, are incorporated herein by reference, a copy of which may be obtained from the Division of Pupil Transportation, Department of Education, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601 from 8 a.m. - 4:30 p.m. Monday through Friday.

(3) Those employees required by this regulation to undergo a drug test as a result of a vehicle accident shall take the drug-alcohol test at the clinic selected by the district immediately following his return to the bus compound, if that return is during normal working hours. If the employee returns to the bus compound after normal working hours or is unable to return to the bus compound following the accident, the employee shall take the drug-alcohol test at the clinic assigned to that district the morning of the next working day. In the event the employee is confined to a hospital for treatment of injuries arising out of the accident and is thereby unable to report to the clinic assigned to that district the morning of the next working day, the employee shall take the drug-alcohol test at the treating hospital.

(4) In the event an employee is taking prescription medication(s) under the care of a physician, the bottle, vial or container issued by the pharmacist shall be brought in to the clinic administering the drug-alcohol test at the time of the test or within twenty-four (24) hours of the test. Each employee and medication(s) shall be reviewed individually and an evaluation made by the clinic and the superintendent of the local school district or his designee regarding medication(s) with potential negative effects on safety performance. In such an instance the employee may be referred by the district to the prescribing physician for the purpose of determining the possibility of changing to an alternative prescription without potential negative effects on safety performance, placed on medical leave, or directed to follow other appropriate action as deemed necessary by the superintendent of the local school districts.

(5) An employee's failure to comply with the district's request to have the drug-alcohol test administered in accordance with this policy shall result in immediate termination.

(6) If the required drug test results in a confirmed positive test after a vehicle accident, the employee may request a blood plasma or blood serum test to contest the positive urine test.

(7) [~~(2)~~] No person shall be employed as a school bus driver who has been convicted of driving any motor vehicle under the influence of alcohol or any illegal drug within the last five (5) years. No person shall drive a school bus unless he or she is physically or mentally able to operate a school bus safely and satisfactorily. If there is limitation of motion in joints, neck, back, arms, legs, or other bodily parts, due to injury or disease and that would limit the driver's ability to safely perform the task of safely driving a school bus, the driver shall be rejected. Any driver taking medication either by prescription or without prescription, shall not be permitted to drive if that medication would affect, in any way, the driver's ability to safely drive a school bus.

Section 3. (1) No person shall drive a school bus unless he or she has:

(a) Visual acuity of at least 20/40 (Snellan) in each eye either without glasses or by correction with glasses;

(b) Form field vision of not less than a total of 140 degrees; and

(c) The ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

(2) Drivers requiring correction by glasses shall wear properly prescribed glasses at all times while driving.

Section 4. No person shall drive a school bus whose hearing is less than 7/15 in the better ear, or hearing loss is greater than forty (40) decibels if audiogram is used, for conversational tones, with or without a hearing aid. Drivers requiring a hearing aid shall wear such properly operating aids at all times while driving.

Section 5. The board, at its discretion, may require a school bus driver to pass a routine physical examination or a special type physical examination more often than annually. The school bus driver shall have a current physical fitness certificate on file in the district superintendent's office.

Section 6. A driver shall not start driving a school bus until his 18th birthday. After April 1, 1992, school bus drivers shall be

twenty-one (21) years of age or older.

Section 7. (1) The school bus driver shall have a current driver's license that is valid in Kentucky. Beginning April 1, 1992, all Kentucky school bus drivers shall possess a commercial driver's license, with the passenger endorsement for a school bus, which is valid in Kentucky.

(2) A driver applicant, prior to acceptance into the driver training program, shall be required to demonstrate driving skills judged to be acceptable by a certified driver training instructor, with acceptable performance standards as outlined in the Division of Pupil Transportation curriculum and with the score sheet to become a part of each drivers record. Skill levels shall be demonstrated in:

(a) Vehicle knowledge;

(b) Driver ability to perform steering, shifting, maneuvering, braking, use of mirrors, and negotiate each of the following:

1. Ninety (90) degree left hand turns;
2. Ninety (90) degree right hand turns;
3. Straight ahead;
4. Irregular surface maneuverability at speeds;
5. Backing ability using mirrors only; and
6. Demonstration of spatial awareness.

Section 8. (1) Minimum training requirements to become a Kentucky school bus driver shall consist of the training course developed by the Kentucky Department of Education. The training course shall consist of the following instructional units and minimum instructional times:

(a) Laws and regulations - one (1) hour;
(b) Driving fundamentals - one (1) hour;
(c) Care and maintenance - one (1) hour;
(d) Critical situations - one (1) hour;
(e) Accidents and emergency procedures - one (1) hour;
(f) Pupil management - one (1) hour;
(g) First aid - one (1) hour;
(h) Special education transportation - five-tenths (.5) hour;
(i) Extracurricular trips - five-tenths (.5) hour; and
(j) Vehicle operations - three (3) hours.
(k) Vehicle control at speed - one (1) hour; and
(l) Bus route identification, driver review and instruction - two (2) hours.

(2) Upon successful completion of the core curriculum the school bus driver applicant shall complete within thirty (30) days:

(a) Driver review I, evaluation and instruction - two (2) hours within the first five (5) days of driving; and

(b) Driver review II, evaluation and instruction - two (2) hours not less than twenty (20) days nor more than thirty (30) days.

Section 9. (1) Certified drivers shall complete annually an eight (8) hour in-service update relevant to the curriculum prior to the beginning of the school year.

(2) Discontinuance of driver employment and subsequent reemployment shall require drivers to become requalified by a training update within a twelve (12) month period following his or her certification termination date.

(3) Drivers who are not updated and recertified within such twelve (12) month period shall be required to be retrained through the beginning training program.

Section 10. Substitute school bus drivers shall meet the same requirements as regular school bus drivers.

Section 11. In case of an emergency that would make it necessary for the driver to leave the bus while pupils are on board, the driver shall stop the motor, shift the bus to low gear, set the parking brake, remove the ignition key, and place one (1) of the older responsible pupils in charge during the driver's absence.

Section 12. The driver shall operate the school bus at all times in a manner that provides the maximum amount of safety and comfort for the pupils under the circumstances.

Section 13. The driver shall supervise the seating of the pupils on the bus. The driver shall make certain the seating capability of the bus has been fully utilized before any pupil is permitted to stand in the bus aisle.

Section 14. The driver shall not, at any time, permit pupils to stand in the stepwell or landing area or where the pupil would likely fall out of the bus if the rear emergency door was opened, or where the driver's view directly in front of the bus or to either side of the front of the bus would be obscured.

Section 15. The driver shall report to the superintendent any overcrowded conditions on the bus.

Section 16. The driver shall transport only those pupils officially assigned to a particular bus trip unless an unassigned pupil presents the driver with a written permit to ride the bus trip that has been signed by the school principal or his designate. The driver shall not permit an assigned pupil to leave the bus at a stop other than where the pupil regularly leaves the bus unless presented with a written permission signed by the principal or his designate.

Section 17. The driver shall not transport adult employees of the board or any person not employed by the board unless he receives written permission from the district superintendent.

Section 18. The driver shall not knowingly permit any firearms or weapons, either operative or ceremonial, to be transported on the bus. The driver shall not knowingly permit any fireworks or any other explosive materials of any type to be transported.

Section 19. The driver shall not knowingly permit any live animals, fowls, or reptiles to be transported on the bus. The driver shall not knowingly permit any preserved specimen to be transported that would likely frighten any pupil or cause a commotion on the bus.

Section 20. The driver shall not permit the transportation of any object that would likely block the bus aisle or exits in case of a collision.

Section 21. The driver shall not permit a pupil to operate the entrance door handle or any other bus control except in case of an emergency.

Section 22. The driver shall activate the flashing amber signal lights a sufficient distance from a bus stop to warn motorists of the intended stop. Once the bus comes to a complete stop, the driver shall activate the stop arm and red flashing signal lights.

Section 23. For safety reasons, the driver shall not permit fueling of the bus while pupils are on board the bus.

Section 24. If a pupil's conduct on the bus is such that it endangers the lives and morals of the other people on the bus and makes it unsafe for the bus to continue on its route, and when requested by the driver to desist from such conduct and the pupil does not comply, it shall be the duty of the driver to order the pupil to leave the bus. Should the order be ignored, the driver shall eject the pupil from the bus or send for assistance, whichever the circumstance dictates. Ejecting a pupil from the bus shall be done only in the most extreme circumstances. When ejection from the bus is required, the driver shall notify the principal of the school where the pupil attends, the district superintendent or some other school authority of the action taken as soon as possible.

Section 25. The school bus driver shall stop the bus at all places where the roadway crosses a railroad track or tracks at the grade level. The stop shall be made not less than fifteen (15) feet nor more than fifty (50) feet from the nearest track. After making the stop, the driver shall open the service door and driver side window and carefully look in each direction and listen for approaching trains

before proceeding. When the driver has ascertained that it is safe for the bus to cross the railroad tracks, he shall close the bus entrance door, shift the bus gears into the range that will provide adequate power and proceed immediately to cross the railroad tracks. In cases of severe weather or restricted visibility, the driver shall request assistance from the oldest pupils on the bus in determining whether or not it is safe for the bus to cross the railroad tracks. Under these circumstances, the stop signal arm and flashing warning lights shall be used only if these pupils get off the bus before it is driven across the tracks and board the bus after it has crossed the tracks.

Section 26 The driver shall have the authority to assign a pupil to a specific seat on the school bus.

Section 27. The driver shall make a pretrip inspection of the bus safety and operating equipment each time that the bus is taken out for the transportation of pupils.

Section 28. The school bus driver shall not operate the school bus at a speed in excess of the posted speed limit on any section of highways over which the bus travels. The bus shall not be operated upon any highway at speeds in excess of fifty-five (55) miles per hour. The driver shall not drive the school bus on any roadway at any time at a speed where the conditions of the roadway, weather conditions, or other extenuating circumstances would likely make it unsafe.

Section 29. The driver shall wear the driver's seat belt at all times that the bus is operated.

Section 30. The stop signal arm and flashing warning lights shall be used only at stops where pupils are boarding or leaving the bus.

Section 31. The driver shall not use tobacco products while operating the school bus, nor knowingly permit pupils to use tobacco products when on the school bus.

Section 32. The driver shall signal pupils who must cross a roadway to board or leave the bus when the driver has determined that any visible approaching traffic creating a substantive risk of harm has come to a complete stop and is not attempting to start up or pass the bus.

Section 33. A driver shall not operate a school bus while under the influence of alcoholic beverages or any illegal drug or other drug as provided in Section 2 of this regulation. Drivers found under the influence of alcohol or any illegal drugs while on duty or with remaining driving responsibilities that same day shall be dismissed from employment. A driver shall report to the superintendent or his designate immediately any revocation of license or conviction for driving under the influence.

Section 34. The driver of a school bus shall be on the bus at all times students are loading or unloading.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: September 14, 1992

FILED WITH LRC: September 15, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 28, 1992 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 23, 1992, 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: Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Stewart M. "Mike" Roscoe

(1) Type and number of entities affected: 176 Kentucky school districts.

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

1. First year: Approximately 1,500 tests @ $60 per test = $90,000.

2. Continuing costs or savings: Approximately 1,500 tests @ $60 per test = $90,000.

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

(b) Reporting and paperwork requirements: Test results will be kept on file at the local school level.

(2) Effects on the promulgating administrative body: The Division of Pupil Transportation will be responsible for printing and disseminating the drug policy.

(a) Direct and indirect costs or savings:

1. First year: Cost of printing and mailing drug policy - $400.

2. Continuing costs or savings: Perhaps less than $100 cost.

3. Additional factors increasing or decreasing costs: Unknown

(b) Reporting and paperwork requirements: Will be reported to the Division of Pupil Transportation on the present driver update form to be kept on the driver update computer program.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: A drug policy has been requested by the State Board for Elementary and Secondary Education.

(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. Applies equally to all districts.

EDUCATION AND HUMANITIES CABINET
Department of Education
(Proposed Amendment)

702 KAR 7:010. Terms and months.

RELATES TO: KRS 156.031, 158.060, 158.070

STATUTORY AUTHORITY: KRS 156.031, 156.070, 158.070

NECESSITY AND FUNCTION: KRS 156.031 requires that regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; and KRS 158.060 and 158.070 define and establish the school day, school month, and school term, and direct the State Board for Elementary and Secondary Education to adopt regulations governing the use of school days. This regulation is necessary for efficient management, control and operation of schools and to insure uniformity in the school term, month and day in all approved schools of the state.

Section 1. The minimum school term of 185 days with a minimum six (6) actual instructional hour day shall consist of nine (9) twenty

(20) day school months and one (1) partial school month of five (5) days. Schools shall be in session a minimum of six (6) actual instructional hours on each of these days except as otherwise provided by KRS 158.060, 158.070, the 1992 General Assembly budget bill, and regulations of the State Board for Elementary and Secondary Education.

Section 2. (1) If either a school district, or any school within a school district, during any school year, misses a total of five (5) hours or less on all school days shortened due to an emergency, this time shall not have to be made up and no shortened school day report shall be submitted to the Department of Education for those hours. Any time missed on shortened school days over the five (5) hours shall be made up and these hours beyond the five (5) shall be reported to the Department of Education on a shortened school day report. Partial days missed over the five (5) hours may be made up by extending the regular school day upon approval of the Department of Education. Those school districts already going longer than the six (6) hour minimum instructional day shall be allowed to count that extra time toward making up partial days missed over the five (5) hours forgiven but only upon approval of the Department of Education. The extended school day to make up hours missed beyond the five (5) hours shall start upon notification to the Department of Education, pending approval. Extending the school day or counting time beyond the six (6) hour minimum instructional day to make up time missed on shortened school days due to emergency shall be allowed only after the time is missed.

(2)(a) All full school days missed shall be made up by putting these full days back in the school calendar. All school districts shall have a minimum of 175 instructional days each school year except as provided in KRS 158.070 which shortens the minimum term for the 1992-94 biennium to allow for more professional development. The only exception shall be in extreme situations as explained in KRS 158.070(3)(a), (b), and (c). Disaster days as outlined in KRS 158.070(3)(b) may [~~shall~~] be approved by the Commissioner of Education and shall be reported to [~~recommended by the chief state school officer and approved by~~] the State Board for Elementary and Secondary Education at its next regularly scheduled meeting [~~only in catastrophic situations~~]. Only under dire circumstances shall any school district be excused from the required 175 day instructional year. Except as provided in paragraph (b) of this subsection, no school district shall be considered for local disaster days unless the district has missed more than twenty (20) full teaching days system-wide. All school districts shall make up at least the first twenty (20) full teaching days missed in a school year by adding these days back into the school calendar.

(b) The Commissioner of Education [~~chief state school officer and the State Board for Elementary and Secondary Education~~] shall continue considering requests for disaster days from school districts where one (1) school, or only part of the district, is forced to miss school due to an emergency on a particular day.

[~~(c) In the event a catastrophic situation occurs after the May meeting of the State Board for Elementary and Secondary Education, the chief state school officer shall act upon any request by local school districts for disaster days. Such action shall be reported to the State Board for Elementary and Secondary Education at its next regularly scheduled meeting.~~]

Section 3. Each day on which school is not in session for any reason other than those specified by State Board for Elementary and Secondary Education regulations or in excess of the limitations therein provided, shall not be counted in the minimum school term.

Section 4. No report shall be made until the completion of a twenty (20) day school month except that a report for the tenth school month shall be made at the conclusion of the school term.

Section 5. (1) Lack of compliance with minimum school day requirements shall, pursuant to KRS 157.350, result in appropriate proportional reductions in funding under the Support Educational Excellence in Kentucky Program.

(2) The following shall constitute the only approvable activities to be conducted during the minimum six (6) hour instructional school day:

(a) Courses and activities included in the "Program of Studies for Kentucky Schools, Grades K-12":

(b) Enrichment courses approved by the State Board for Elementary and Secondary Education;

(c) Experimental courses or programs approved by the State Board for Elementary and Secondary Education;

(d) Cocurricular activities, such as club meetings and assemblies, as long as such are related directly to the instructional program and are scheduled so as to minimize absences from classroom instruction; and

(e) Homeroom in the morning and afternoon for checking attendance. These periods shall not exceed ten (10) minutes per homeroom or twenty (20) minutes daily.

Section 6. The school day shall not be shortened on regularly scheduled school days except in cases of emergency declared by the local superintendent in accordance with policies of the local board of education.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: September 14, 1992

FILED WITH LRC: September 15, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 28, 1992 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 23, 1992, 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: Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul Hampton

(1) Type and number of entities affected: 176 local school districts.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings: None

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

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: None

(5) Identify any statute, administrative regulation or government

policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Section 2 and 3 of the Kentucky Constitution.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Learning Programs Development
(Proposed Amendment)

704 KAR 3:390. Extended school services.

RELATES TO: KRS 158.070

STATUTORY AUTHORITY: KRS 156.070, 158.070

NECESSITY AND FUNCTION: KRS 158.070 requires schools to provide continuing education beyond the minimum school term for students in need of such extended services and requires the State Board for Elementary and Secondary Education to promulgate administrative regulations establishing criteria for the allotment of grants to local school districts to provide such services. This regulation implements that duty.

Section 1. Definitions. (1) "Continuing education" means extended school services.

(2) "Extended school services" means instructional and support [related] services provided by school districts for students who need additional time to achieve academic expected outcomes. Such services shall be provided at times separate from the regular school day, regular school week, or minimum school term.

(3) "Support [Related] services" means noninstructional components of a program which are provided to enable the student to realize the benefits of the instructional program. Such services may include but are not limited to transportation, school-based counseling, [therapy,] parent training for follow through, and referrals [arrangements] for social, health and financial assistance through appropriate service agencies.

(4) "Instructional materials [and equipment]" means expendable and nonexpendable books, kits, software and manipulatives, but does not include computer hardware.

(5) "School district", as used in this section, means a local public education agency.

Section 2. Instructional Program. (1) The major emphases of extended school services shall be:

(a) To sustain students' present level of performance to [and] prevent them [students] from falling behind; [and]

(b) To provide extended programming for students who have been retained or who are at risk of being retained in a class or grade or of failing to graduate on time without additional assistance; and

(c) To close the achievement gap of low-performing students so that the students will perform successfully in the instructional program appropriate to their age ranges.

(2) The instructional program shall include:

(a) A method to assess the priority educational needs of each individual student and to determine the expected competencies to be exhibited by the student at the end of the extended program;

(b) An appropriate educational program designed for the individual student which assists the student in mastering the expected competencies within the timelines specified by the program;

(c) An ongoing method of informal and formal assessment to document the student's progress toward mastery of the expected competencies;

(d) A schedule of services for each student which shall be of the duration and regularity necessary to allow mastery of the expected competencies within a reasonable and projected timeline

(e) Teaching techniques which are supportive of the regular school program and which provide continuity with the regular program; and

(f) Varied instructional approaches which include but are not limited to those which are tutorial, diagnostic or prescriptive, computer-assisted, and in addition, counseling when such service is needed to assist the student in overcoming social or behavioral problems which interfere with the student's academic success.

(3) The instructional program may utilize a variety of scheduling models including but not limited to:

(a) Extended day programs which are scheduled any time outside of the regular school day and which may include a night program;

(b) Saturday programs which operate for a full or half day over a specified period of time;

(c) Summer programs which operate a full or half day during the months of June, July and/or August; and

(d) Flexible school calendars which allow eligible students to attend school for a longer period of time than other students.

(4) Teachers providing instruction in extended school programs which are offered for academic credit for purposes of promotion or graduation shall meet the same professional qualifications as teachers who are employed in the regular school program.

(5) Extended school services shall be provided to eligible students who are in the first year of the primary school program through the twelfth grade. Students shall be eligible to receive such services until such time as they graduate form the twelfth grade or become twenty one (21) years of age, whichever comes first.

Section 3. Student Selection. Selection of pupils to receive extended school services shall be as follows:

(1) Prior to adoption by the State Board for Elementary and Secondary Education of the outcomes expected of all students, each school district shall select pupils as described in Section 2(1) of this administrative regulation [to receive extended school services] who need additional instructional time to attain expected competencies. A student shall not be selected or assigned to receive extended school services for disciplinary purposes or for any kind of in-school suspension.

(2) A local board of education may mandate the attendance of eligible students to extended school services through the development of a policy which shall describe all conditions under which attendance will be required and shall provide a description of any exceptions permissible under the policy. Such conditions may include but are not limited to:

(a) The characteristics of the students who will be required to attend;

(b) A description of the criteria by which they may exit the extended school program or may no longer be required to attend;

(c) The conditions under which a targeted student may be excused from attendance;

(d) The arrangements for transporting the students mandated to attend. The local school board shall include a copy of the policy in the district's application for funds through extended school services.

(3) [(2)] In assessing students' need for extended school services, [attainment of competencies,] the schools shall consider each student's performance in:

(a) Academic skill areas for a single subject or single grade, application of such skills to everyday life situations, and integration of skills and experiences to acquire new information;

(b) School attendance when it negatively affects [academic] performance;

(c) Patterns of promotion or [,] retention [or dropping out];

(d) Physical and mental readiness for learning; and,

(e) When applicable, readiness for transition to work, postsecondary education or the military.

(4) Two (2) [(3) One (1)] or more of the following methods of documentation shall be used to verify which students shall be

determined eligible:

(a) Teacher recommendation based upon classroom observation and anecdotal records or parent recommendation;

(b) Academic performance based upon formal and informal measurements of progress; and

(c) Behavioral and developmental progress as documented in formal and informal assessments and reports.

(5) [~~(4)~~] Local school boards shall approve and disseminate procedures whereby pupils who have a greater need as determined by the eligibility criteria shall be referred and selected first to receive extended school services. Such procedures shall not exclude students who have greater academic need from referral or selection for extended school services due to the inability of the parent or student to provide transportation.

(6) [~~(5)~~] School districts shall ~~inform~~ parents and guardians of extended school services which will be offered in the school system including:

(a) A general notification which describes the nature of the services to be offered including the opportunities for maintenance of performance, prevention of failure and reduction of academic deficiencies;

(b) A specific notification to parents or guardians of their child's [~~identification of~~] eligibility to receive extended school services;

(c) Procedures for parents of guardians to request reconsideration of their children's identification or lack of identification of eligibility for extended school services.

(7) [~~(6)~~] Upon adoption by the State Board for Elementary and Secondary Education of the outcomes expected of all students, each school district shall select pupils to receive extended school services who need additional instructional time to achieve the outcomes.

Section 4. Funding. [~~In fiscal years 1991 and 1992,~~] Each school district shall be eligible to receive a grant award from available funds to provide extended school services. [~~In fiscal year 1991, available funds shall be the amount of the total appropriation less administrative costs which shall not exceed two (2) percent. In fiscal year 1992,~~] Available funds shall be the amount of the total appropriation less two (2) percent for state administrative costs and up to ten (10) percent which shall be reserved to fund innovative projects on a competitive basis. The chief state school officer shall determine the amount of the grant award for which each school district is eligible upon a formula approved annually by the State Board for Elementary and Secondary Education. [~~according to the following formula:~~

~~(1) Fifty (50) percent of available funds shall be distributed equally among school districts on the basis of average daily attendance (ADA) in the most recent school year.~~

~~(2) Fifty (50) percent of available funds shall be distributed to each school district based upon the most current data available for district average test score on a statewide administered test, district average dropout rate, and district economic deprivation rate as determined by the percent of students receiving free and reduced lunch.~~

~~(a) The following weights shall be applied to these factors:~~

~~TABLE~~

~~NCE TEST SCORE~~	~~WEIGHT~~
~~47.3 - 51.4~~	~~1~~
~~43.2 - 47.3~~	~~2~~
~~<43.2~~	~~3~~

~~DROPOUT RATE~~	~~WEIGHT~~
~~4.3>~~	~~3~~
~~2.9 - 4.3~~	~~2~~
~~1.5 - 2.9~~	~~1~~

~~ECON.DEPRIV.~~	~~WEIGHT~~
~~>58.0~~	~~4~~
~~40.3 - 58.0~~	~~3~~
~~<22.6 - 40.3~~	~~2~~
~~22.6~~	~~1~~

~~Weights generated for each school district in these three (3) categories shall be added together to generate a total weight for each school district.~~

~~(b) Each possible total weight shall be assigned a monetary value on a graduated scale by the chief state school officer. The amount of the monetary values shall be dependent upon the amount of funds equal to fifty (50) percent of the available funds for extended school services. The monetary value thus generated for each school district shall be multiplied by the district's total number of pupils in the primary school program through the twelfth grade to determine the allotment for each school district under this subsection.~~]

(1) [~~(3)~~] To ensure the opportunity for all school districts to provide effective extended school services of adequate size and scope, no school district shall receive a grant of less than $15,000.

(2) [~~(4)~~] Grant awards shall be made to each school district upon approval by the chief state school officer of an application as prescribed in Section 5 of this regulation. Beginning in FY 93, regular grant funds shall be available for use by school districts only in [~~throughout~~] the fiscal year in which the grant is awarded. [~~School districts shall be authorized to carry over such funds until September 30 of the succeeding fiscal year; however, in any fiscal year in which any school district has not fully budgeted and received approval for the grant funds for which it is eligible by April 15, such funds shall become available for reallocation to other school districts. School districts shall apply for reallocation funds to implement innovative extended school programs on a competitive basis. Grant awards for innovative programs shall be determined by the chief state school officer. In fiscal year 1992, funds available for innovative projects shall include reallocation funds as well as reserved funds which shall consist of ten (1) percent of the total appropriation.~~]

(3) [~~(5)~~] Funds received for extended school services shall be expended for instructional and support [~~related~~] services necessary to provide an effective program. Such services shall include salaries of personnel and may include instructional [~~,~~] materials and supplies if a need is demonstrated and the district does not have the supplies and materials available. Transportation and [~~equipment, indirect costs, transportation, when necessary,~~] staff development related to the provision of extended school services are approvable support services. [~~, and other related services.~~] Funds for extended school services shall not be used for capital outlay. School districts are authorized to enter into contractual arrangements when needed to provide comprehensive extended school service programs.

(4) [~~(6)~~] Appropriate financial records including separate ledgers for extended school services shall be maintained by each school district and such records as may be required shall be submitted to the Department of Education upon direction.

Section 5. Application for Funds. (1) School districts shall apply for funds to provide extended school services by submitting an application to the chief state school officer [~~no later than September 30 of each fiscal year~~] on forms provided by the Department of Education. The components which are scheduled to take place within the regular school term shall be submitted by July 1 of each fiscal year. The components [~~Notwithstanding the cutoff date, applications~~] may be amended [~~and specific components of applications submitted~~] until March 1 of the same [~~each~~] fiscal year.

(2) Application for funds for any summer school component which takes place in June shall be included in the application for the regular school term in the same fiscal year. The funds for that portion of the summer school shall be expended by June 30.

(3) Any summer school component which is scheduled to take place within July or August may be submitted and approved with the regular term application for the preceding fiscal year but shall be submitted no later than the preceding March 1 of the same calendar year. The component may be amended until the preceding June 15 of the same calendar year.

(4) [~~(2)~~] Applications shall include a description of the services to be provided and operated, a statement of the needs to be met, the methods to be used, the projected number of students to be served and the selection criteria, the facilities in which the program will be provided, the evaluation methods and a budget for each separate

component to be provided. The application shall also provide the number and type of certified and noncertified staff, including peer tutors, necessary to operate the program and shall include the criteria used in selecting the staff.

(5) [~~(3)~~] Applications shall be approved by the chief state school officer prior to the encumbrance or expenditure of such funds by any school district, including but not limited to the contracting for personnel for extended school services. Approval of programs as described in each district's application shall be based on operational guidelines approved and disseminated by the Department of Education. Such guidelines shall be annually reviewed and modified as needed.

Section 6. Program Evaluation. School districts providing extended school services shall submit an annual self-evaluation of [~~evaluate~~] the effectiveness of such services. The self-evaluation shall be developed according to instructions provided by the Department of Education and [~~Evaluation~~] shall be based upon the degree to which each student served in the program attains the expected competencies. Evaluation components shall [~~may~~] include but not be limited to such areas as percent of students achieving expected competencies, percent of students attending a specified percent of time, and percent of students who are promoted to the next level of the program as a result of the extended school services. School districts shall provide to the Department of Education the annual [a] report and other evaluation data deemed necessary by the Department of Education [~~of evaluation results~~].

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: September 14, 1992

FILED WITH LRC: September 15, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 28, 1992 at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 23, 1992, 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: Kevin M. Noland, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: William Scott, Carole Kruse

(1) Type and number of entities affected: 176 school districts.

(a) Direct and indirect costs or savings to those affected: Potentially, districts will receive a larger portion of the allocation due to a possible reduction in the amount retained in KDE for innovative grants.

1. First year: The 5% reduction in innovative grant funds allowed for an additional $1,632,885 to be distributed to local school districts.

2. Continuing costs or savings: To be determined annually.

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

(b) Reporting and paperwork requirements: An annual self-evaluation of the ESS program will be coordinated with the information needs of the Office of Education Accountability.

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Section 2 and 3 of the Kentucky Constitution.

KENTUCKY STATE UNIVERSITY
Board of Regents
(Proposed Amendment)

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 in accordance with 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.

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 Sections (1), (2), (3), (4), (5), (6), (7), (8), (10), (11), and (12) of KRS 164A.575. [~~KRS 164A.575(1) through (12).~~]

Section 2. The President of Kentucky State University, on behalf of the Board of Regents, is authorized to purchase interest in real property, contractual services, rentals of all types, supplies, materials, equipment, printing, and services, in accord with procedures based upon the principles of KRS Chapter 45A.

Section 3. The President of Kentucky State University, on behalf of the Board of Regents, is authorized to negotiate with vendors who maintain a general service administration price agreement with the United States of America or any agency thereof, provided, however, that no contract executed under this provision shall authorize a price higher than is contained in the contract between General Service Administration and the vendor affected.

BARBARA CURRY, Chairperson

APPROVED BY AGENCY: September 11, 1992

FILED WITH LRC: September 14, 1992 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on October 22, 1992, 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 October 17, 1992, 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: Up to $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: Up to $50,000 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: N/A

(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
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:020. Parts or materials list.

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. The function of this administrative regulation is to allow the department to permit the use of new parts and materials without amending specific administrative regulations for each new item. This administrative regulation will eliminate the repetitious amending of the Plumbing Code now required to include new materials item by item. This amendment is necessary to effectuate department policy in accordance with KRS Chapter 13A. [~~This amendment is necessary to add a new product approved by the Plumbing Code Committee on May 26, 1992.~~]

Section 1. Definitions. (1) "APML" shall mean the "Approved Parts or Materials List."

(2) "ABS" means acrylonitrile-butadiene-styrene pipe.

(3) "ASTM" means American Society for Testing Materials.

(4) "Parts or materials" shall mean all types of fittings and piping used in the soil, waste and vent systems, house sewers, potable water supply, plumbing fixtures, appurtenances, and mechanical sewage systems in plumbing systems.

(5) "Committee" shall mean the State Plumbing Code Committee.

(6) "Code" as defined by KRS 318.010(11).

(7) "Department" as defined by KRS 318.010(1).

(8) "Person" as defined by KRS 318.010(9).

(9) "PVC" means polyvinyl chloride pipe.

Section 2. Approved Parts or Materials List (APML). (1) Any part or material manufactured or produced according to a standard number listed in the code shall be considered approved if it meets the latest edition of that numbered standard.

(2) The use of any part or material in any drainage or plumbing system, other than those currently authorized by the code, is prohibited unless the use of the part or material has been considered by the committee and approved by the department as being equal to or better than other similarly approved items for inclusion in the APML. The APML may also specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending the APML. The request shall include:

(a) A description of the part or material for which approval is sought;

(b) Available technical data;

(c) A listing of other authorities which have approved the use of the part or material; and

(d) Any other pertinent information requested by the committee.

(2)(a) The committee shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the department.

(b) A hearing shall be held before the committee if requested, by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.

(c) Upon approval of a recommendation by the department, the APML shall be amended by listing the new part or material in Section 5 of this administrative regulation.

Section 4. Custody of the APML. It shall be the responsibility of the Director, Division of Plumbing, to maintain an up-to-date APML and to make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department of Housing, Buildings and Construction, Frankfort, Kentucky 40601. The cost of reproduction shall not exceed ten (10) cents per page.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been approved by the Kentucky Plumbing Code Committee and the Division of Plumbing and shall be allowed for installation in Kentucky.

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032.

(2)(a) Flushmate water closet tank.

(b) Microphor company. Two (2) quart flush toilets.

(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.

(3) Tubular traps with gasket in trap seal.

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover.

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commer-

cial and household usage.

(d) Sewage ejector pit - eighteen (18) inch by twenty-two (22) inch with steel cover pit and eighteen (18) inch by thirty (30) inch with steel cover sump pit as manufactured by Lunsford and Associates, Inc.

(e) Little Giant Pump Company, Drainosaur Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.

(f) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates.

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.

(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.

(c) Dektite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste only. Underground shall be laid on six (6) inches of sand grillage and shall be backfilled by hand and tamped six (6) inches around piping or may be surrounded by six (6) inches of sand grillage.

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Therma-Stor Products Group.

(b) Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.

2. Eemax Electric Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirement that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and shall be installed with the product.

3. Vitaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater and shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the relief valve extends into the heat chamber discharge.

4. Paloma Automatic Instantaneous Gas Water Heaters Numbers PH-6DN, PH-6DP, PH-12A-DN, PH-12A-DP, PH-12M-DN, PH-12M-DP, PH-16A-DN, PH-16A-DP, PH-16M-DN, PH-16M-DP, PH-24A-DN, PH-24A-DP, PH-24M-DN and PH-24M-DP.

5. Rinnai Gas Fired Instantaneous Water Heaters Model Numbers REU-95GS-2R, REU-95GS-3R, REU-90, REU-130 pressure type and shall be equipped with an approved temperature and pressure relief valve.

6. Elkay Aqua-Temp tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve.

7. International Technology Sales Corporation AEG Telefunken MDT instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve.

8. International Technology Sales Corporation Zanker Faucet Model W05U without a temperature and pressure relief valve.

9. Amtrol hot water maker model numbers WH7P, WH7 and WH7C with a minimum three-fourths (3/4) inch inlet and outlet.

10. Chronomite Laboratories, Inc. - instantaneous water heater and shall be equipped with an approved temperature and pressure relief valve. Chronomite Instant-Flow Tankless Water Heater without a temperature and pressure relief valve.

11. Nova Hot Water Generator Models: VES5/10, VES6/12, VES7/14, VES8/16, VES9/18 and VES11/22 as manufactured by Hot Water Generators, Inc.

12. Aqua Star tankless gas water heaters, model numbers 125 VP and 80 VP and shall be equipped with an approved temperature and pressure relief valve.

13. Ariston electric water heaters, model numbers P-15S and P-10S and shall be equipped with an approved temperature and pressure relief valve.

14. Vaillant Corporation gas fired point of use water heater.

15. Trinom Hot Man Tankless Water Heater as manufactured by Siemens.

16. Field Controls Company Power Venter - Models PVAE and SWG for use in conjunction with gas and oil fired water heaters.

(11) Compression joints. Fail-safe hot and cold water systems.

(12) Orion fittings for acid waste piping systems for above and below ground.

(13) R & G Slone Manufacturing Company. Fuseal mechanical joint for the connection of polypropylene and waste piping.

(14) Johns Manville Flex I drain roof drain system.

(15) Hydrocide liquid membrane (HLM) to be used as a shower pan material conforming to ASTM C836-76. The density of the material shall be at least one-sixteenth (1/16) inch thick.

(16) Scotch-Clad brand waterproofing system as manufactured by the 3M Company for thin-set installation of ceramic and quarry tile in shower stalls, bathrooms, janitorial closets limited to those applications on concrete floors and using metallic soil and waste piping.

(17) Elkay Aqua-chill water dispensers.

(18) Flexible connectors for hot and cold potable water supply in plumbing fixture connections as manufactured by Aqua-Flo Corporation limited to thirty (30) inch length except dishwashers which shall be forty-eight (48) inches maximum.

(19)(a) Delta Faucet Company's quick-connect fitting known as "grabber" to be used with hot and cold potable water installations above ground only.

(b) REMCO Angle Stop Quick connect valve for use with hot and cold potable water installations above ground only.

(20) Interceptors.

(a) Town and Country plastic interceptors to be used as a grease trap.

(b) Grease recovery unit (GRU) as manufactured by Lowe Engineering, Lincoln Park, NJ.

(c) Scienco, Inc., models SI-101-20G, SI-104-35G, SI-102-50G and SI-103-100G with PVC solvent connections only.

(d) Rockford separators for grease, oil, hair and solids in various styles and sizes and being more specifically model series G, G LO, G M, G LOM, GF, GFE, GAS, GPS, GSS, OS, RHS, GSC, RMS, RSD, SD, SDE, GTD, and RTD that are used for their intended purpose and installed in accordance to the manufacturer's specification and the plumbing code.

(e) Grease interceptors as manufactured by Enpoco, Inc. of St. Charles, IL.

(21) Plastic Oddities Srv (sewer relief vent) clean-out.

(22) Contech A-2000 - a PVC corrugated pipe with smooth interior meeting or exceeding all the material and service test

requirements of ASTM D-3034-74 except dimensions at the time of manufacture.

(23) Nonchemical water treatment to control lime scale and corrosion buildup superior water conditioners as manufactured by Kemtune, Inc.

(24) Eljer plumbing ware - Elgers ultra one/G water closet.

(25) "Power Flush" and "Quik Jon" as manufactured by Zoeller Company; shall have a three (3) inch vent; alternate additional waste openings to be located in pump chamber above top of base chamber.

(26) Exemplar Energy garden solar water heater.

(27) ProSet systems for pipe penetrations in fire rated structures. System A for copper and steel pipe. System C using solvent weld joints only. ProSet E-Z flex coupling is approved for similar or dissimilar materials.

(28) ABS and PVC backwater valves, Models 3281, 3282, 3283 and 3284 for solvent cement joints only as manufactured by Canplas Industries.

(29) Clamp-All Corporation Pipe Coupling Systems is approved size for size on dissimilar materials on new or existing installations. Snap-All Increaser/Reducer transition bushings are approved only for repairs using dissimilar materials or sizes.

(30) Mission Rubber Company "Band-Seal Specialty Coupling" is approved as a transition between any combination of the following materials: cast iron, copper, galvanized steel, schedule 40 PVC and ABS and SDR 35.

(31)(a) Laticrete 9235 Waterproof Membrane to be used as a safing material for floors and walls in showers, bathtubs and floor drain pans.

(b) Ultra-Set as manufactured by Bostik Construction Products to be used as a water proofing material.

(32) DFW Elastomeric PVC coupling manufactured by DFW Plastics, Inc. for use on building sewers only.

(33) Fernco Lowflex Shielded Couplings, approved for connecting extra heavy, no-hub and service weight cast iron pipe, DWV PVC and ABS pipe, SDR 35 sewer pipe, galvanized steel pipe and copper pipe or as a transition between any of these materials in soil waste and vent systems above or below grade.

(34) TBA drain, waste and vent pipe, schedule 40 PVC piping marked "meets dimensional specifications of ASTM D-2665". This pipe has been tested for all the tensile strength, durability, etc., of ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials.

(35) Blucher-Josam stainless steel pipe, fittings and drains for disposal of corrosive wastes.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 11, 1992
FILED WITH LRC: September 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1992 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 16, 1992, (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 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, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: Manufacturers of new products not yet made part of a national standard allowed by the Kentucky Plumbing Code.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings because the regulation only establishes acceptability of previously unapproved products. Provides ability of manufacturer to market his product in state.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: Paperwork requirements and recordkeeping needs remain the same; no costs or savings involved.

(2) Effects on the promulgating administrative body: Formalizes, with proper regulatory oversight the procedure for acceptability of new products in the State Plumbing Code.

(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Unchanged by this amendment.

(3) Assessment of anticipated effect on state and local revenues: No effect on revenues because the regulation merely identifies existing procedures in regulatory form.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The previous method of filing new parts or materials did not statutorily meet KRS Chapter 13A requirements.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This is the only known law or policy dealing with this product.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes. Tiering was used in that each product presented for approval is considered separately for compliance with generally recognized safety and workability standards.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

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

RELATES TO: KRS Chapters 198B, 318

STATUTORY AUTHORITY: KRS ~~[13A.120,]~~ 198B.040(10), 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation identifies the specification numbers for the ~~[relates to]~~ quality and weight~~[s]~~ of material~~[s]~~ that shall ~~[will]~~ be used in the installation of plumbing systems and ~~[is necessary to]~~ establishes minimum standards for the intended use. This amendment is necessary to correct references to various standards to be used in the installation of plumbing systems; delete obsolete language relative to the regulation of subsoil drainage systems which are no longer under the jurisdiction of the department, and removes all references to allowing lead in water distribution piping which has been prohibited for years. ~~[this quality and weight and to conform to accepted practices. This amendment is necessary to identify new standards used in the manufacturing of plastic pipe (Section 10(2) of this regulation). This amendment was approved by the State Plumbing Code~~

~~Committee on November 6, 1991.]~~

Section 1. Definition of Terms. (1) "ABS" means acrylonitrile-butadiene-styrene.

(2) "ASSE" means American Society of Sanitary Engineers and copies of standards identified in this administrative regulation may be obtained by writing the American Society of Sanitary Engineers, P.O. Box 40362, Bay Village, Ohio 44140.

(3) "ASTM" means American Society for Testing and Materials and copies of standards identified in this administrative regulation may be obtained by writing the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(4) "Drain pipe" means any pipe which carries wastewater or waterborne wastes in a building drainage system.

(5) "Drainage System" means all the piping within a public or private premises which conveys sewage, rain water or other liquid wastes to a point of disposal. It does not include the mains of public sewer systems or a private or public sewage treatment or disposal plant.

(6) "DWV pipe" means an abbreviated term for drain, waste and vent piping, including aluminum, as used in common plumbing practice.

(7) "Plumbing system" means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste and vent pipes; and sanitary and storm sewers and building drains; including their respective connections, devices and appurtenances within a building or premises.

(8) "Potable water" means water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming in its bacteriological and chemical quality to the requirements of the Public Health Service Drinking Water Standards or the regulations of the public health authority having jurisdiction.

(9) "PVC" means polyvinyl chloride.

(10) "Stack" means any vertical line of soil, waste, vent, or inside conductor piping, except vertical vent branches which do not extend through the roof and which pass through less than two (2) stories before being reconnected to a vent stack or stack vent.

(11) "Trap" means a fitting or device which provides a liquid seal to prevent the emission of sewer gases without materially affecting the flow of sewage or wastewater [~~through it~~].

(12) "Vent system" means a pipe or pipes installed to provide a flow of air to or from a drainage system, or to provide a circulation of air within the system to protect trap seals from siphonage and back pressure.

(13) "Waste pipe" means a pipe which conveys only waste.

Section 2. Materials, Quality of. The [~~All~~] materials used in a [~~any~~] drainage or plumbing system or part of a system shall be free of defects.

Section 3. Label, Cast or Stamped. Each length of pipe, fitting, trap, fixture and device used in a plumbing or drainage system shall be stamped or indelibly marked with the weight or quality and with the maker's mark or name (manufacturer's specification number).

Section 4. Vitrified clay pipe, concrete pipe, truss pipe, Extra heavy SDR 35 sewer piping, polyethylene sewer piping, polyethylene and corrugated polyethylene subsoil drainage tubing shall be produced and labeled and used only as follows:

(1) Vitrified clay pipe, [~~shall conform to~~] ASTM [~~Standard Specifications~~] C-200.

(2) Concrete pipe, [~~shall conform to~~] ASTM [~~Standard Specifications~~] C-14.

(3) Truss pipe, [~~shall conform to~~] ASTM [~~Standard Specifications~~] D-2680-74. Solid wall truss pipe, [~~shall conform to~~] ASTM [~~Standard Specifications~~] D-2751-74.)

(4) Extra heavy SDR 35 sewer piping, [~~shall conform to~~] ASTM [~~Standard Specifications~~] D-3033-74 and D-3034-74.

[~~(5) Polyethylene sewer piping shall conform to ASTM D 3350 and shall be used only between a septic tank and a distribution box or boxes.~~

~~(6) Polyethylene and corrugated polyethylene subsoil drainage tubing shall conform to ASTM Standard Specifications F 405-74 and shall bear the National Sanitation Foundation (NSF) seal of approval. No pipe or fittings shall be used unless the manufacturer of the material submits to the department a sample of the pipe and fittings that will be used, along with an analysis of the material from a private testing laboratory approved by the department. The report shall be submitted to the department on an annual basis as of July 1, of each year. Polyvinyl Chloride subsoil drainage tubing shall conform to ASTM D 2729. The tubing shall have two (2) rows of three-fourths (3/4) inch holes within an arch of 120 degrees of circumference of the piping and shall be on four (4) inch centers. The tubing shall be visibly marked with the name of the manufacturer and the commercial standard number at ten (10) feet intervals.~~]

Section 5. Cast-iron Pipe. (Hub and Spigot and No-hub). (1) Extra heavy. Extra heavy cast-iron pipe and fittings shall be produced and labeled as [~~conform to~~] ASTM A74-82.

(2) Service-weight. Service-weight cast-iron pipe and fittings shall be produced and labeled as [~~conform to~~] ASTM A74-82.

(3) Coating. Cast-iron pipe and fittings for underground use shall be coated with asphaltum, coal tar pitch or using a coating produced and labeled as [~~conforming to~~] ASTM A-174.

Section 6. Wrought-iron Pipe. All wrought-iron pipe shall be produced and labeled with [~~conform to~~] the latest ASTM "standard specifications for welded wrought iron pipe."

Section 7. Mild-steel Pipe. [~~All~~] Steel pipe shall be produced and labeled with [~~conform to~~] the latest ASTM "standard specifications for welded and seamless steel pipe."

Section 8. Brass pipe; Copper Pipe; and Brass Tubing. Brass pipe, copper pipe and brass tubing shall be produced and labeled with [~~conform to~~] the latest standard specifications of ASTM for "brass pipe, copper pipe, and brass tubing, standard sizes."

Section 9. Aluminum Drain, Waste and Vent (DWV) Pipe with End Cap Components. Aluminum drain, waste and vent pipe with end cap adapters shall be produced and labeled as ASSE [~~conform to the requirements of American Society of Sanitary Engineering (ASSE)~~] Standard No. 1045.

Section 10. Borosilicate Pipe, Plastic Pipe, Stainless Steel Tubing, Polyethylene Pipe and Polypropylene Pipe. (1) Borosilicate pipe shall be produced and labeled with [~~conform to~~] the latest ASTM standards.

(2) Plastic pipe. All plastic piping used in a drainage, waste and vent system shall be schedule 40 or 80, Type 1, Grade 1, polyvinyl chloride produced and labeled as ASTM D 1784-75 [~~compounds as defined and described in tentative specifications for rigid polyvinyl chloride (PVC) (ASTM Designation: D 1784-75)~~], or cellular core PVC produced and labeled [~~conforming to~~] ASTM F-891, or Schedule 40 or 80 acrylonitrile-butadiene-styrene produced and labeled as ASTM D 1788-73 [~~compound as defined and described in standard specification for acrylonitrile-butadiene-styrene (ABS) (ASTM Designation: D 1788-73)~~] or cellular core ABS produced and labeled as [~~conforming to~~] ASTM F-628. Pipe and fittings shall be produced and labeled in accordance with the provisions of [~~Commercial Standard~~] ASTM-D-2665-76, as amended, for PVC and ASTM-D-2661-90 [~~76~~] for ABS, and both shall bear the National Sanitation Foundation seal of approval. Copies of National Sanitation Foundation standards for the manufacturer of products identified in this administrative regulation may be obtained by writing the National Sanitation Foundation (NSF), 3475 Plymouth Road, P.O. Box 1468, Ann Arbor, MI 48106. All pipe and fittings shall bear the ASTM designation together with the NSF seal, the manufacturer's identification and the size. The use of plastic pipe and fittings (PVC or ABS) as outlined here shall be restricted to buildings if the soil or waste and vent stack do not exceed forty-five (45) feet in height, the vertical distance from the base of the stack to its terminus through the roof of the building.

(3) Stainless steel tubing. Stainless steel tubing for hot and cold water piping shall be Grade H produced and labeled as [~~conforming to~~] ASTM A268-68. Stainless steel tubing for the soil, waste and vent system shall be either Grade G or H produced and labeled as [~~conforming to~~] ASTM A-268-68.

(4) Polyethylene pipe. Polyethylene pipe used in acid waste systems shall be produced and labeled as [~~conform to~~] ASTM D-1204-62T.

(5) Polypropylene pipe. Polypropylene pipe used in acid waste systems shall be produced and labeled as [~~conform to~~] ASTM D-2146-65T.

Section 11. Lead Pipe, Diameter, Weights. (1) Lead soil, waste and vent pipes shall be produced and labeled as [~~in accordance with the standards of the Lead Industries Association and~~] Federal Specifications WW-P-325, [~~which are identical in substance,~~] and shall not be lighter than the following weights:

Size Inside Diameter Inches	Commercial Designation "D" or "XL"		Wall Thickness Inches	Weight Pounds	Per Foot Ounces
1 1/2	D	XL	0.138	3	8
2	D	XL	0.142	4	12
3	D	XL	0.125	6	0
4	D	XL	0.125	8	0

(2) All lead bends and lead traps shall be of the weight known as extra heavy (XH) and shall have at least one-eighth (1/8) inch wall thickness. [~~Weights for lead water service or supply pipes shall be according to the maximum working pressure in pounds per square inch as given in federal specifications WW-P-325.~~]

Section 12. On roofing systems requiring integral flashings, a flashing material which is part of the manufactured roofing system and required by the roofing manufacturer to guarantee or warranty the roofing system, shall be used.

Section 13. Sheet Lead. Sheet lead for shower pans shall not weigh less than four (4) lbs. per sq. ft. and shall not weigh less than three (3) lbs. per sq. ft. for vent pipe flashings.

Section 14. Sheet Copper or Brass. Sheet copper or brass shall not be lighter than No. 18 B. & S. gauge, except local and interior ventilating pipe shall not be lighter than No. 26 B. & S. gauge.

Section 15. Threaded Fittings. (1) Plain screwed fittings shall be either cast-iron, malleable iron, or brass of standard weight and dimensions.

(2) Drainage fittings shall be either cast-iron, malleable iron, or brass, with smooth interior waterway, with threads tapped out of solid metal.

(3) [~~All~~] Cast-iron fittings used in a water supply distribution shall be galvanized.

(4) [~~All~~] Malleable iron fittings shall be galvanized.

Section 16. Caulking Ferrules. Caulking ferrules shall be of red brass and shall be in accordance with the following table:

Pipe Sizes Inches	Inside Diameter Inches	Length Inches	Minimum Weight Each
2	2 1/4	2 1/2	1 lb. 0 oz.
3	3 1/4	4 1/2	1 lb. 12 oz.
4	4 1/4	4 1/2	2 lb. 8 oz.

Section 17. Soldering Nipples. Soldering nipples shall be recessed red cast brass, iron pipe size. When cast, they shall be full bore and of minimum weight.

Section 18. Floor Flanges for Water Closets and Service Sinks or Similar Fixtures. Floor flanges shall either be hard lead, brass, cast iron, galvanized malleable iron, ABS or PVC. Hard lead and brass flanges shall not be less than one-eighth (1/8) inch thick. Cast iron and galvanized malleable iron shall not be less than one-fourth (1/4) inch thick and shall have a two (2) inch caulking depth.

Section 19. The use of lead (defined as solders and flux containing more than two-tenths (0.2) percent lead, and pipes and pipe fittings containing more than eight (8.0) percent lead) in the installation or repair of a [~~any~~] public or private water system providing potable water for human consumption shall not be used.

Section 20. New Materials. Materials other than those specified in this regulation shall be prohibited unless the material is specifically approved by the State Plumbing Code Committee and the Department of Housing, Buildings and Construction as being equal to or better than the material specified in the State Plumbing Code. It shall be the responsibility of any person or company seeking the approval of a material not included in this code to prove to the satisfaction of these agencies that the material is equal to or better than the material which it is intended to replace. Procedural requirements for approval of new parts and materials are set forth in 815 KAR 20:020.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 11, 1992
FILED WITH LRC: September 15, 1992 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1992 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 16, 1992, (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 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, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden
(1) Type and number of entities affected: See comments under #6.
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions:

(6) Any additional information or comments: The amendments to this administrative regulation are intended to correctly reference the manufacturer's standard specification number identified for the use specified. Material not labeled as outlined in this administrative regulation does not comply with the State Plumbing Code.

TIERING: Was tiering applied? No. Tiering is not used in that each standard must be represented on the material in an identical manner.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:070. Plumbing fixtures.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation relates to the kind, type and quality of plumbing fixtures that shall [~~are to~~] be used in the construction of plumbing systems and identifies the manufacturer's standard specification number of the material accepted in those installations. This amendment is necessary to correct references to various standards to comply with KRS Chapter 13A drafting rules. [~~The amendment to this regulation includes the deletion of archaic material as well as amending language to allow the use of alternative materials and clarifying specific standards to be used.~~]

Section 1. Materials. [~~All~~] Receptacles used as water closets, urinals, or [~~otherwise~~] for the disposal of human excreta, shall be of vitrified earthenware, hard natural stone, or cast-iron with a light color porcelain enameled on the inside, except as indicated in Section 4 of this administrative regulation.

Section 2. Installation. [~~All~~] Plumbing fixtures shall be installed to allow [~~free and open in a manner to afford~~] access for cleaning. Where practical, all pipes from fixtures shall be run to the wall and no trap or pipe shall extend nearer to the floor than twelve (12) inches except laundry trays or similar fixtures.

Section 3. Water Closet Bowls. Water closet bowls shall be [~~made~~] of one (1) piece construction and [~~of such form as to~~] hold a sufficient quantity of water when filled to the trap overflow to prevent fouling of its interior surfaces, and it shall be provided with an integral flushing rim [~~so constructed as~~] to flush the entire interior of the bowl.

Section 4. Plastic Water Closet Bowl and Tank. Plastic water closet bowl and tank shall be constructed [~~made~~] with a polypropylene lining inside the one (1) piece bowl and tank. The outer surface of the bowl shall be constructed of PVC material and the filler material between the two (2) surfaces shall be made of polyurethane foam. The bowl shall have a three (3) inch water seal and shall have a two and one-eighth (2 1/8) inch waste opening passage.

Section 5. Frost-proof Closet. A frost-proof water closet may be installed only in a building that has at least a twelve (12) inch air break between it and any building used for habitation or occupancy. The room shall be tightly enclosed and accessible from the outside only. The soil pipe between the trap and hopper shall be of extra heavy cast-iron, four (4) inches in diameter and shall be light colored porcelain enamel on the inside. The building shall [~~must~~] have a nonabsorbent floor. A [~~Each~~] frost-proof water closet shall have a four (4) inch vent.

Section 6. (1) Floor drains and shower drains. A floor drain or a shower drain shall be [~~is~~] considered a plumbing fixture and shall be provided with a strainer.

(2) Shower drain pan construction. Shower drain pans shall be constructed of sheet lead weighing not less than four (4) pounds per square foot, nonplasticized chlorinated polyethylene produced and labeled as [~~conforming to~~] ASTM D-412-66, D-1204-54 [~~D-12-4-54~~] and D-568-61 shall be not less than 0.040 inches, nonplasticized polyvinyl chloride (PVC) sheet material produced and labeled as [~~conforming to~~] ASTM D-1004, D-2240, D-412 and D-1790 shall be not less than 0.040 inches thick or other approved material. Shower pans shall be constructed without seams and shall extend to a minimum height of six (6) inches on all vertical walls. Shower pans shall not be required on a concrete floor below the outside grade level. Copies of ASTM standards identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(3) Fiberglass bathtubs, showers, tub enclosures and shower stalls. Fiberglass bathtubs and tub enclosures shall be produced and labeled as ANSI Z 124.1 [~~conform to Commercial Standards CS 221-59~~]. Acrylic-faced bathtubs shall be produced and labeled as [~~conform to~~] ASTM E-84B or E-162. Fiberglass shower stalls and shower receptors shall be produced and labeled as ANSI Z 124.2 [~~conform to Commercial Standards CS 222-59~~].

(4) Metamorphosed carbonate aggregate polyester resinous martrix-marbleoid bathtubs, lavatories and shower stalls. Metamorphosed carbonate aggregate polyester resinous martrix-marbleoid bathtubs, shall be produced and labeled as [~~conform to~~] ANSI Z 124-1, lavatories shall be produced and labeled as [~~to~~] ANSI Z 124-3 and shower stalls shall be produced and labeled as [~~to~~] ANSI Z 124-2. Copies of ANSI standards identified in this administrative regulation may be obtained by writing the American National Standards Institute, 1430 Broadway, New York, New York 10018.

Section 7. Fixture Strainers. [~~All~~] Fixtures, other than water closets and pedestal urinals, shall be provided with a strainer. The [~~total~~] outlet area of the strainer shall not be less than [~~that of~~] the interior area of the trap.

Section 8. Fixture Overflow. The overflow from a fixture shall be optional, but if used, the overflow shall be connected to the inlet side of a trap and accessible for cleaning [~~be so arranged that it may be readily and effectively cleaned~~].

[~~Section 9. Ventilation of Rooms Containing Fixtures. Refer to BOCA Basic Mechanical Code M 1602.9 and BOCA One and Two Family Dwelling Codes, R 204.3.~~]

Section 9. [~~10.~~] Fixture Additions. [~~Any fixture or~~] Fixtures added to a plumbing system shall be installed to comply with the other sections of the State Plumbing Code [~~this code~~].

Section 10. [~~11.~~] Defective Fixtures. [~~Any~~] Newly installed fixtures found defective or old fixtures found to be in any unsanitary condition, shall be repaired, replaced, or removed within thirty (30) days upon written notice from the department.

Section 11. [~~12.~~] Water Heaters. (1) A water heater designed for use as [~~is~~] an appliance for supplying potable hot water for domestic or commercial purposes[~~. It~~] may be used for space heating if the water temperature does not exceed 140 degrees Fahrenheit. Water heaters shall be properly connected to the hot and cold water supply and shall be connected to an adequate size flue or chimney. A water heater [~~, but in no case~~] shall not [~~this~~] be connected to a flue serving a coal burning apparatus. The flue or chimney shall extend two (2) feet above the roof and shall be properly flashed and shall not terminate within six (6) feet of a door or window. A [~~No~~] fuel fired water heater, with the exception of those having direct-vent or through the wall vent systems, shall not be placed in any bathroom, toilet room or a room used for sleeping. If a water heater is placed in a closed room or closet, the door shall [~~must~~] be a louver door or shall be properly ventilated [~~provided with proper ventilation~~] to provide

combustion air and circulation (see 815 KAR 20:120).

(2) Direct venting system location. Residential gas-fired direct vent and through the wall type water heaters shall be vented in accordance with the manufacturer's recommendations and shall be installed in accordance with the National Fire Prevention Association Pamphlet #54 adopted by reference in the Kentucky Fire Prevention Code filed in 815 KAR 10:040 [~~have as a minimum the National Fuel Gas Association Standards as follows: (NFPA Pamphlet #54)~~]. The vent terminal of a direct vent appliance with an input of 50,000 BTU per hour or less shall be located at least nine (9) inches from any opening through which flue gases could enter a building, and [~~such~~] an appliance with an input over 50,000 BTU per hour shall require a twelve (12) inch vent termination clearance. The bottom of the vent terminal and the air intake shall be located at least twelve (12) inches above grade" (see 815 KAR 20:1~~20~~,.Section 11).

Section 12. [~~13.~~] Conservation of Water. (1) Conservation of hot water.

(a) Showers. Showers used for other than safety reasons shall be equipped with approved flow control devices to limit total flow to a maximum of three (3) gpm per shower head.

(b) Lavatories.

1. Lavatories in restrooms of public facilities shall be equipped with outlet devices which limit the flow of domestic hot water to a maximum of 0.75 gpm.

2. Lavatories (other than those listed in subparagraph 1 of this paragraph) and sink faucets shall be equipped with flow control devices which limit the flow of domestic hot water to a maximum of four (4.0) gpm.

(2) Conservation of cold water.

(a) Showers. Showers used for other than safety reasons shall be equipped with approved control devices to limit total flow to a maximum of three (3.0) gpm per shower head.

(b) Lavatories and sink faucets. Lavatories and sink faucets shall be equipped with flow control devices which limit the flow of domestic cold water to a maximum of four (4.0) gpm.

(c) Water closets.

1. Tank type water closets shall not exceed three and one-half (3 1/2) gallons (thirteen and three-tenths (13.3) liters) per flush.

2. Flushometer type water closets shall not exceed three and one-half (3 1/2) gallons (thirteen and three-tenths (13.3) liters) per flush.

(d) Urinals.

1. Tank type urinals shall not exceed three (3) gallons (eleven and four-tenths (11.4) liters) per flush.

2. Flushometer type urinals shall not exceed one and one-half (1 1/2) gallons (five and seven-tenths (5.7) liters) per flush.

(3) Lavatory faucets located in restrooms intended for public use shall be of the metering or self-closing type except those intended [~~that are separate~~] for the physically impaired.

(4) The provisions of this section shall apply to [~~all~~] new construction, [~~as well as~~] renovations and replacement in existing structures. Upon satisfactory compliance with [~~In satisfaction of~~] the requirements of this section, the Division of Plumbing shall permit the installation of tank type water closets equipped with devices [~~which are~~] found by the inspector to meet applicable standards in water closets having a tank capacity in excess of three and one-half (3 1/2) gallons (thirteen and three-tenths (13.3) liters). The Division of Plumbing may also allow the use of standard flush water closets and urinals which do not meet the specific standards if [~~when~~], in the opinion of the division, the configuration of the building drainage system requires a greater quantity of water to adequately flush the system, or if [~~where~~] the owner requests the use of antique fixtures which may not be equipped for reduced flow.

[~~(5) The equipment required by this section will be mandatory April 1, 1988.~~]

CHARLES A. COTTON, Commissioner.
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 3, 1992
FILED WITH LRC: September 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1992 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 16, 1992, (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 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, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: See comments under #6.

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The amendments to this administrative regulation are intended to correctly reference the manufacturer's standard specification number identified for the use specified. Material not labeled as outlined in this administrative regulation does not comply with the State Plumbing Code.

TIERING: Was tiering applied? No. Tiering is not used in that each standard must be represented on the material in an identical manner.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

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

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation relates to the proper installation of steel and wrought iron pipe and fittings and identifies the manufacturer's standard specification number of the material accepted in those installations. This amendment is necessary to correct references to standards to comply

with KRS Chapter 13A drafting rules. [~~This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.~~]

Section 1. Materials. [~~All~~] Steel pipe shall be produced and labeled with [~~conform to~~] the current [~~latest~~] ASTM standard specification[s] number for welded wrought iron pipe or [~~ASTM standard specifications for~~] welded and seamless steel pipe. Schedule 40 shall be the minimum weight. For water distribution or soil, waste and vent, [~~only~~] galvanized pipe shall be used. Copies of ASTM standards identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

Section 2. Cutting and Reaming. (1) Pipe shall be cut to length with a square cut using pipe cutters, hacksaw or abrasive saw.

(2) If the [~~All~~] cut-to-length pipe [~~which~~] is to be threaded or prepared for a mechanical connection, it shall be reamed to the full inner diameter of the pipe.

Section 3. Jointing Techniques. (1) Screw joints. [~~All~~] Screw joints shall be made by the use of a properly cut thread inserted into the female part of the fitting after applying the recommended pipe joint compound sparingly to the male threads. Tighten hand-tight to check for alignment and then tighten enough to insure a tight leak-proof joint. Do not overtighten.

(2) Mechanical joints. Mechanical joints for hot and cold water shall not be used above ground unless the couplings are galvanized and the gaskets are [~~conform to~~] ASTM D-735-61, Grade N-R-615 BZ [~~and are limited to Z in size and above~~]. [~~Lubricate~~] The pipe ends shall be lubricated with an [~~with~~] approved lubricant and [~~slip~~] the gasket shall be slipped [~~completely~~] over one (1) pipe end. The [~~Bring~~] pipe ends shall be connected [~~together~~] and [~~slide~~] the gasket shall be inserted [~~back~~] into central spanning position. The [~~Put~~] housing clamps shall be placed over the gasket and the [~~, insert~~] bolts and nuts tightened with a socket wrench[~~, draw nuts down equally and tightly~~].

Section 4. Hangers and Supports. (1) Hangers, anchors and supports shall be [~~of material~~] of sufficient strength to support the piping and its contents. Hangers, anchors and supports shall be securely attached to the building construction at [~~sufficiently close~~] intervals to support the piping and its contents. Provisions shall be made to allow for expansion, contraction, structural settlement and vibration.

(2) Vertical piping.

(a) Screwed piping shall be supported at every other story height and [~~with~~] supports shall be of ferrous metal.

(b) Mechanical joint piping shall be supported at every story height and [~~with~~] supports shall be of ferrous metal.

(3) Horizontal piping. Horizontal piping shall be supported at [~~sufficiently close~~] intervals which [~~to~~] keep the piping in alignment and prevent sagging. Screwed and mechanical joint pipe one and one-half (1 1/2) inches and over shall be supported at [~~each~~] twelve (12) foot intervals; one and one-quarter (1 1/4) inch and smaller shall be supported at [~~each~~] eight (8) foot intervals. Supports shall be of ferrous metal.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 3, 1992
FILED WITH LRC: September 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1992 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 16, 1992, (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 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, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: See comments under #6.

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

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The amendments to this administrative regulation are intended to correctly reference the manufacturer's standard specification number identified for the use specified. Material not labeled as outlined in this administrative regulation does not comply with the State Plumbing Code.

TIERING: Was tiering applied? No. Tiering is not used in that each standard must be represented on the material in an identical manner.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

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

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation shall govern the installation of polybutylene (PB) tubing in potable hot and cold water distribution systems within buildings and identifies the manufacturer's standard specification number of the material accepted in those installations. Installation, materials and inspections shall comply with the current edition of the Kentucky State Plumbing Code and with this administrative regulation. This amendment is necessary to make technical corrects to standards for installation of polybutylene tubing for hot and cold water systems and comply with KRS Chapter 13A drafting rules. [~~standard. This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.~~]

Section 1. Definitions. (1) "ASTM" means American Society of

Testing Materials and copies of the standards identified in this administrative regulation may be obtained by writing the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(2) "KSPCC" means Kentucky State Plumbing Code Committee.

(3) "NSF" means the National Sanitation Foundation and copies of the standards identified in this administrative regulation may be obtained by writing the National Sanitation Foundation, 3475 Plymouth Road, P.O. Box 1468, Ann Arbor, Michigan 48106.

(4) "PB" means polybutylene.

(5) "SDR" means standard dimension ratio.

(6) "Approved" means approval received from the Kentucky Department of Housing, [~~by the Commonwealth of Kentucky,~~] Division of Plumbing.

Section 2. (1) Material. Tubing shall be polybutylene (PB) and shall be produced and labeled as [~~.~~

~~(2) Tubing shall conform to~~] ASTM D-3309-85b.

(2) [~~(3)~~] Fittings shall be metal or plastic compression or insert type.

(a) Compression fittings shall utilize brass nuts and shall be approved for use with PB tubing.

(b) Insert fittings. Refer to 815 KAR 20:120, Water Supply Pipes and Materials.

NOTE 1. Manufacturers of fittings shall recommend assembly procedures.

NOTE 2. Manufacturers shall provide test data from an independent testing laboratory acceptable to the KSPCC, that their PB system or their PB tubing, together with recommended fittings, shall have [~~has~~] a short term working pressure and temperature rating (STWP) of [~~or~~] 150 psi (1033 kPa) at 210 degrees Fahrenheit (410 degrees Centigrade) for forty-eight (48) hours or more.

Section 3. Markings. (1) Tubing. Tubing shall be legibly marked or labeled at intervals of not more than five (5) feet (1.5m) with [~~at least~~] the following:

(a) Manufacturer's name or trademark.

(b) ASTM D3309.

(c) Tube size marked, "tubing" or "copper tubing size (CTS)".

(d) PB 2110.

(e) SDR 11.

(f) Pressure rating, 100 psi, at 180 degrees Fahrenheit (690 Mpa at eighty-two (82) degrees Centigrade).

(g) NSF seal or marking or other KSPCC acceptable agency.

(h) Manufacturer's date and material code.

(2) Fittings. Fittings shall be marked with [~~at least~~] the following:

(a) Manufacturer's name or trademark or other acceptable markings.

(b) Plastic fittings shall be labeled with the NSF seal or marking of other KSPCC acceptable agency.

(3) Position of markings. If [~~When~~] practical, markings shall be visible for inspection.

Section 4. Protection of Tubing. (1) Abrasion. Tubing passing through drilled metal studs, joists, or hollow masonry walls shall be protected from abrasion or sharp edges by elastomeric or plastic sleeves, grommets or other approved means.

EXCEPTION: Straight runs may have protection only at beginning and end at maximum three (3) feet (0.9m) intervals.

(2) Puncture. Steel plate protection shall be installed if [~~when~~] required by this regulation or other regulations of the department.

(3) Exposed tubing.

(a) Attic opening. Tubing closer than six (6) feet (1.83m) to an attic opening shall be protected.

(b) General. Exposed tubing shall be protected from mechanical damage.

(4) Freezing. In areas where PB must be drained to protect the system from freezing, horizontal tubing shall be graded to drain.

(5) Storage. Tubing shall be stored [~~in a way~~] to protect the system from mechanical damage (slitting, puncturing, etc.). Tubing shall be stored undercover to keep it clean and avoid long term exposure to sunlight. Exposure to sunlight during normal construction periods is not harmful.

(6) Thermal expansion. General. The linear expansion rate for PB is approximately ten (10) inches (600 mm) per 100 feet (10,000 mm) of tube per 100 degrees Fahrenheit (fifty (50) degrees Centigrade) change in temperature. If [~~When~~] installing runs of tubing, one-eighth (1/8) inch (three (3) mm) longitudinal clearance per foot (300 mm) of run shall be provided to accommodate thermal expansion. A vertical branch being connected to a horizontal main shall be made by loop, or a twelve (12) inch (300 mm) minimum horizontal offset to allow for expansion and contraction [~~construction~~] in both sections of the tubing. Examples of expansion methods are shown in Figure 1.

NOTE: Radius of bends shall comply with Section 10(1) of this regulation.

NOTE: Expansion rate is independent of size of tube.

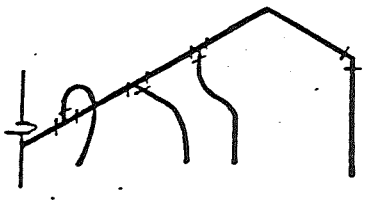


Figure 1

(7) Clearance. Adequate clearance shall be provided between tubing and structure (such as bored holes and sleeves) to allow free longitudinal movement.

Section 5. Hangers and Supports. (1) Vertical tubing. Vertical tubing shall be supported at each floor. Tubing shall have a midstory guide.

(2) Horizontal tubing. Horizontal tubing shall be supported at maximum thirty-two (32) inch (810 mm) intervals. If continuously supported, hangers or supports may be placed at six (6) feet (1800 mm) intervals.

(3) Hangers and anchors. Tubing shall not be anchored rigidly to a support; but shall be secured with smooth hangers or straps allowing [~~that provide~~] for a degree of movement and preventing [~~that prevents~~] damage to the tubing. [~~Do not use~~] Hangers or straps with sharp or abrasive edges shall not be used. [~~Do not use~~] Hangers that pinch the tubing shall not be used. Metal hangers or straps shall be insulated to prevent abrasion.

Section 6. Joints and Connections. (1) Procedure. Tubing shall be cut with a tubing cutter, equipped with a thin cutting wheel designed specifically for plastics. Tubing shall be cut square, i.e., perpendicular to the length. If other cutting methods are used, care shall be taken to remove any excess material, flashing or burrs.

(2) Tools.

(a) Compression fittings. Follow manufacturers recommendations.

(b) Insert fittings. [~~only~~] Approved crimping tools shall be used with PB insert fitting systems. Tools shall be calibrated three (3) times daily and used in conjunction with approved insert fittings. Crimp rings shall be of wrought copper only. For specific crimping procedures, follow manufacturer's recommendations.

(c) Socket-fused joints.

1. The [~~Cut~~] pipe or tubing end shall be cut square.

2. [~~Chamfer~~] The outside corner of the pipe end shall be chamfered for pipe one and one-quarter inch (1 1/4") iron pipe size (IPS) and larger with proper chamfering tool.

3. The [~~Clean~~] pipe or tubing end shall be clean and [~~. (pipe shall be~~] free of dirt or grease.[~~)~~]

4. A [~~Place~~] depth gauge shall be placed on the pipe or tubing end to prevent the[~~, thereby preventing~~] pipe from bottoming out on the fitting.

5. A [~~Clamp~~] cold ring shall be clamped around the pipe with one (1) side contacting the depth gauge. (Cold ring rounds the pipe end,

and limits the depth that the heater face and socket fitting slide over pipe end.)

6. To insure pipe or tubing roundness with one-half inch (1/2") and three-fourths inch (3/4") pipe, an [use] insert stiffener shall be used [to insure pipe or tubing roundness].

7. The [Clean] fitting shall be clean and the[.-(] socket shall be free of dirt or grease.[)]

8. The heating tool shall be cleaned after each fusion.

9. The [Place] pipe or tubing end and fitting shall be placed adjacent to the heater elements.

10. The temperature of the heating tool shall be no less than 500 degrees Fahrenheit nor shall it exceed 526 degrees Fahrenheit.

11. The [Push] pipe or tubing end, heater and fitting shall be pushed together with an even pressure.

12. [Use] The following chart or manufacturer's recommendations shall be used for heating and cooling times.

Size	Heating Time	Cooling Time
1/2"	5 - 7 Seconds	20 Sec. Minimum
3/4"	7 - 9 Seconds	20 Sec. Minimum
1"	8 - 10 Seconds	20 Sec. Minimum
1 1/4"	10 - 12 Seconds	20 Sec. Minimum
1 1/2"	10 - 12 Seconds	20 Sec. Minimum
2"	12 - 15 Seconds	30 Sec. Minimum

13. [Make certain that] Joint shall be [is] intact and formed properly.

Section 7. Transition Joints. (1) Fittings. Transitions for PB tubing to metal piping valves shall be made only with approved transition fittings intended for [to] this purpose.

(2) Threaded joints. Female threaded plastic fittings shall not be installed unless specifically approved for this purpose. Only approved thread tape or thread lubricant intended for use with plastic fittings shall be used. Conventional pipe thread compounds, putty, mineral oil, linseed oil base products, and unknown mixtures shall not be used. Threaded plastic fittings shall not be over-tightened. [DO NOT OVERTIGHTEN].

Section 8. Materials Location. Fittings shall NOT be installed in or under a concrete floor slab resting on the ground within a building or structure [or parts thereof]. [The term] "Building or structure or part thereof" shall include structures such as porches and steps, roofed porte-cocheres, roofed patios, carports, covered driveways, and similar structures or appurtenances.

Section 9. Pressure Relief Drains. Drain lines. Tubing shall not be used as a pressure relief valve drain pipe.

Section 10. Installation. (1) Bends. Tubing shall be installed using bends with a minimum radius of twelve (12) times the nominal tubing diameter.

(2) Damage. Kinked or buckled tubing shall be removed.

(3) Finished nipples. It shall be [is] permissible to stub through a finished wall, floor or ceiling surface with nipples connected to drip ear elbows or other fittings designed to be fastened to the structure to prevent rotation. Finish nipples shall be of conventional metallic materials or shall be nonmetallic code approved nipples.

(4) Hose bibbs. Hose bibbs shall not be directly connected to PB tubing. The metal piping directly connected to any hose bibb shall be anchored so that the loads on the hose bibb shall not strain the PB tubing.

(5) Recess light fixtures. PB tubing shall not be installed within twelve (12) inches (.30m) of a recessed light fixture.

(6) PB tubing installed in fire resistive construction. If [Where] tubing [is installed and] penetrates required fire resistive construction, the fire resistive integrity of the construction shall be maintained. Methods for maintaining the integrity of the fire resistive construction shall be as required by the Kentucky Building Code; or if [where] not established by the Kentucky Building Code, by qualified testing methods approved by the Division of Plumbing. Approval shall be obtained prior to installing any tubing.

(7) Heated joints. Brazed, soldered or welded joints within eighteen (18) inches (500 mm) of PB tubing shall be made before connecting to PB tubing. [DO NOT apply] Flame shall not be applied to tubing.

(8) Vents. Tubing shall not be installed within six (6) inches (fifteen and one-tenth (15.1) mm) of a gas appliance single wall vent connector or within a confined space (such as stud cavity) containing any appliance vent.

(9) Working pressure and temperature. Working pressure shall not exceed eighty (80) psi (552 kPa) and working temperature shall not exceed 180 degrees Fahrenheit (eighty-two (82) degrees Centigrade).

(10) Exposure to sunlight. PB tubing shall not be installed so as to be subjected to direct sunlight after installation, and shall not be installed on the surface of the building.

(11) Water heaters. Tubing shall not be installed downstream from any instantaneous type (coil or immersion) water heater or closer than six (6) inches (fifteen (15) mm) developed length upstream. Tubing [it] shall not be installed in the vertical runs of a water heater and downstream six (6) inches horizontally.

(12) Identification. A permanent sign with the legible words "This building has nonmetallic interior water piping" shall be fastened on or inside the main electric service panel.

(13) Water hammer arresters. A PB hot water system may [will] withstand repeated pressure surges, [well] in excess of its rated pressure, but water hammer arresters may be advisable if [when] solenoid valves or other quick closing devices are used in the system. In designing for these devices, the [pipe or fitting] manufacturer's recommended surge pressure limits shall be utilized for the pipe or fitting.

(14) [Only] Approved metal fittings shall be used in hot water circulating lines.

(15) The system shall be tested in accordance with the Kentucky Plumbing Code. A PB distribution system shall be pressure tested immediately after installation.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 11, 1992
FILED WITH LRC: September 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1992 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 16, 1992, (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 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, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: See comments under #6.

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements:
(3) Assessment of anticipated effect on state and local revenues:
(4) Assessment of alternative methods; reasons why alternatives were rejected:
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: The amendments to this administrative regulation are intended to correctly reference the manufacturer's standard specification number identified for the use specified. Material not labeled as outlined in this administrative regulation does not comply with the State Plumbing Code.
TIERING: Was tiering applied? No. Tiering is not used in that each standard must be represented on the material in an identical manner.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:076. Installation recommendations for polybutylene (PB) cold water building supply, yard piping and tubing.

RELATES TO: KRS Chapter 318
STATUTORY AUTHORITY: KRS [~~13A.120,~~] 318.130
NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation shall govern the installation of polybutylene (PB) pipe and tubing in cold water building supply and yard systems, and identifies the manufacturer's standard specification number of the material accepted in those installations. Installation, materials and inspections shall comply with the current edition of the Kentucky State Plumbing Code and with this administrative regulation. This amendment is necessary to comply with KRS Chapter 13A drafting rules. [~~standard. This amendment deleting Section 7 of this regulation is necessary to allow the use of polybutylene pipe under concrete and to remove language which conflicts with 815 KAR 20:075.~~]

Section 1. Definitions. (1) "ASTM" [~~. For the purpose of this regulation,~~] means the American Society of Testing Materials and copies of the standards identified in this administrative regulation may be obtained by writing the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.
(2) "KSPCC" [~~. For the purpose of this regulation,~~] means "Kentucky State Plumbing Code Committee."
(3) "NSF" [~~. For the purpose of this regulation,~~] means "National Sanitation Foundation."
(4) "PB" [~~. For the purpose of this regulation,~~] means "polybutylene."
(5) "SDR" [~~. For the purpose of this regulation,~~] means "Standard Dimension Ratio."
(6) "Approved" [~~. For the purpose of this regulation,~~] means approval received from the Kentucky Department of Housing, Buildings and Construction, Division of Plumbing.

Section 2. (1) Material. Tubing shall be [~~is~~] polybutylene (PB) and shall be produced and labeled as [~~.~~
~~(2)(a) Tubing shall conform to~~] ASTM D-2666.
(2) [~~(b)~~] Pipe shall be produced and labeled as [~~conform to~~] ASTM D-2662.
[~~NOTE: Pipe is usually black or blue.~~]
(3) Fittings shall be metal or plastic compression, flare or insert type. (Refer to 815 KAR 20:120, [~~Section 9,~~] Water supply pipes and materials.)
NOTE 1. Manufacturers of fittings shall recommend assembly procedures.
NOTE 2. Manufacturers shall provide test data from an independent testing laboratory, acceptable to the KSPCC, that their PB system or their PB tubing, together with recommended fittings, has a short term working pressure and temperature rating (STWP) or 160 psi at 210oF for forty-eight (48) hours or more.

Section 3. Markings. (1) Tubing. Tubing shall be legibly marked at intervals of not more than five (5) feet with [~~at least~~] the following:
(a) Manufacturers name or trademark.
(b) ASTM D-2662 (pipe) or ASTM D-2666 (tubing).
(c) Size.
(d) PB 2110.
(e) Pressure rating, 160 psi.
(f) NSF seal or marking or other KSPCC acceptable agency.
(g) Manufacturers date and material code.
(2) Fittings. Fittings shall be marked with [~~at least~~] the following:
(a) Manufacturers name or trademark or other acceptable markings.
(b) Plastic fittings shall be labeled with the NSF seal or marking of other KSPCC acceptable agency.
(3) Bands shall be marked with [~~at least~~] the following:
(a) Manufacturers name or trademark.
(b) Model.
(c) Stainless steel series (300).
(4) Position of Markings. Identifying markings shall be visible for inspection without moving materials [~~unless otherwise acceptable to the administrative authority~~].

Section 4. Protection of Piping. (1) Exposed piping. Vertical piping may extend a maximum of twenty-four (24) inches above grade if [~~when~~] located on the exterior of the building or structure and protected from mechanical damage [~~to the satisfaction of the Kentucky Division of Plumbing~~]. If [~~Where~~] exposed to sunlight, the pipe shall be wrapped with at least 0.040 inches of tape.
(2) Protection from damage. Piping coils, as supplied by the manufacturer, shall be adequately protected against damage in shipment. A prominent label shall contain at least the information required in Section 3(1) of this regulation.
(3) Storage. Piping shall be stored [~~in a way~~] to protect it from mechanical damage (slitting, puncturing, etc.). Tubing shall be stored under cover to keep it clean and to avoid long-term exposure to direct sunlight. Exposure to sunlight during normal construction periods is not harmful.
(4) Thermal expansion.
(a) Snaking. Piping shall be "snaked" in the trench bottom with enough slack, at least six (6) inches per 100 feet, to compensate for thermal expansion and contraction before stabilizing piping.
(b) Stabilizing. [~~Stabilize~~] Piping shall be stabilized by bringing the piping [~~it~~] approximately to operating temperature before testing and backfilling by one of the following methods:
1. Shade backfill. Joints shall be [~~Leave all joints~~] exposed for examination [~~so that they may be examined~~] during pressure test.
2. Piping shall be filled [~~Fill~~] with water at operating temperature.
3. Piping shall be allowed [~~Allow~~] to stand overnight.

Section 5. Trenching, Cover and Backfill. (1) Trenching and cover. Trench bottoms shall be uniformly graded and shall be of either undisturbed soil or shall consist of a layer or layers of compacted backfill to allow [~~so that~~] minimum settlement to [~~will~~] take place.
(2) Backfill. Selected backfill shall be used. Backfill shall be tamped [~~Tamp the backfill~~] around the pipe [~~so as~~] to provide firm continuous support and proper compaction. Backfill shall be at least twelve (12) inches over pipes, except that joints shall be left exposed. After inspection and pressure test, backfill shall be completed [~~complete backfill~~].

Section 6. Joints. Joints shall be made as follows:

(1) Barbed insert fittings. Procedure (pipe only).

Step 1. Pipe shall be cut [~~pipe~~] square.

Step 2. Burrs shall be removed. [~~Remove all burrs.~~]

Step 3. [~~Place~~] Two (2) strap-type stainless steel clamps shall be placed over the pipe (see Section 3(3) of this regulation).

Step 4. [~~Check that~~] Fittings shall be [~~are~~] properly sized for pipe.

Step 5. [~~Force~~] The end of the pipe shall be placed over the barbed insert fitting, making contact with the fitting shoulder (the end of the pipe may be softened by placing in hot water.)

Step 6. [~~Position~~] The clamps shall be positioned 180 degrees apart and tightened evenly to seal joint.

(2) Flared joints, procedure (pipe and tubing).

Step 1. [~~Cut~~] Pipe or tubing shall be cut square.

Step 2. Burrs shall be removed. [~~Remove all burrs.~~]

Step 3. The [~~Place~~] nut shall be placed over end of piping or tubing.

Step 4. [~~Lubricate~~] The point of the flaring tool and the tubing to be flared shall be lubricated using a [~~. Use~~] nontoxic liquid soap or other lubricant recommended by the manufacturer.

Step 5. [~~Flare~~] Piping shall be flared with a listed tool according to the tool manufacturers recommendations.

Step 6. [~~Assembly~~] The joint shall be assembled.

Step 7. [~~Tighten~~] Flare nuts shall be tightened according to manufacturers recommendation. Flare nuts shall not be overtightened. [~~DO NOT OVERTIGHTEN.~~]

(3) Mechanical compression joints, procedure (pipe and tubing).

Step 1. [~~Cut~~] Piping shall be cut square.

Step 2. Burrs shall be removed. [~~Remove all burrs.~~]

Step 3. The [~~Follow~~] manufacturer's recommended procedure shall be followed.

(4) Prohibited joints. Piping shall not be threaded.

Section 7. Installation. (1) Bends. Piping may be bent at a radius of not less than twelve (12) times the nominal diameter.

(2) Identification. A label shall be fastened to the main electrical meter panel stating "This structure has a nonmetallic water service."

(3) Working pressure. Working pressure shall not exceed 160 psi.

Section 8.Sizing. Piping shall be sized in accordance with 815 KAR 20:120.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 11, 1992
FILED WITH LRC: September 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1992 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 16, 1992, (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 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, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: See comments under #6.

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

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The amendments to this administrative regulation are intended to correctly reference the manufacturer's standard specification number identified for the use specified. Material not labeled as outlined in this administrative regulation does not comply with the State Plumbing Code.

TIERING: Was tiering applied? No. Tiering is not used in that each standard must be represented on the material in an identical manner.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

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

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS Chapter 13A, 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation relates to the storage, handling and installation of aluminum soil, waste, vent and storm drain pipe and fittings, and identifies the manufacturer's standard specification number of the material accepted in those installations. This amendment is necessary to comply with KRS Chapter 13A drafting rules. [~~This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.~~]

Section 1. [~~All~~] Aluminum pipe and fittings shall be produced and labeled as [~~conform~~] to American Society of Sanitary Engineers [~~Engineering~~] (ASSE) Standard #1045 and copies of this standard may be obtained by writing the American Society of Sanitary Engineers, P.O. Box 40362, Bay Village, Ohio 41140. [~~, performance standard and installation procedures for aluminum drain, waste and vent pipe with end cap components.~~]

Section 2. General. (1) The installation of aluminum drain, waste, and vent (DWV) with end cap components for both sanitary and storm use shall be installed in compliance with this administrative regulation [~~as per these requirements~~].

(2) Handling instructions, installation instructions, special environmental conditions, workmanship, and assembly for aluminum drain, waste and vent (DWV) systems shall be followed by the installer.

Section 3. Shipping, Storage and Handling. (1) Aluminum pipe shall be shipped and stored on a flat, clean surface, free of nails, rocks, or other sharp objects which could potentially damage the pipe or coating (if supplied) or both. Pipe shall not be stacked more than

ten (10) pieces high, unless strapped in bundles as received from the supplier, nor shall one (1) pipe rest unwrapped within another, which is not a recommended practice for any lined material. Pipe shall be supported on flat supports having a bearing face approximately four (4) inches wide, at intervals not greater than five (5) feet and at each end of the pipe.

(2) [~~Unless suitably crated,~~] Mechanical handling of pipe and accessories shall not be performed, unless they have been suitably crated. Manual handling shall be used on all sizes of pipe.

(3) [~~All~~] Pipe and joint components shall be stored away from extreme heat and [~~from~~] the danger of mechanical damage.

(4) Strict attention shall be paid to all safety regulations for handling and storage of pipe, fittings and accessories.

Section 4. Installation. (1) [~~Before starting the installation, all~~] Pipe, fittings, and joint components shall be examined for damage before starting an installation. [~~All materials that are~~] Bent, crushed, severely dented, or [~~otherwise~~] damaged materials shall not be used.

(2) Pipe shall be cut square and all ragged or burred edges, inside and outside shall be removed. [~~taking care not to disturb~~] The alcladding or the internal lining of the pipe shall not be disturbed. Pipe shall be cut with a circular saw equipped with a mitre box or guide to ensure a square cut. A twelve (12) or fourteen (14) inch diameter, semi or high speed steel, fine toothed, hollow ground, metal cutting blade shall be satisfactory. Tungsten carbide tipped blades that give a longer blade life are available. A solid or liquid blade lubricant shall be used.

(3) Assembly procedure.

(a) [~~Slip~~] The Alcan Adapter Ring (complete with mastic seal) shall be slipped over the cut end of the Alcan Aluminum DWV Pipe.

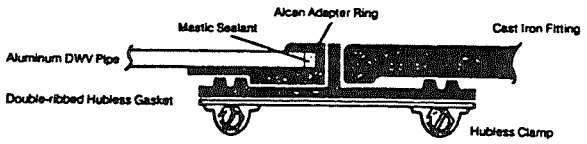
(b) [~~Slip~~] The hubless clamp shall be slipped over the aluminum pipe and out of the way until required.

(c) [~~Insert~~] The aluminum DWV pipe with adapter ring shall be inserted into the double-ribbed gasket.

(d) [~~Insert~~] The cast iron fitting shall be inserted into the other end of the double-ribbed hubless gasket.

(e) [~~Slide~~] The hubless clamp shall be slid over the gasket and [~~Torque~~] the screws shall be torqued alternately to sixty (60) in./lb, completing the joint procedure.

[~~(f) The joint is now complete.~~]



(4) Open clearance. The opening through walls, partitions, and floors shall be sufficient in size to allow free passage of pipe, fittings, and joint components. The openings shall be smooth and free of harmful surfaces and projections.

(5) Sealed. If openings through walls, partitions, and floors require sealing, they shall be sealed with mortar, concrete, or other sealants compatible with aluminum. [~~Care shall be taken to ensure that~~] Aluminum drain, waste and vent (DWV) pipe shall [~~is~~] not be in contact with reinforcing steel embedded in concrete. If required by code [~~regulations~~] or deemed necessary by the installing plumber, the pipe shall be wrapped in suitable plastic or rubber tape over the area passing through the wall or floor, or coated with good quality bituminous paint.

NOTE: If a sealant containing magnesium oxychloride is used, the pipe shall be provided with additional protection.

(6) Service penetration firestops. Service penetration firestop assemblies shall be in accordance with local fire or building codes.

Section 5. Joints. (1) Coupled. Joints shall be made in accordance with the manufacturer's instructions, including end cap protection and other component details.

(2) Transition to other piping. Adapter fittings are available for joining aluminum drain, waste and vent (DWV) pipe to other types of pipe, and [~~,~~] only adapter fittings approved for the specific transition shall be used.

Section 6. Supports. (1) Hangers. If a hanger or support for aluminum drain, waste and vent (DWV) pipe is of a metal other than aluminum and if chlorides or other electrolytes are present or likely to be present, the hanger shall be suitably separated and electrically isolated from the pipe. Supports and hangers shall have a broad support base and shall be free of burrs and rough edges to prevent abrasion of the pipe.

(2) Spacing. Horizontal pipe shall be supported at intervals not greater than ten (10) feet, at all joints, at all branch ends, and at all points where there is a change in direction. Trap arms shall be supported as close to the trap as possible. Vertical pipe shall be supported at intervals not greater than ten (10) feet.

Section 7. Buried Pipe. Only aluminum drain, waste and vent (DWV) pipe having a factory-applied external coating and marked "UGRD" shall be used underground. Joints shall be protected from corrosion by applying a tape wrap or shrink sleeve. The pipe shall be protected from mechanical damage by suitable structural shielding, if deemed necessary.

Section 8. Drain, Waste and Vent Systems Subject to Freezing. In servicing an aluminum drain, waste and vent (DWV) system to protect trap and fixtures from freezing, a glycol-water solution made up of sixty (60) percent by mass of glycol mixed in water shall be used. Alcohol antifreeze shall not be used[~~, because alcohol will evaporate and lose its effectiveness~~].

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 11, 1992
FILED WITH LRC: September 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1992 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 16, 1992, (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 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, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: See comments under #6.

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

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The amendments to this administrative regulation are intended to correctly reference the manufacturer's standard specification number identified for the use specified. Material not labeled as outlined in this administrative regulation does not comply with the State Plumbing Code.

TIERING: Was tiering applied? No. Tiering is not used in that each standard must be represented on the material in an identical manner.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(Proposed Amendment)

815 KAR 20:100. Joints and connections.

RELATES TO: KRS 198B.040(7), 198B.050(2), Chapter 318

STATUTORY AUTHORITY: KRS 13A.120, 198B.040(10), 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation relates to the methods that shall be used in joining certain types of piping materials together and [~~as well as~~] denoting the methods that shall be used in securing plumbing fixtures to waste piping outlets. This administrative regulation also identifies the manufacturer's standard specification number of the material accepted in those installations. This amendment is necessary to comply with KRS Chapter 13A and to delete obsolete language regarding material used in subsoil drainage systems which are no longer under the jurisdiction of the department. [~~This amendment is necessary to bring the regulation into technical compliance with KRS Chapter 13A. No other substantive changes were made.~~]

Section 1. Water and Airtight Joints. [~~All~~] Joints and connections shall be made [~~permanently~~] gas and water tight.

Section 2. Vitrified Pipe Joints; Concrete Pipe Joints; House Sewers - Combined Sewers. Joints in vitrified clay pipe shall be [~~conform to~~] ASTM specification C-425. Joints in concrete pipe shall be [~~conform to~~] ASTM specifications C-443. If [~~When~~] it is necessary to use piping in other than standard lengths hot poured joints may be used. Joints between cast iron pipe and vitrified clay pipe or concrete pipe shall be made either of hot poured bitumastic compound or by a preformed elastomeric ring. The ring shall completely fill the annular space between the cast iron spigot and the vitrified clay or concrete pipe hub. Joints in pipe and fittings with no [~~of not~~] more than two (2) pipe sizes between vitrified clay, acrylonitrile-butadiene-styrene or polyvinyl chloride to cast iron pipe and fittings or the joining of either material [~~to the other~~] may be made with proper fittings by using [~~the use of~~] a dispersion grade polyvinyl chloride ring produced and labeled as either [~~conforming to~~] ASTM C-443, C-425, C-594, C-564 or [~~and~~] D-1829 or a elastomeric polyvinyl chloride coupling. Copies of ASTM standards identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

Section 3. Caulked Joints. [~~All~~] Caulk joints shall be firmly packed with oakum or hemp and shall have at least one (1) inch of pure lead properly caulked. [~~No~~] Paint, varnish or putty shall not be permitted until tests have been performed.

Section 4. (1) Screw joints. [~~All~~] Screw joints shall be American Standard screw joints and all burrs or cuttings shall be removed.

(2) Mechanical joint couplings for hot and cold water. Mechanical joint couplings for hot and cold water shall not be used above ground unless the couplings are galvanized and the gaskets produced and labeled as [~~conform to~~] ASTM D-735-61, grade N-R-615 BZ, or other material listed in [~~on~~] approved parts or materials list, 815 KAR 20:020.

(3) Mechanical joint couplings for storm water piping. Mechanical joint couplings for storm water piping shall not be used above ground unless the couplings are either black iron or galvanized and the gaskets produced and labeled as [~~conform to~~] ASTM D-735-61, grade N-R-615 BZ.

(4) Joints in PVC and ABS Schedule 40 or 80 pipe and fittings. Joints in polyvinyl chloride schedule 40 or 80 pipe and fittings shall be solvent welded joints and shall be in compliance with [~~conform to~~] ASTM D-2665-69. Joints in acrylonitrile-butadiene-styrene pipe and fittings shall be solvent welded joints and shall be in compliance with [~~conform to~~] ASTM D-2661-90 [~~69~~]. Acrylonitrile-butadiene-styrene and polyvinyl chloride sewer piping produced and labeled as [~~that conforms to~~] ASTM 3033 or [~~and~~] 3034 shall be joined by solvent cement produced and labeled as [~~conforming to~~] ASTM D-2661-90 [~~69~~] for acrylonitrile-butadiene-styrene and ASTM D-2665-69 for polyvinyl chloride or with an elastomeric joint in compliance with [~~conforming to~~] ASTM D-3212-73.

(5) Copper pipe, brass and stainless steel tubing joints. Joints of copper pipe, brass and stainless steel tubing [~~joints~~] shall be soldered [~~joints~~].

(6) Expansion. An [~~Every~~] expansion joint shall be of an approved type and the [~~its~~] material shall comply [~~conform~~] with the type of piping in which it is installed.

(7) Brazed joints. Brazed joints shall be made by [~~first~~] cleaning the surfaces to be joined down to the base metal, applying flux approved for the joints and for the filler metal to be used, and making the joint by heating to a temperature sufficient to melt the approved brazing filler metal on contact.

(8) Elastomeric polyvinyl chloride coupling. Elastomeric polyvinyl chloride couplings shall be used for connecting cast iron, vitrified clay, concrete, or plastic pipe or the combination of these pipe materials for use on house sewers and combination sewers only. This coupling shall be provided with #305 stainless steel clamps.

[~~(9) Joints in corrugated polyethylene subsoil drainage tubing. Joints in corrugated polyethylene subsoil drainage tubing shall be made by slip joints using appropriate fittings.~~]

(9) [~~(10)~~] Joints in aluminum pipe shall be made by use of an adaptor ring (complete with mastic seal) over the cut end of the pipe and the use of an approved elastomeric sealing sleeve with a corrosion resistant clamping device.

Section 5. Cast Iron Soil Pipe Joints. (1) Joints in cast iron shall either be caulked, screwed, or joints made with the use of neoprene gaskets. Neoprene gaskets shall be produced and labeled as [~~conform to either~~] ASTM C-564-70 [~~or CS 301-72~~]. [~~Joints that conform to commercial standard 301-69T shall have a stainless steel clamp.~~]

(2) Cast iron coupling for joining hubless cast iron pipe shall consist of neoprene gasket produced and labeled as [~~conforming to~~] ASTM C-564, cast iron clamps produced and labeled as [~~conforming to~~] ASTM A-48 and stainless steel bolts and nuts produced and labeled as [~~conforming to~~] ANSI B-18.2.1 and ANSI B-18.2.2. Copies of ANSI standards identified in this administrative regulation may be obtained by writing the American National Standards Institute, 1430 Broadway, New York, New York 10018.

Section 6. Borosilicate Joints. Joints and gaskets used for borosilicate pipe shall be made in a manner approved by the department.

Section 7. (1) Steel, brass and copper connections to cast iron pipe. Steel, brass and copper joints when connected to cast iron pipe shall be either screwed or caulked joints. [~~All~~] Caulked joints shall be made by the use of a caulking spigot.

(2) PVC and ABS pipe and fitting connections to steel, brass, copper and cast iron pipe. Polyvinyl chloride and acrylonitrile-butadiene-styrene pipe and fitting connections to steel, brass, copper or cast iron pipe shall be either [~~be~~] a screwed or caulked joint. Joints between Schedule 40 PVC or ABS pipe and cast iron pipe may be made by the use of a neoprene gasket produced and labeled as [~~stamped~~] ASTM C-564-70. [~~All~~] Caulk joints shall be made with the use of either a polyvinyl chloride or acrylonitrile-butadiene-styrene or cast iron caulking spigot.

(3) Stainless steel tubing to cast iron pipe or [~~to~~] galvanized steel pipe or [~~and~~] to copper tubing. Stainless steel tubing to cast iron pipe shall be made by caulking spigot. Stainless steel tubing to galvanized steel pipe or copper pipe shall be made by the use of an adaptor.

(4) Joints in acid waste piping. Joints in vitreous glazed piping shall be made in a manner and of a material approved by the department. Joints in polyethylene and polypropylene piping shall be made by the heat fusion process. Joints in polypropylene shall [~~also~~] be made with a union joint. Joints in borosilicate pipe shall be a stainless steel mechanical joint. Joints between silicon iron pipe shall be either caulk joint or stainless steel mechanical joint.

Section 8. Lead Pipe. Joints in lead pipe or between lead pipe and brass or copper pipes, ferrules, soldering nipples, or trap, shall be full-wiped joints with an exposed surface of the solder at each side of the joint of not less than three-quarters (3/4) of an inch. The minimum thickness of the thickest part of the joint shall be at least as thick as the material being used. If lead pipe is used for acid waste lines, the pipe may be joined by burning.

Section 9. Lead Pipe to Cast Iron, Steel, or Wrought Iron Pipe. The joints between lead to cast iron, steel or wrought iron shall be made by means of a caulking ferrule or a soldering nipple.

Section 10. Wall or Floor Flange Joints. Wall or floor flange joints shall be made by using a lead ring or brass flange and shall be properly soldered.

Section 11. Soil Pipe, Iron Pipe, Copper Pipe; Tubular Trap Joints. Joints between soil pipe, iron pipe, copper pipe and tubular traps shall be made by the use of a heavy red cast brass adaptor. Tubular traps shall be soldered to the adaptor in a manner approved by the department.

Section 12. Slip Joints. Slip joints shall be permitted only on the inlet side of a trap.

Section 13. Unions. Unions shall be ground faced and shall not be concealed or enclosed.

Section 14. Roof Joints. The joint at [~~of~~] the roof shall be made watertight by use of copper, lead or other approved flashing or flashing material. The approved flashing [~~it~~] shall not extend [~~not~~] less than six (6) inches from the pipe in all directions and shall extend upward twelve (12) or more inches and turn down into the pipe. A hub flashing may be used if it is constructed in a manner allowing the flashing to [~~so it can~~] be caulked into a hub above the roof.

Section 15. Increasers and Reducers. If [~~When~~] different size pipes or [~~pipes and~~] fittings are to be concealed, the proper size increaser or reducer pitched at an angle of forty-five (45) degrees between the two (2) sizes, shall be used. This section does not apply to nonmetallic installations.

Section 16. Prohibited Joints and Connections. A [~~Any~~] fitting or connection which has an enlargement chamber, or recess with a ledge shoulder, or reduction of the pipe area in the direction of the flow shall be [~~is~~] prohibited.

Section 17. Hangers and Supports. [~~All~~] Piping and fixtures shall be adequately supported by hangers or anchors securely attached to the building construction.

Section 18. Welded Pipe for Soil, Waste and Vent Systems. Mild steel pipe may be welded for a soil waste and vent system if the welds are mechanically sound and the bore of the piping is smooth throughout its length. The welded piping shall be covered with a metallic continuous coating. Written permission shall be secured from the department for this type system.

CHARLES A. COTTON, Commissioner
EDWARD J. HOLMES, Secretary
APPROVED BY AGENCY: September 3, 1992
FILED WITH LRC: September 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1992 at 10 a.m. in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by October 16, 1992, (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 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, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Judith G. Walden

(1) Type and number of entities affected: See comments under #6.

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected:

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: The amendments to this administrative regulation are intended to correctly reference the manufacturer's standard specification number identified for the use specified. Material not labeled as outlined in this administrative regulation does not comply with the State Plumbing Code.

TIERING: Was tiering applied? No. Tiering is not used in that each standard must be represented on the material in an identical manner.

PROPOSED REGULATIONS RECEIVED THROUGH NOON, SEPTEMBER 15, 1992

LEGISLATIVE RESEARCH COMMISSION

1 KAR 3:006. Repeal of 1 KAR 3:005.

RELATES TO: KRS 45.750 to 45.810
STATUTORY AUTHORITY: KRS 7.320, 13A.350
NECESSITY AND FUNCTION: 1 KAR 3:005 implements KRS 45.750 to 45.810. Due to the 1992 Kentucky General Assembly's passage of House Bill 258, KRS 45.750 to 45.810 now contain sufficient detail so that 1 KAR 3:005 is necessary.

Section 1. 1 KAR 3:005, Capital construction and equipment purchase oversight committee; procedure; records, is hereby repealed.

SENATOR JOHN A. "ECK" ROSE, Co-chairman
REPRESENTATIVE DONALD J. BLANDFORD, Co-chairman
APPROVED BY AGENCY: August 5, 1992
FILED WITH LRC: August 18, 1992 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on October 23, 1992, at 10 a.m. in Room 113, Capitol Annex, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this committee in writing by October 18, 1992, 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. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person: Mr. Ed Sergent, Committee Staff Administrator, Capital Projects and Bond Oversight Committee, Room 002A, Capitol Annex, Frankfort, Kentucky, 40601, (502) 564-8100.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ed Sergent
(1) Type and number of entities affected: The Capital Projects and Bond Oversight Committee and entities which report to the committee. No actual number available.
(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: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: KRS 45.750 to 45.810 now contain sufficient detail so that 1 KAR 3:005 is unnecessary.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Statutory language creates a uniform process with which the Capital Projects and Bond Oversight Committee and entities which report to the committee can comply.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 3:005. Lender participation.

RELATES TO: KRS 164.740(6), (16), 164.748(5), (13), 20 USC 1078(B)(1)(U), 1085(d), 34 CFR 682.401(b)(10)(A)
STATUTORY AUTHORITY: KRS 164.746(6), 164.748(4), 20 USC 1078(B)(1)(U), 34 CFR 401(b)(10)(A)
NECESSITY AND FUNCTION: KRS 164.748(1) authorizes the board to "provide loan guarantees, upon such terms and conditions as the board may prescribe within the limitations provided by KRS 164.740 to 164.785, and the federal act in respect of loans to eligible students." KRS 164.748(5) authorizes the board to "enter into contracts with eligible lenders approved by the state to lend moneys, upon such terms and conditions as may be agreed upon between the authority and the eligible lender, to provide for the administration of student financial assistance programs, including, but not by way of limitation, the authority's program of insured student loans." The authority is the designated guarantor for the state of Kentucky under the Robert T. Stafford Federal Student Loan Program pursuant to the federal act of 1965, as amended (20 USC 1071 et seq.) and agreements with the secretary. Section 428(b)(1)(U) of the federal act requires the authority to provide for the eligibility of all lenders described in 435(d)(1) of the federal act under reasonable criteria. 34 CFR 682.401(b)(10)(A) requires the authority to establish and disseminate the criteria for lender eligibility. This regulation sets forth the criteria for approval of lender participation and execution of a contract of insurance with eligible lenders.

Section 1. Definitions. (1) The definition of "authority" is governed by KRS 164.740(1).
(2) The definition of "board" is governed by KRS 164.740(2).
(3) The definition of "eligible lender" is governed by KRS 164.740(6).
(4) The definition of "federal act" is governed by KRS 164.740(9).
(5) The definition of "insured student loan" is governed by KRS 164.740(12).
(6) The definition of "loan guarantee" is governed by KRS 164.740(14).
(7) The definition of "participating lender" is governed by KRS 164.740(16).
(8) The definition of "secretary" is governed by KRS 164.740(20).

Section 2. (1) In order to be considered for participation in the authority's insured student loan program, a lender shall submit to the authority, if requested, information sufficient to enable the authority to determine the eligibility of the lender and whether it meets the following criteria. In determining whether to enter into a contract of insurance with an applicant, and, if so, what the terms of the contract will be, the authority considers:
(a) Whether the applicant is an organization described in, and not disqualified pursuant to, 435(d) of the federal act;
(b) Whether the applicant is capable of complying with federal regulations and 11 KAR Chapter 3 as they apply to lenders participating in the authority's insured student loan program;
(c) Whether the applicant is capable of implementing adequate procedures for making, servicing, and collecting insured student loans;
(d) Whether the applicant has had prior experience with a similar federal, state, or private nonprofit student loan program, and the amount and percentage of loans that are currently delinquent or in default under that program;
(e) The financial resources of the applicant; and
(f) In the case of a school that is seeking approval as a lender, whether it is accredited.

Section 3. (1) The authority may enter into a contract of insurance with an eligible lender approved by the secretary that is located in any

state, if the lender is:

(a) Capable of complying with federal regulations and 11 KAR Chapter 3 as they apply to lenders participating in the authority's insured student loan program;

(b) Capable of implementing adequate procedures for making, servicing, and collecting insured student loans; and

(c) Located in any state and, except for the exclusive purpose of holding insured student loans acquired by transfer from another eligible lender, the organization directly or through a subsidiary maintains an office within Kentucky in which it offers the full range of financial services (in addition to insured student loans) that cause the lender to be an organization described in 435(d) of the federal act.

(2) The authority shall issue loan guarantees for lenders under contracts described in Section 4 of this administrative regulation without regard to the residency of the borrower or the state in which the educational institution is located.

(3) The authority shall deem the state in which the participating lender is located to be the area served by the authority.

Section 4. The Contract of Insurance. (1) In order to participate, an eligible lender shall execute a contract of insurance with the authority. No loan guarantee shall be issued by the authority unless it is covered by such an agreement.

(2) In general, under a contract of insurance, the participating lender agrees to comply with all laws, regulations, and other requirements applicable to its participation as a lender. In return the authority agrees to insure each eligible loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The authority may include in a contract of insurance a limit on the duration of the contract and the number or amount of loans the participating lender may make or hold.

(4) Except as otherwise approved by the authority, a contract of insurance with a school lender limits the loans made by that school lender that will be covered by the loan guarantee to those loans made to students, or to parents borrowing on behalf of students, who are:

(a) In attendance at that school;

(b) In attendance at other schools under the same ownership as that school; or

(c) Employees or dependents of employees, or whose parents are employees, of that school lender or other schools under the same ownership, under circumstances the authority considers appropriate for loan guarantees.

(5) A limit imposed under subsection (4) of this section on a school lender that makes loans to students, or to parents of students, in attendance at other schools under the same ownership, or to employees, or to dependents or parents of employees of those other schools may be imposed on a school-by-school basis.

WAYNE STRATTON, Chairman

APPROVED BY AGENCY: September 8, 1992

FILED WITH LRC: September 15, 1992 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, October 28, 1992 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Friday, October 23, 1992, 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: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden

(1) Type and number of entities affected: The regulation permits approval of voluntary participation by various types of financial institutions (including banks, savings and loan associations, credit unions, and insurance companies). 303 lenders located in Kentucky are currently participating in the authority's loan insurance programs. Section 3 of this regulation provides for participation by holding companies (i.e., parent corporations) that have full service subsidiary operations in Kentucky. It is expected that three to five such lenders will choose to participate in the first year; however, the number could eventually be greater, because there are at least 22 organizations outside of Kentucky that have subsidiaries in Kentucky.

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

1. First year: The regulation will not impose additional cost on lenders, because it provides for voluntary participation. Savings may be achieved because multistate lenders currently utilize a different guarantor for each state in which their lenders participate in student loan programs. Consolidation of their lending activity into one guarantor will eliminate duplication of many procedures. These savings are difficult to quantify because they vary with the lender's loan volume and servicing practices, but consolidation will certainly centralize and provide uniformity in processing, disbursing, and servicing their student loan portfolios.

2. Continuing costs or savings: Same as 1 above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There will be no perceivable effect upon the participating lenders' competitors. This regulation permits expanded access to the authority's loan insurance program under criteria similar to federal criteria. Organizations in other states who do not have full-service operations in Kentucky would be excluded, but they would have access to the loan insurance program of the state in which they are located.

(b) Reporting and paperwork requirements: The reporting and paperwork requirements on voluntary participants in Kentucky are those imposed by federal regulations. However, an out-of-state lender that chooses to participate in the authority's program will be reporting to only one guarantor for all of its subsidiaries; consequently, considerable duplication and multiplicity will be eliminated.

(2) Effects on the promulgating administrative body: As a result of additional lenders participating in authority loan programs, loan program volume is expected to increase by an amount of at least $100 million.

(a) Direct and indirect costs or savings:

1. First year: A substantial increase in loan guarantee volume could conceivably result in an increase in personnel and operating requirements. However, this will be offset by a proportionate increase in federally restricted agency income from insurance premiums and administrative cost allowance of up to 3% and 1% of loan volume respectively. It is impossible to estimate the increase in costs or revenue at this time because this depends on the level of voluntary participation and extent of lending.

2. Continuing costs or savings: If the newly eligible lenders substantially increase the authority's loan guarantee volume, both costs and income would experience an increase.

3. Additional factors increasing or decreasing costs: The authority has observed a marked increase in multistate banking and interstate mergers and acquisitions of financial institutions in recent years. This regulation permits participation under criteria similar to federal regulations, but extends access to out-of-state lenders having a Kentucky connection. The authority believes that failure to provide access to out-of-state lenders will result in diminution of overall participation in the authority's program as Kentucky financial institutions continue to be acquired by out-of-state holding companies.

(b) Reporting and paperwork requirements: Any increase in reporting and paperwork requirements will be in direct proportion to the increase in loan volume.

(3) Assessment of anticipated effect on state and local revenues: Federally restricted revenues will be increased by an undetermined amount as the result of loan insurance premiums (up to 3%) and administrative cost allowance (up to 1%) on increased loan volume.

(4) Assessment of alternative methods; reasons why alternatives

were rejected: The authority is required by federal regulations (34 CFR 682.401(b)(10)) to prescribe and disseminate criteria for lender participation substantially similar to criteria prescribed by federal regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflict with any statute, administrative regulation or government policy. However, some parts of this regulation duplicate portions of 11 KAR 3:060 which will be repealed in the near future as the result of changes in the federal law.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: The proposed regulation makes one major change to existing practices; large, multistate lenders with full-service operations in Kentucky will be able to make authority-insured loans in any state in which they operate as a lender. The authority considers this expanded access essential to avoid an overall decrease in participation in the authority's program in the face of increasing interstate mergers and acquisitions among financial institutions.

TIERING: Was tiering applied? No. The concept of tiering is not applicable to this regulation. All lenders with operations in Kentucky are afforded equal access to voluntary participation in the authority's loan insurance program.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 20 USC 1078(B)(1)(U) and 1085(d) of the Higher Education Act of 1965 as amended by 416 and 427 of PL 102-325 (July 23, 1992) and 34 CFR 682.401(b)(10)(A).

2. State in sufficient detail the state compliance standards: This regulation provides for approval of participation of qualified lenders in the authority's insured student loan program. It requires that the applicant meet the federal definition of an eligible lender and that the lender be capable of meeting the requirements of diligence in making, servicing, and collecting insured loans.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal statute (20 USC 1078(b)(1)(u) requires the authority to provide eligibility for all lenders under reasonable criteria that are similar to federal requirements. 20 USC 1085(d) provides eligibility for banks, savings and loan associations, credit unions, insurance companies, pension funds, rural rehabilitation funds, and various other organizations. The organization must not engage in certain incentives to obtain applicants for loans or fraudulent activities. 34 CFR 682.401(b)(10)(A) requires the authority to establish and disseminate criteria for lender participation.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. This regulation requires the applicant to meet federal criteria for eligibility. However, it is somewhat more restrictive than federal eligibility, in that it limits participation, for purposes of making loans outside of Kentucky to those organizations that maintain a full-service operation within Kentucky. This slightly more restrictive measure has been approved by the U.S. Department of Education.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The slightly more restrictive provision of requiring a lender to maintain a full-service operation in Kentucky in order to participate for the purpose of making loans outside of Kentucky has been approved by the U.S. Department of Education and is considered necessary to the efficient administration of the authority's program while maintaining the public purpose of the authority as a Kentucky state agency.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

11 KAR 4:015. Repeal of 11 KAR 4:010

RELATES TO: 164.746(5)
STATUTORY AUTHORITY: KRS 164.746(6)
NECESSITY AND FUNCTION: 11 KAR 4:010 is not necessary because the board of directors has adopted bylaws which comprehensively provide for the internal operation of the board, including the establishment of committees, election of officers, voting, duties of officers, conduct of board members, and the holding of meetings. These bylaws constitute a public record available for inspection at the authority's office at 1050 U.S. 127 South, Frankfort, Kentucky, Monday through Friday from 8 a.m. to 4:30 p.m. Because the bylaws address the matter of holding board meetings, 11 KAR 4:010 is unnecessarily duplicative.

Section 1. 11 KAR 4:010, Board meetings, is hereby repealed.

WAYNE STRATTON, Chairman
APPROVED BY AGENCY: September 8, 1992
FILED WITH LRC: September 15, 1992 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, October 28, 1992 at 9 a.m. at 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Friday, October 23, 1992, 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: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Paul P. Borden

(1) Type and number of entities affected: No entities are affected. 11 KAR 4:010 is being repealed because the board of directors has adopted bylaws which comprehensively provide for the internal operation of the board.

(a) Direct and indirect costs or savings to those affected: No entities are affected; there are no costs or savings.

1. First year: There are no costs or savings.

2. Continuing costs or savings: None

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

(b) Reporting and paperwork requirements: There are no requirements.

(2) Effects on the promulgating administrative body: There are no effects on the promulgating administrative body. Because the bylaws address the matter of board meetings, 11 KAR 4:010 is being repealed.

(a) Direct and indirect costs or savings: There are no 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: There are no such requirements.

(3) Assessment of anticipated effect on state and local revenues:

There is no effect on state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternatives. 11 KAR 4:010 is duplicative of the bylaws and is therefore being repealed.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The regulation being repealed was duplicative of bylaws, and for that reason it is being repealed.

(a) Necessity of proposed regulation if in conflict: Proposed regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(6) Any additional information or comments: This administrative regulation repeals an existing regulation which duplicates the bylaws and is therefore not necessary.

TIERING: Was tiering applied? No. The concept of tiering is not applicable to the repeal of a duplicative regulation.

GENERAL GOVERNMENT CABINET
Auditor of Public Accounts

45 KAR 1:060. Confidentiality.

RELATES TO: KRS 43.050, 43.070, 43.071

STATUTORY AUTHORITY: KRS 43.075(1)

NECESSITY AND FUNCTION: This regulation provides uniform standards and procedures for maintaining the confidentiality of information obtained by employees of the Office of the Auditor of Public Accounts.

Section 1. Definitions. (1) "Confidential information" means originals, copies, and recordings of all workpapers, documents, notes, and other written or unwritten information related to the official business of the Office of the Auditor of Public Accounts.

(2) "Employee" means:

(a) Current and former employees of the Office of the Auditor of Public Accounts; and

(b) Persons currently and formerly under contract with the Office of the Auditor of Public Accounts.

(3) "Authorized person" means:

(a) In all matters:

1. The Auditor of Public Accounts; and

2. An employee of the Office of the Auditor of Public Accounts; and

(b) With regard to examinations of a local government or state agency, the local government or state agency head and his designee.

Section 2. Confidentiality. (1) An employee of the Office of Auditor of Public Accounts:

(a) Unless specifically authorized in writing by the Auditor of Public Accounts, shall not disclose confidential information to a person who is not an authorized person; and

(b) Unless specifically prohibited in writing by the Auditor of Public Accounts, may disclose confidential information to an authorized person if disclosure is required in the performance of his official duties.

(2)(a) Confidential information obtained by an employee of the Office of the Auditor of Public Accounts in the performance of their official duties shall be preliminary in nature.

(b) Confidential information that represents final action of the Office of the Auditor of Public Accounts shall be disclosed only through written reports of official findings and recommendations signed by the Auditor of Public Accounts.

(3) An employee shall take action to protect and safeguard confidential information from:

(a) Loss;

(b) Destruction;

(c) Theft; and

(d) Intentional or negligent access, observation, and eavesdropping by anyone who is not an authorized person.

Section 3. Confidentiality Statement. (1) An employee shall sign the "Confidentiality Statement of the Office of the Auditor of Public Accounts".

(2) "Confidentiality Statement of the Office of the Auditor of Public Accounts (1992)" is incorporated by reference. It may be inspected, obtained or copied at the Office of the Auditor of Public Accounts, 144 Capitol Annex, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

Section 4. Disciplinary Action. An employee who violates the provisions of this administrative regulation shall be subject to disciplinary action.

A. B. CHANDLER, III, Auditor

APPROVED BY AGENCY: September 15, 1992

FILED WITH LRC: September 15, 1992 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1992, at 10 a.m. at 2439 U.S. 127 South. Individuals interested in attending this hearing shall notify this agency in writing by October 16, 1992, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: David H. MacKnight, General Counsel, Office of the Auditor of Public Accounts, Room 144, Capitol Annex, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Dave MacKnight

(1) Type and number of entities affected: This regulation effects no entities outside the promulgating administrative body.

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

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements:

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Additional costs due solely to this regulation are approximately 130 copies of the confidentiality agreement at a total cost of less than $5.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Employees will be required to complete a single-page statement noting they have received and read the regulation.

(3) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on state and local revenue.

(4) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 13A requires policy to be in administrative regulations.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known areas of conflict, overlapping, or duplication.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? No. All staff of the APA are included under the provisions of this regulation due to equal protection and due process requirements.

FINANCE AND ADMINISTRATION CABINET
KENTUCKY RETIREMENT SYSTEMS

105 KAR 1:250. Participation of county attorney employees.

RELATES TO: KRS 78.5302
STATUTORY AUTHORITY: KRS 61.645
NECESSITY AND FUNCTION: This administrative regulation sets out the procedures for determining membership in either the Kentucky Employees Retirement System or County Employees Retirement System for each employee of a county attorney who is paid from the county attorney's delinquent tax fees, federal or state grant funds received for collection of child support or any other source of funds outside the control of the fiscal court.

Section 1. For each employee paid in whole or in part from delinquent tax fees, federal or state grant funds received for collection of child support or other funds outside the control of the fiscal court, the county attorney shall complete and submit a Form 110, Retirement System Membership Determination, to the retirement office. The county attorney shall submit the form on or before the date the first contributions are reported on each employee.

Section 2. The county attorney shall determine the system in which each employee shall participate based on the following:

(1) For an employee currently participating in the County Employees Retirement System or Kentucky Employees Retirement System, the county attorney shall continue to make the required contributions for the supplementary wages to the system in which the employee is participating.

(2) For employees not currently participating in a retirement system, the employee shall participate in the Kentucky Employees Retirement System if a majority of the employee's time is spent in performing prosecutorial duties. If a majority of the employee's time is spent preforming civil legal representation of the fiscal court and other county officials, the employee shall participate in the County Employees Retirement System.

(3) For those employees whose time is spent performing duties related to child support collection cases, whether criminal or civil, the employee shall participate in the retirement system which the county attorney has selected for child support enforcement employees consistent with the funding and operational methods of the county attorney's office.

(4) For purposes of this section, prosecutorial duties shall include duties and functions related to the prosecution of criminal cases in the district or circuit courts of the Commonwealth. Civil legal representation shall include duties and functions related to the representation of the fiscal court, its officers or employees or other elected county officers in any civil or administrative proceeding in state or federal courts and administrative agencies.

Section 3. Once the county attorney has determined the system in which an employee shall participate, the employee shall participate in the designated system as long as he remains an employee of the county attorney regardless of any change in the employee's duties or responsibilities.

Section 4. The forms required by this administrative regulation are incorporated by reference and may be obtained from the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky, 40601, Monday through Friday.

JOHN D. ROBEY, Chairman
APPROVED BY AGENCY: August 20, 1992
FILED WITH LRC: August 25, 1992 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 26, 1992, at 9 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 October 21, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: This administrative regulation affects county attorney offices and employees who are paid from nonfiscal court funds who are members of the system.

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

1. First year: The cost is dependent on the number of employees meeting the statutory requirements. No estimate is available. The cost to the employee is 5% of salary. The cost to the employer is dependent upon the system in which the employee is placed.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The county attorney must complete a certification form on each employee and complete monthly wage and contribution reports on all participating employees.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Additional accounting, data processing and benefits counseling activity required to provide services to the affected employees. There is not sufficient data to determine the estimated impact.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Additional monthly contribution reports for these employees will be generated, posted, reconciled and balanced in addition to the member folders and forms.

(3) Assessment of anticipated effect on state and local revenues: The county attorneys shall be required to pay the employer contributions on their employees.

(4) Assessment of alternate methods; reasons why alternatives were rejected: This administrative regulation implements the requirements of KRS 78.5302.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute or regulation is in 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: This administrative regulation was developed with the assistance and input of county attorney offices in the state.

TIERING: Was tiering applied? Yes. The determination for the system in which an employee is placed is based on the job duties of the employee and the overall activity of the county attorney's office.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?
Yes X No__ (If yes, complete questions 2-4)

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation applies to all employees paid from delinquent tax fees, federal or state funds for child support collection and enforcement and other funds outside the control of fiscal court.

3. State the aspect or service of local government to which this

administrative regulation relates. This administrative regulation establishes the procedure for determining the retirement system under which these employees are to be reported.

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: In accordance with KRS 78.5302, enacted by the 1992 General Assembly, retirement coverage is to be extended to all employees involved in child support enforcement and collection. The number and total payroll on which contributions are to be reported is not known. The employee shall pay 5% of gross salary. The county attorney shall pay the appropriate employer contribution rate dependent upon the system into which he places his employees.

FINANCE AND ADMINISTRATION CABINET
KENTUCKY RETIREMENT SYSTEMS

105 KAR 1:260. Purchase of Out-of-state service credit.

RELATES TO: KRS 61.552

STATUTORY AUTHORITY: KRS 61.645(9)(e)

NECESSITY AND FUNCTION: The statute provides for the purchase of out-of-state service credit for members of the Kentucky Retirement Systems. This administrative regulation sets out the requirements and forms for obtaining credit for this service.

Section 1. Each employee wishing to purchase service credit for out-of-state public service under KRS 61.555(17) to (18) shall request a copy of Form 41, Certification of Out-ofstate Service, effective August 1992.

Section 2. The employee shall mail the form to his former employer and retirement plan for completion. If the employee wishes to purchase hazardous service in CERS, he shall also obtain a copy of the description of his duties in the out-of-state position from his former employer. The employee shall be responsible for obtaining the information requested on the form regarding the period of out-of-state service.

Section 3. The completed form and job description shall be submitted to the retirement office. The retirement system shall determine how much service is eligible for purchase under the statute based on the information submitted.

Section 4. Service credit shall be eligible for purchase as hazardous duty if the position is the same as or substantially similar to positions for which hazardous duty credit has been approved under KRS 61.592.

Section 5. The retirement system shall notify the employee of the cost of the service which qualifies for purchase. The cost shall be determined as a delayed contribution payment except that the employee shall pay 100 percent of the total. The cost shall be based on the employee's age rounded to the nearest year and the employee's estimated current rate of pay, final rate of pay or final compensation, whichever is higher. Payment by the employee shall be due on the date shown on the notification.

Section 6. If the employee's actual rate of pay or final compensation is higher than estimated and results in a difference of $100 or more in the cost of the service, the employee shall be notified and shall pay the additional cost for the service within thirty (30) days of the date on the notification.

Section 7. If the retirement system determines that the service is not eligible for purchase, the retirement system shall notify the employee of the reasons. If additional information is needed to make the determination, the employee shall be responsible for obtaining the additional information.

JOHN D. ROBEY, Chairman

APPROVED BY AGENCY: August 20, 1992

FILED WITH LRC: August 25, 1992 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 26, 1992, at 9 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 October 21, 1992, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: This administrative regulation affects those employees with eligible public service in states other than Kentucky.

(a) Direct and indirect costs or savings to those affected: The total cost of the added benefit is the responsibility of the member. There is no actuarial cost to the system.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The employee is required to obtain documentation of service on a form provided by the retirement office.

(2) Effects on the promulgating administrative body: There is no actuarial cost. Administrative cost associated with the processing of these requests cannot be determined until more is known about the number of employees with out-of-state public service.

(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 paperwork requirements are consistent with other service purchase requests.

(3) Assessment of anticipated effect on state and local revenues: This administrative regulation does not affect local or state revenues.

(4) Assessment of alternate methods; reasons why alternatives were rejected: This provision was required by new language in KRS 61.552.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute or regulation is in 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. The provisions are designed to apply equally to all employees with eligible service.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy

201 KAR 2:195. Impaired pharmacists.

RELATES TO: KRS Chapter 315
STATUTORY AUTHORITY: KRS 315.191(1)
NECESSITY AND FUNCTION: The problems of chemical dependence and other infirmities which affect a pharmacist's ability to practice pharmacy make it necessary for the Kentucky Board of Pharmacy, in the interest of public welfare, to identify impaired pharmacists and encourage rehabilitation on a voluntary or involuntary basis.

Section 1. Definitions. "Impaired pharmacist" means a licensed pharmacist exhibiting diminished mental or physical faculties which affect his ability to adequately engage in the practice of pharmacy with the skill and competency necessary for the protection of public health.

Section 2. Factors contributing to impairment of a pharmacist shall include, but not be limited to:
(1) Substance abuse;
(2) Chemical dependence;
(3) Disease;
(4) Trauma;
(5) Mental illness; and
(6) The aging process.

Section 3. The identification of impairment may be on a voluntary or an involuntary basis.
(1) Voluntary:
(a) Self diagnosed and freely admitted to, with the impaired pharmacist seeking a solution; or
(b) Reluctantly accepted after intercession by family members or fellow professionals, or after a Kentucky Board of Pharmacy administrative conference.
(2) Involuntary: vehement denial and failure to cooperate without a formal hearing.

Section 4. (1) An impaired pharmacist submitting to voluntary resolution to achieve rehabilitation by entering into and participating in approved programs shall be granted every consideration of confidentiality as long as he adheres to the terms contained in an agreement with the board.
(2) Full practice privileges may be retained by an impaired pharmacist submitting to voluntary resolution when all signs apparent to counselors, evaluators, and employers remain positive.
(3) Failure to adhere to the terms of an agreement with the board shall subject an impaired pharmacist to the same actions and penalties as would apply to involuntary identification of impairment.
(4) Impaired pharmacists involuntarily identified because of suspicious or unprofessional behavior reasonably construed to be consistent with impaired function or practice posing a threat to public welfare shall be impartially investigated by the Kentucky Board of Pharmacy. When necessary, the board's assessment of the evidence obtained shall be reviewed by competent and unbiased professionals utilized to evaluate the board's determination.
(5) Individuals necessitating a formal hearing to determine impairment, and who are found to be impaired and to constitute a danger to the public through their continued practice of pharmacy, shall bear the administrative expenses incurred by the board and be subject to appropriate fines and penalties as specified in KRS 315.990(2) and 315.121, respectively, and the record shall be subject to disclosure pursuant to KRS 67.870.

TOM HOUCHENS, President
APPROVED BY AGENCY: September 9, 1992
FILED WITH LRC: September 9, 1992 at 1 p.m.
PUBLIC HEARING: A public hearing on this proposed amendment to administrative regulation shall be held on October 21, 1991 at 10 a.m. (EDT) at the office of the Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 16, 1992, 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: Julio Polio, Interim Executive Director, Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Julio Polio
(1) Type and number of entities affected: Approximately 50 pharmacists in last three years.
(a) Direct and indirect costs or savings to those affected: No added costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: No added paperwork required.
(2) Effects on the promulgating administrative body: Allows impaired pharmacist to continue to be licensed with monitoring by the Board of Pharmacy.
(a) Direct and indirect costs or savings: No added costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Negligent amount of paperwork.
(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: Allows for monitoring to ensure compliance for safety of citizens of the Commonwealth.
(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. N/A. Would apply to all impaired pharmacists.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy

201 KAR 2:205. Pharmacist-in-charge.

RELATES TO: KRS Chapter 315
STATUTORY AUTHORITY: KRS 315.020(1), 315.0351(7), 315.191(1)
NECESSITY AND FUNCTION: Kentucky Revised Statutes require applicants for pharmacy permits to place a pharmacist in charge as a prerequisite to compounding and dispensing privileges granted by the Kentucky Board of Pharmacy.

Section 1. Definitions. The term "pharmacist-in-charge" means a pharmacist licensed in the Commonwealth of Kentucky, or in the appropriate jurisdiction of an out-of-state pharmacy holding a Kentucky Board of Pharmacy permit, who accepts responsibility for

the operation of a pharmacy in conformance with all laws and regulations pertinent to the practice of pharmacy and the distribution of prescription drugs and who is personally in full and actual charge of such pharmacy.

Section 2. Duties and Responsibilities. (1) The pharmacist-in-charge shall be so designated in the application for a permit to operate a pharmacy and in each application for renewal of that permit thereafter.

(2) A pharmacist may not serve as pharmacist-in-charge:

(a) For more than one (1) pharmacy at a time, except upon written approval from the Kentucky Board of Pharmacy; and

(b) Unless he is physically present in that pharmacy for a minimum of ten (10) hours per week or such amount of time appropriate to provide supervision and control.

(3) The pharmacist-in-charge shall be responsible for:

(a) Quality assurance programs for pharmacy services designed to objectively and systematically monitor care, pursue opportunities for improvement, resolve identified problems as may exist, and detect and prevent drug diversion;

(b) The procurement, storage, security, and disposition of drugs and the provision of pharmacy services;

(c) Assuring that all pharmacists and interns employed by the pharmacy are currently licensed;

(d) Notifying the Board of Pharmacy within five (5) working days of any change in the:

1. Employment of the pharmacist-in-charge;
2. Employment of staff pharmacists; and
3. Schedule of hours for the pharmacy;

(e) Making or filing of any reports required by state or federal laws and regulations; and

(f) Responding to the Kentucky Board of Pharmacy regarding identified violations or deficiencies.

TOM HOUCHENS, President

APPROVED BY AGENCY: September 9, 1992

FILED WITH LRC: September 9, 1992 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed amendment to administrative regulation shall be held on October 21, 1991 at 10 a.m. (EDT) at the office of the Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 16, 1992, 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: Julio Polio, Interim Executive Director, Kentucky Board of Pharmacy, 1228 U.S. 127 South, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Julio Polio

(1) Type and number of entities affected: 1184 licensed pharmacists in Kentucky and 62 out-of-state pharmacies that would be required to name a specific pharmacist-in-charge.

(a) Direct and indirect costs or savings to those affected: No additional cost added to pharmacy permit.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: No additional paperwork required. Name is now included on the permit completed by permittees.

(2) Effects on the promulgating administrative body: Permits must be issued annually.

(a) Direct and indirect costs or savings: No additional costs or savings.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional paperwork required.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Specific responsibility of pharmacist assigned charge duties.

(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. N/A

GENERAL GOVERNMENT CABINET
Kentucky Board of Registration for Professional Geologists

201 KAR 31:010. Fees.

RELATES TO: KRS 322A.050

STATUTORY AUTHORITY: KRS 322A.030(5)

NECESSITY AND FUNCTION: This regulation is necessitated by KRS 322A.050 and sets forth in detail all fees charged by the board.

Section 1. The application fee for registration as a professional geologist shall be $200.

DAVID C. SCOTT, Chairman

APPROVED BY AGENCY: September 11, 1992

FILED WITH LRC: September 15, 1992 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 21, 1992, at 9:30 a.m. at the offices of the Division of Occupations and Professions, located at the Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by October 16, 1992, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602.

REGULATORY IMPACT ANALYSIS

Contact Person: David Nicholas

(1) Type and number of entities affected: There will be approximately 1,500 individuals credentialed by the board who would come under this regulation.

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

1. First year: $200 per individual (nonrefundable).
2. Continuing costs or savings: Renewal fees will be determined later.
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: The application fee should accompany the application.

(2) Effects on the promulgating administrative body: This regulation sets the application fee for potential licensees.

(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: All funds received will be deposited to a trust and agency revolving account.

(3) Assessment of anticipated effect on state and local revenues: This fee should generate approximately $300,000 in fees for agency use.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires the promulgation of this regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Is tiering applied? No. All credentialed practitioners will be subject to this regulation in the same ways.

JUSTICE CABINET
Department of Corrections

500 KAR 10:001. Definitions.

RELATES TO: 1992 Acts, ch. 255, §3

STATUTORY AUTHORITY: 1992 Acts, ch. 255, §3

NECESSITY AND FUNCTION: The Kentucky State Corrections Commission shall make grants to assist local jurisdictions in the implementation and operation of community corrections programs. This administrative regulation sets forth the purpose and name of this grant program.

Section 1. Definitions. For the purposes of this administrative regulation, the terms listed below shall have the following meanings:

(1) "Eligible applicant" shall mean any local government agency or combination of agencies, private nonprofit or charitable organization who has an established community corrections board.

(2) "Director" shall mean the person designated by the Secretary of the Justice Cabinet to serve as primary staff person to the Kentucky Corrections Commission.

(3) "Targeted offender" shall mean a person charged with or convicted of one (1) or more felonies who is eligible for probation, conditional discharge, conditional release, shock probation, or suspension of sentence.

(4) "Board" shall mean a board consisting of at least eight (8) community members who are responsible for developing and implementing a community corrections program plan.

(5) "Program plan" shall mean a written plan describing the proposed community-based correctional programs to be offered in a judicial district, for the purpose of diverting felon offenders from prison.

(6) "Commission" shall mean the Kentucky State Corrections Commission.

(7) "Cabinet" shall mean the Justice Cabinet.

(8) "Department" shall mean the Department of Corrections.

(9) "Grant funds" shall mean funds awarded by the commission for implementing a program plan.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: September 15, 1992

FILED WITH LRC: September 15, 1992 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for October 26, 1992 at 9 a.m., in the State Office Building Auditorium, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing: Cheryl Roberts, Executive Director, Office of Administrative Services, 5th floor, State Office Building, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Cheryl Roberts

(1) Type and number of entities affected: 1 or 2 judicial districts in the state.

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

1. First year: None unless applicant chooses to contribute to the program.

2. Continuing costs or savings: None unless applicant chooses to contribute to the program.

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

(b) Reporting and paperwork requirements: Applicants who receive funding will be required to file quarterly progress reports with the commission.

(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: If grant results in fewer commitments to the state prison systems, some long-term savings may be realized.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Staff is required to submit an annual report on the program to the Legislative Research Commission.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Method was outlined in statute.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET
Department of Corrections

500 KAR 10:010. Authority, purpose, name of grant program.

RELATES TO: 1992 Acts, ch. 255, §3

STATUTORY AUTHORITY: 1992 Acts, ch. 255, §3

NECESSITY AND FUNCTION: The Kentucky Corrections Commission shall make grants to assist local jurisdictions in the implementation and operation of community corrections programs. This administrative regulation sets forth the purpose and name of this grant program.

Section 1. Name and Purpose. The Kentucky community corrections grant program provides funds to communities to develop alternatives to incarceration for felon offenders.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: September 15, 1992

FILED WITH LRC: September 15, 1992 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this

regulation has been scheduled for October 26, 1992 at 9 a.m., in the State Office Building Auditorium, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing: Cheryl Roberts, Executive Director, Office of Administrative Services, 5th floor, State Office Building, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Cheryl Roberts

(1) Type and number of entities affected: 1 or 2 judicial districts in the state.

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

1. First year: None unless applicant chooses to contribute to the program.

2. Continuing costs or savings: None unless applicant chooses to contribute to the program.

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

(b) Reporting and paperwork requirements: Applicants who receive funding will be required to file quarterly progress reports with the commission.

(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: If grant results in fewer commitments to the state prison systems, some long-term savings may be realized.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Staff is required to submit an annual report on the program to the Legislative Research Commission.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Method was outlined in statute.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET
Department of Corrections

500 KAR 10:020. Administration and application procedure for community corrections grant program.

RELATES TO: 1992 Acts, ch. 255, §3

STATUTORY AUTHORITY: 1992 Acts, ch. 255, §3

NECESSITY AND FUNCTION: This administrative regulation is necessary to provide the application process and administrative procedures for the community corrections grant programs enacted by the General Assembly in the Acts 1992, ch. 255, §3.

Section 1. Application Process. The director shall notify eligible applicants of the availability of grant funds, requirements of the program, grant application format, and deadline for receiving applications by mailing notices to each county government and judicial district.

Section 2. Eligibility Requirements. (1) The following programs are eligible for funding pursuant to Section 1(2) of Chapter 255 of the 1992 Kentucky Acts:

(a) Victim restitution;

(b) Community service work;

(c) Home confinement;

(d) Electronic monitoring;

(e) Drug and alcohol counseling program;

(f) Day reporting centers; and

(g) Other programs that are for a purpose outlined in Section 1(2) of Chapter 255 of the 1992 Kentucky Acts.

(2) Eligible applicants may apply for a grant to implement a program plan in a judicial district. Prior to submitting a program plan, the board shall approve the application which shall include:

(a) Project overview containing a description of the cities and counties to be served and the general format of the programs;

(b) Letters of certification of need and support from the circuit judge, Commonwealth attorney and the chief executive officer of the governmental unit;

(c) A projected budget detailing the manner in which the funds shall be expended;

(d) Any local funds or contributions allocated to the development and implementation of the program plan;

(e) All of these topics are contained in the form entitled "Kentucky Community Corrections Act Grant Application" which is hereby incorporated by reference. The "Kentucky Community Corrections Act Grant Application" is available for inspection and copying at the Division of Administrative Services, Kentucky Department of Corrections, 5th Floor, State Office Building, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

Section 3. Department Assistance. The department shall provide consultation and technical assistance for the development of program plans within budget and staffing limitations of the department.

Section 4. Funds Restrictions. Grant funds shall be used for the development and implementation of new or enhanced programs and services for the targeted offenders. Such funds shall not be used to supplant funds previously committed to said programs and services by local or state government.

(1) Grant funds shall not be used for jail operations or the renovation or construction of facilities or the acquisition of land.

(2) No program can collect for fees from offenders participating in the program except those fees specifically ordered by the court.

Section 5. Award Procedure. (1) The director shall forward copies of the grant application form hereby incorporated by reference to members of the commission who shall vote on the applications within sixty (60) days of the final deadline. The commission shall make their decision based on priorities established by the commission. The director shall notify the recipient(s) of the grant(s) award(s) within two (2) weeks of the decision.

(2) Grants shall be made on a year-to-year basis with consideration for continued funding until June 30, 1994 after review of submitted progress reports and audit reports. No continuation funding shall be provided to a program which has failed to reduce prison commitments.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: September 15, 1992

FILED WITH LRC: September 15, 1992 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for October 26, 1992 at 9 a.m., in the State Office Building Auditorium, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing: Cheryl Roberts, Executive Director, Office of Administrative Services, 5th floor, State Office Building, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Cheryl Roberts

(1) Type and number of entities affected: 1 or 2 judicial districts in the state.

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

1. First year: None unless applicant chooses to contribute to the program.

2. Continuing costs or savings: None unless applicant chooses to contribute to the program.

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

(b) Reporting and paperwork requirements: Applicants who receive funding will be required to file quarterly progress reports with the Commission.

(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: If grant results in fewer commitments to the state prison systems, some long-term savings may be realized.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Staff is required to submit an annual report on the program to the Legislative Research Commission.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Method was outlined in statute.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b)If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET
Department of Corrections

500 KAR 10:030. Community corrections board.

RELATES TO: 1992 Acts, ch. 255, §3

STATUTORY AUTHORITY: 1992 Acts, ch. 255, §3

NECESSITY AND FUNCTION: This administrative regulation is necessary to provide for the makeup and duties of the community corrections board enacted by the General Assembly in the 1992 Acts, ch. 255, §3.

Section 1. Appointments. The appointment of members to the community corrections board shall be in accordance with 1992 Acts, chapter 255, §6 and the articles of incorporation.

Section 2. Meetings and Duties. Meeting times and duties of the community corrections board shall be in accordance with 1992 Acts, chapter 255 and the articles of incorporation.

Section 3. Reporting Requirements. (1) The board shall submit a minimum of quarterly progress reports to the director in a format approved by the department.

(2) Deviations from the approved plan or budget shall first be approved by the director. An annual independent audit shall be completed and submitted to the director.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: September 15, 1992

FILED WITH LRC: September 15, 1992 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for October 26, 1992 at 9 a.m., in the State Office Building Auditorium, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing: Cheryl Roberts, Executive Director, Office of Administrative Services, 5th floor, State Office Building, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Cheryl Roberts

(1) Type and number of entities affected: 1 or 2 judicial districts in the state.

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

1. First year: None unless applicant chooses to contribute to the program.

2. Continuing costs or savings: None unless applicant chooses to contribute to the program.

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

(b) Reporting and paperwork requirements: Applicants who receive funding will be required to file quarterly progress reports with the Commission.

(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: If grant results in fewer commitments to the state prison systems, some long-term savings may be realized.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Staff is required to submit an annual report on the program to the Legislative Research Commission.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Method was outlined in statute.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b)If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET
Department of Corrections

500 KAR 10:040. Annual review for compliance.

RELATES TO: 1992 Acts, ch. 255, §3

STATUTORY AUTHORITY: 1992 Acts, ch. 255, §3

NECESSITY AND FUNCTION: This administrative regulation is necessary to provide for the annual review of the community corrections program enacted by the General Assembly in the 1992 Acts, ch. 255.

Section 1. Review Process. During each fiscal year, the director shall inspect and examine the fiscal and program records of each grant to determine compliance with the program plan and submit a report to the commission.

(1) If the director determines that there is a reasonable cause to believe that a program or facility is not in substantial compliance with current requirements of the grant, or the program plan under which it was funded, notice of such findings shall be submitted to the commission.

(2) Thirty (30) days following such notice, the board shall determine if there is substantial compliance or satisfactory progress being made to achieve compliance.

(3) The director may suspend all or any portion of a grant if it is determined by the commission that the board is not in substantial compliance or has not made satisfactory progress in achieving substantial compliance.

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: September 15, 1992

FILED WITH LRC: September 15, 1992 at 10 a.m.

PUBLIC HEARING SCHEDULED: A public hearing on this regulation has been scheduled for October 26, 1992 at 9 a.m., in the State Office Building Auditorium, Frankfort, Kentucky. Those interested in attending this hearing shall notify in writing: Cheryl Roberts, Executive Director, Office of Administrative Services, 5th floor, State Office Building, Frankfort, KY 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact: Cheryl Roberts

(1) Type and number of entities affected: 1 or 2 judicial districts in the state.

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

1. First year: None unless applicant chooses to contribute to the program.

2. Continuing costs or savings: None unless applicant chooses to contribute to the program.

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

(b) Reporting and paperwork requirements: Applicants who receive funding will be required to file quarterly progress reports with the Commission.

(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: If grant results in fewer commitments to the state prison systems, some long-term savings may be realized.

3. Additional factors increasing or decreasing costs: Same as 2(a)1.

(b) Reporting and paperwork requirements: Staff is required to submit an annual report on the program to the Legislative Research Commission.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: Method was outlined in statute.

(5) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF EDUCATION
Office of Commissioner

701 KAR 5:075. Antinepotism certifications of superintendents.

RELATES TO: KRS 160.380

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY AND FUNCTION: KRS 160.380(2) prohibits local school superintendents from hiring their relatives or relatives of local school board members, with certain limited exceptions. KRS 160.380(2) also prohibits the employment of a principal's relatives in the principal's school, with certain limited exceptions. This regulation requires certification by each superintendent as to compliance with KRS 160.380(2). This requirement is intended to identify any existing nepotism violations and to discourage and eliminate nepotism violations.

Section 1. By October 1 of each year, each local school superintendent shall file with the Department of Education, Office of Legal Services, a signed and sworn statement providing information as to compliance with the antinepotism provisions of KRS 160.380(2)(e), (f), and (g). The statement filed by each superintendent shall be a completed "Antinepotism Statement of Local Superintendent," which is a form dated June 1992 and which is incorporated herein by reference. The form is available 8 a.m. to 4:30 p.m., Monday through Friday, from the Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

Section 2. Failure to comply with Section 1 of this administrative regulation may be considered willful neglect of duty or nonfeasance in violation of KRS 156.132. Providing false information on the "Antinepotism Statement of Local School Superintendent" form may be considered misconduct in violation of KRS 156.132.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: September 14, 1992

FILED WITH LRC: September 15, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 28, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 23, 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: Kevin M. Noland, General Counsel, Office of Legal Services, Department of Education, 500 Mero Street, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Kevin Noland

(1) Type and number of entities affected: 176 local school districts.

(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):
(b) Reporting and paperwork requirements: Each superintendent must complete a one-page form and file it with the Department of Education.
(2) Effects on the promulgating administrative body: KDE will need to review 176 forms and follow up to correct violations where appropriate.
(a) Direct and indirect costs or savings: Unknown at this time.
1. First year: Unknown
2. Continuing costs or savings: Unknown
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: See (2) above.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No effective alternative, given the difficulty of proactively identifying nepotism violations.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. The antinepotism statute, KRS 160.380, applies equally to all superintendents and school districts.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of District Support Services

702 KAR 3:260. Restructuring revenue bond issues.

RELATES TO: KRS 58.150, 156.200, 157.440, 160.476, 160.477, 162.080, 162.090
STATUTORY AUTHORITY: KRS 156.070
NECESSITY AND FUNCTION: KRS 157.440 permits taxation to the maximum approved rate for local school districts with a special voted building fund tax that had a finite expiration date. The ability to provide facilities that are needed in these districts was limited due to the limited time available through the approved special voted building fund tax. Since KRS 157.440 provided tax revenues beyond the expiration date of the special voted building tax fund, it is necessary to provide districts the opportunity to restructure their debt in a way that takes into consideration the tax revenue that will be realized beyond the expiration date. This regulation sets forth the criteria that permit school districts to restructure revenue bond issues.

Section 1. The following conditions shall exist before a school district may restructure bonds:
(1) The school district shall have had on July 13, 1990, a special voted building fund tax with a finite expiration date.
(2) The district's outstanding debt service shall have been specifically tailored to mature within the life of the special voted building fund tax. The district's debt service shall be constricted within the limitation of the special voted building fund tax to the point that additional funding of capital improvements from the present to the tax expiration date are severely restricted.
(3) The average annual debt service of the district in the period from the present to the expiration date of the special voted building fund tax shall be at least three (3) times the average annual debt service in the period following the expiration of the tax.

Section 2. No district using or committing general fund revenues for existing debt service shall be eligible to participate in a restructuring of revenue bonds.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman
APPROVED BY AGENCY: September 14, 1992
FILED WITH LRC: September 15, 1992 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 28, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 23, 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: Kevin M. Noland, General Counsel, Office of Legal Services, Department of Education, 500 Mero Street, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Gary Griesser
(1) Type and number of entities affected: 23 school districts that had a special voted building fund tax that had a finite expiration date on July 13, 1990.
(a) Direct and indirect costs or savings to those affected:
1. First year: Would vary by district for those districts electing to restructure their bonds. The savings would be in the reduced debt service and costs would be the expense of issuing the new bonds.
2. Continuing costs or savings: Same as above.
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: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments:
TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

BUREAU FOR LEARNING SUPPORT SERVICES
Department of Education
Office of Learning Programs Development

704 KAR 3:405. Superintendent training program and assessment process.

RELATES TO: KRS 156.111, 160.350
STATUTORY AUTHORITY: KRS 156.111
NECESSITY AND FUNCTION: KRS 156.111 mandates that the Kentucky Department of Education establish a superintendent training program and assessment center and that the State Board for Elementary and Secondary Education adopt administrative regulations to govern the training content, number of hours, written examination, and criteria for successful completion of the training and assessment center process. This regulation implements the superintendent training program and assessment center process.

Section 1. Definitions. (1) "Assessee" means an individual who undergoes the assessment process.

(2) "Assessment center candidate" means a superintendent or applicant for a superintendent position who has been recommended by a local board of education or the Kentucky Department of Education to undergo assessment.

(3) "Assessor" means a trained observer who records and analyzes assessee performance during an assessment.

(4) "Assessor training" means training in which participants are taught how to observe and record behaviors displayed by assessment center candidates and are taught to write objective and comprehensive reports.

(5) "Comprehensive superintendent examination" means a written comprehensive examination over the following subjects:

(a) Core concepts of management;
(b) School-based decision making;
(c) Kentucky school law;
(d) Kentucky school finance;
(e) School curriculum and assessment.

(6) "Final assessment report" means a written report providing the overall performance ratings as well as the performance rating for each skill, and shall include suggestions for improvement and growth, and signatures of all persons involved in the assessment process.

(7) "Mastery level on the Kentucky Superintendent Comprehensive Examination" means a required level of performance on each of the five (5) components of the Kentucky Superintendent Comprehensive Examination to be determined by an advisory committee to the Kentucky Department of Education based on technical reports secured from field test data obtained during the 1992-93 school year.

(8) "Screening committee" means the local superintendent search screening committee required by KRS 160.352.

(9) "Superintendent assessment and training and testing process" means a comprehensive assessment process and training program including assessment of personal administrative skills, training modules in identified skill dimensions and selected concepts related to the position of school superintendent, and a comprehensive examination. Assessment and training are more specifically defined as follows:

(a) "Assessment process" means a Kentucky Department of Education psychometric procedure emphasizing multiple individual and group simulations representative of the superintendent position which will yield extensive feedback of each assessee's strengths and behaviors in skill dimensions validated as essential for effective performance. The assessment process is used to develop a personal skills profile on candidates seeking employment or employed in superintendent positions.

(b) "Training program" means a series of training modules designed for the purpose of improving individual skills of superintendent candidates or providing knowledge in the following subjects:

1. Core concepts of management, up to eighteen (18) hours;
2. School-based decision making, up to nine (9) hours;
3. Kentucky school law, up to nine (9) hours;
4. Kentucky school finance, up to twelve (12) hours;
5. School curriculum and assessment, up to twenty-four (24) hours.

(10) "Written assessment report" means a report which provides each assessee with a profile of strengths and behaviors and suggestions to help improve the assessee's skills.

(11) "Written testing report" means a report which provides each assessee with certification of successful completion of each component of the comprehensive superintendent examination.

Section 2. (1) The Superintendent Training and Assessment Center shall be responsible for the assessment of superintendents and superintendent applicants, provide assessor training, provide training using Kentucky Department of Education approved modules, and serve as the site for the administration of the comprehensive superintendent examination.

(2) The center staff shall coordinate assessments and trainings, maintain all records, make provisions for the necessary reporting of training and assessment status as to all superintendents, and report the status of all superintendent candidates to the chairperson of the local board of education. The report shall:

(a) Be sent at the conclusion of participation in the training, testing, and assessment process;

(b) Include a copy to the participating superintendent;

(c) Specify whether the participating superintendent successfully completed the training, testing, and assessment process. A report shall be made to the assessee, the Office of Teacher Education and Certification, and the local board of education chairperson on any person serving in the position of superintendent, who does not complete the assessment and successfully complete the comprehensive superintendent examination within the applicable deadlines set forth in KRS 156.111 and 160.350.

Section 3. (1) The following shall apply to a person hired for the first time as a superintendent in Kentucky after July 1, 1992 and before July 1, 1994:

(a) Superintendents who complete the assessment phase and demonstrate mastery on the Kentucky Superintendent Comprehensive Exam will be certified as having met the requirements of KRS 156.111.

(b) A superintendent who does not demonstrate mastery on any one (1) of the components of the Kentucky Superintendent Comprehensive Exam shall be eligible to participate in a second training of the appropriate module(s) of the training program prior to retaking the comprehensive examination or shall retake the comprehensive examination on the next schedule on the next scheduled date of the examination.

(2) Persons employed as superintendent in Kentucky prior to July 1, 1992, may elect to not participate in any, or all, of the modules of the training phase and take the appropriate components of the comprehensive examination.

(a) Superintendents who complete the assessment phase and demonstrate mastery on the Kentucky Superintendent Comprehensive Exam shall be certified as having met the requirements of KRS 156.111.

(b) Superintendents who do not demonstrate mastery on the Kentucky Superintendent Comprehensive Exam shall be eligible to participate in further training in corresponding module(s) as a requirement for eligibility to repeating the comprehensive examination.

Section 4. (1) The Superintendent Training and Assessment Center director shall allocate training and assessment center slots, considering factors to assure diversity and equal access. Local school districts with actual or imminent superintendent vacancies shall be given priority in the assignment of training and assessment center slots.

(2) Each assessee, upon completion of the superintendent assessment center process, shall receive a final assessment report. Superintendents and superintendent candidates shall complete the requirements for training and assessment and achieve the designated mastery level on each of the modules of the Kentucky Superintendent Comprehensive Examination to successfully complete the training and

testing and assessment.

(3) Upon completion of the assessment and successful completion of testing by superintendent candidates, the Superintendent Training and Assessment Center staff shall provide the Office of Teacher Education and Certification and the chairperson of the appropriate local board of education a written report confirming completion of the assessment and successful completion of testing.

(4) Persons desiring to be assessed as superintendent, but who are not employed as a superintendent or are not candidates for superintendency at the time, may have requests granted by the Superintendent Training and Assessment Center director at the candidate's expense.

(5) Prior to assessment, each assessment center candidate shall sign an agreement to respect the confidentiality of the assessment center process and materials.

Section 5. (1) The Superintendent Training and Assessment Center staff shall maintain all assessment center reports.

(2) The security of training and testing and assessment data shall be maintained by the Superintendent Training and Assessment Center staff. Each written report shall be the property of the Kentucky Department of Education. Individual profile reports shall be disseminated by the Superintendent Training and Assessment Center staff only after written authorization has been given by the assessee.

(3) All complete written training and assessment center reports shall be retained in confidential Superintendent Training and Assessment Center files. Working documents used by the assessment/training team to formulate each report shall be discarded after three (3) years.

Section 6. The Kentucky Department of Education shall pay a stipend for each assessment performed by an assessor and for services necessary to conduct training and testing as needed.

Section 7. Complaints regarding failure to comply with statutory and regulatory provisions of the superintendent training and assessment program shall be directed to and evaluated by the Kentucky Department of Education.

Section 8. (1) Continuing education for superintendents shall include:

(a) Participation in forty-two (42) hours of Kentucky Department of Education approved training over twenty-four (24) months; or

(b) Completion of an annual individual personal growth training plan of at least twenty-one (21) hours.

(2) Completion of continuing education of the superintendent shall be reported to the Kentucky Department of Education. The Kentucky Department of Education shall annually notify the local board of education chairperson of the status of the school district's superintendent's continuing education.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the State Board for Elementary and Secondary Education, as required by KRS 156.070(4).

THOMAS C. BOYSEN, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: September 14, 1992

FILED WITH LRC: September 15, 1992 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on October 28, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by October 23, 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: Kevin M. Noland, General Counsel, Office of Legal Services, Department of Education, 500 Mero Street, 120 Capital Plaza Tower, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Gail Gerry

(1) Type and number of entities affected: 176 school districts.

(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):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(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: N/A

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments:

TIERING: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

WORKERS' COMPENSATION BOARD
Department of Workers' Claims

803 KAR 25:091. Workers' compensation hospital fee schedule.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS Chapter 13A, 342.020, 342.035, 342.260

NECESSITY AND FUNCTION: KRS 342.035 requires the Workers' Compensation Board to promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges and reimbursements under KRS 342.020 are fair, current, and reasonable and limited to such charges as are fair, current, and reasonable for similar treatment of injured persons of a like standard of living in the same community and where such treatment is paid for by the injured person himself. The increased security of payment afforded by the Workers' Compensation Act may be considered in determining what fees are reasonable. KRS 342.020 requires the employer to pay for hospital treatment, including nursing, medical and surgical supplies and appliances. The function of this regulation is to regulate hospital fees for services and supplies provided to workers' compensation patients pursuant to KRS 342.020.

Section 1. Definitions. (1) "Hospital" means any facility, surgical center, or psychiatric, rehabilitative or other treatment or specialty center which is licensed pursuant to Kentucky Revised Statutes

Chapter 216B.

(2) "Hospital-based physician" means any person whose fees for services are billed by the hospital.

(3) "Unbundling" means the practice of submitting separate bills for services to any payor pursuant to this regulation which are billed to payors other than pursuant to this regulation on a global basis.

(4) "Global basis" means the practice of submitting a bill for two (2) or more services as one (1) item only.

(5) "New hospital" means a hospital which has not completed its first fiscal year.

Section 2. Applicability. This regulation shall apply to all workers' compensation patient hospital fees for all hospitals as defined in Section 1(1) of this administrative regulation, for all compensable services and supplies provided on or after the effective date of this regulation.

Section 3. Calculation of Hospital's Base Cost-to-charge Ratio. (1) A hospital's base cost-to-charge ratio shall be based on the latest HCFA-2552 which has been supplied to the Cabinet for Human Resources, Department of Medicaid Services, pursuant to 907 KAR 1:376 and 907 KAR 1:013. The calculation for cost shall be the net expenses for allocation as reflected on Worksheet A, Column 7, Line 95 of the HCFA-2552.

(2) The base cost-to-charge ratio shall be further modified to allow for a return to equity by the addition of fifteen (15) percentile.

(3) In no event shall a hospital's adjusted cost-to-charge ratio exceed eighty-five (85) percentile. If a hospital's cost-to-charge ratio, including the fifteen (15) percentile addition, does exceed eighty-five (85) percentile, it shall be reduced to eighty-five (85) percentile.

Section 4. Appeal of Assigned Ratio. (1) Each hospital subject to the provisions of this regulation shall be notified of its proposed base cost-to-charge ratio by the Commissioner of the Department of Workers' Claims by U.S. mail within thirty (30) days of the date the base cost-to-charge ratio is assigned by the Workers' Compensation Board.

(2) A hospital may request a review of its assigned ratio by filing a written appeal with the Commissioner of the Department of Workers' Claims no later than thirty (30) calendar days after the ratio has been assigned and hospital notified of its proposed cost-to-charge ratio.

Section 5. Revision of Hospital Cost-to-charge Ratio. (1) The Kentucky Workers' Compensation Board shall calculate and publish each hospital's adjusted cost-to-charge ratio on an annual basis. A new hospital shall be assigned a base cost-to-charge ratio of eighty-three (83) percentile until it has been in operation for one (1) full fiscal year.

(2) Any assigned cost-to-charge ratio shall remain in full force and effect until a new cost-to-charge ratio is assigned by the Workers' Compensation Board pursuant to this regulation.

Section 6. Calculation for Hospitals Located Outside the Commonwealth of Kentucky. (1) A hospital located outside the boundaries of the Commonwealth of Kentucky will be deemed to have agreed to be subject to the provisions of this regulation if it accepts a patient for treatment who is covered under the Kentucky Workers' Compensation Act.

(2) The base cost-to-charge ratio for an out-of-state hospital shall be the latest cost-to-charge ratio for Medicaid purposes assigned to the hospital by the state where the hospital is located. An out-of-state hospital shall furnish its most recent cost-to-charge ratio for Medicaid purposes when submitting its bill for services.

Section 7. Reports to be Filed by Hospitals. All bills submitted by a hospital pursuant to this regulation shall be submitted on a uniform billing form (UB-82). All bills shall include a statement of services which clearly and concisely sets forth the nature or type of service rendered. Unless a bill complies with this section, it shall not be considered a bill or statement for services for the purposes of KRS 342.020 and 342.035.

Section 8. Billing and Audit Procedures. (1) Any hospital providing only the technical component of a procedure shall bill and be paid for the technical component only.

(2) Any practitioner providing only the professional component shall bill for and be paid the professional component only. A practitioner billing for the professional component shall submit the bill to the insurer on the Workers' Compensation Board SMS 1 (Statement for Medical Services).

(3) All workers' compensation medical payment obligors administering or paying bills subject to this regulation shall be required to audit the bills to ensure compliance with this regulation.

(4) Any records or documents requested by a workers' compensation medical payment obligor shall be supplied by the hospital not later than ten (10) working days from the date the request for records or documents is received, unless good cause is shown for a failure to do so. A hospital shall not charge more than fifty (50) cents per page for reproducing the requested records or documents unless the requested records or documents total less than ten (10) pages, in which case a minimum five (5) dollar fee may be charged.

Section 10. Miscellaneous. (1) A new hospital shall be required to file a letter with the Workers' Compensation Board setting forth the start and end of its fiscal year within ninety (90) days of the date it commences operation.

(2) A hospital-based practitioner shall use the Workers' Compensation Board SMS 1 (Statement for Medical Services) when billing for professional services and shall be compensated pursuant to the Kentucky Medical Fee Schedule adopted pursuant to 803 KAR 25:090.

(3) Any physicians performing services which are regulated pursuant to 803 KAR 25:090 (Kentucky medical fee schedule) in a hospital as defined in Section 1 of this regulation shall bill for services rendered pursuant to 803 KAR 25:090 only.

(4) Kentucky law requires the employer (or insurer) to provide all medical care necessary to cure and relieve the effects of the employee's injury. Accordingly, under no circumstances should the employee be billed for treatment.

(5) The practice of "unbundling," as defined in Section 1(3) of this administrative regulation, is hereby prohibited.

JUDGE ARMAND ANGELUCCI, Chairman

APPROVED BY AGENCY: September 15, 1992

FILED WITH LRC: September 15, 1992 at noon

PUBLIC HEARING: A public hearing will be held at the Farnham Dudgeon Civic Center, Capital Plaza Complex, Conference Rooms ABC, 405 Mero Street, Frankfort, Kentucky 40601, 10 a.m., on October 21, 1992. Individuals interested in attending this hearing shall notify this agency in writing by October 16, 1992, 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: J. Gary Lee, Attorney, Office of General Counsel, Department of Workers' Claims, Perimeter Park West, 1270 Louisville Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: J. Gary Lee

(1) Type and number of entities affected: Hospitals treating workers' compensation patients and the insurers making payments to them. The Kentucky Hospital Association has 112 members.

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

1. First year: It is anticipated that use of the hospital fee schedule

will result in savings to workers' compensation insurance carriers, and will help to ensure that hospital charges for workers' compensation patients are in line with charges assessed against other kinds of patients.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None known. This regulation is not intended to place any single hospital at a competitive advantage or disadvantage.

(b) Reporting and paperwork requirements: All hospitals must use a uniform billing form (UB-82).

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Some additional cost to the agency may result from the requirement that the Workers' Compensation Board shall calculate and publish each hospital's adjusted cost-to-charge ratio on an annual basis.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: Use of the hospital fee schedule may reduce the number of disputes that arise concerning hospital charges.

(b) Reporting and paperwork requirements: The board must calculate and publish each hospital's adjusted cost-to-charge ratio on an annual basis.

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

(4) Assessment of alternative methods; reasons why alternatives were rejected: KRS 342.035 requires the board to adopt a schedule of fees periodically as needed to ensure that fees, charges and reimbursements under KRS 342.020 are fair, current, and reasonable.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 803 KAR 25:090 is an existing regulation adopting a medical fee schedule. In the event there is any conflict, overlap, or duplication, the more specific hospital fee schedule will apply to the charges of hospitals rather than the medical fee schedule under 803 KAR 25:090.

(a) Necessity of proposed regulation if in conflict: See above.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: The hospital fee schedule regulation addresses the concerns of hospitals and the objections of hospitals concerning application of the current medical fee schedule to them.

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes. Each hospital's base cost-to-charge ratio is calculated separately, based upon information supplied to the Cabinet of Human Resources pursuant to 907 KAR 1:376 and 907 KAR 1:013.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 2:110. Financial examinations of insurers.

RELATES TO: KRS 304.2-210, 304.2-230

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes standards for the Commissioner of Insurance and his examiners in conducting financial examinations of insurers.

Section 1. Definitions. As used in this administrative regulation:

(1) "Accredited state" means a state in which the insurance supervisory authority has qualified as meeting the minimum financial regulatory standards established from time to time by the National Association of Insurance Commissioners; and

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

Section 2. Foreign insurers authorized to do business in Kentucky shall be examined no less frequently than every five (5) years.

Section 3. In exercising his discretion to accept a full report of the last recent examination of a foreign or alien insurer certified to by the insurance supervisory official of another state, the commissioner shall not accept an examination report on or after January 1, 1994, unless:

(1) The foreign or alien insurer is domiciled in a state which is an accredited state;

(2) The examination is performed under the supervision of an accredited state; or

(3) The examination is performed with the participation of an examiner employed by an accredited state who states under oath that the examination was consistent with the standards and procedures required by the accredited state.

Section 4. The commissioner's examiners shall observe the procedures set forth in the National Association of Insurance Commissioners Financial Condition Examiners Handbook (1976; as updated 1992), incorporated herein by reference and available from the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601-1847, 8 a.m. to 4:30 p.m. (ET) weekdays.

RONNIE C. MOORE, Commissioner
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: August 24, 1992

FILED WITH LRC: September 14, 1992 at 9 a.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for October 21, 1992 at 1:30 p.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Ronnie C. Moore, Commissioner, Kentucky Department of Insurance, Post Office Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 1:30 p.m. (ET), on October 21, 1992, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance at least five (5) days prior to the hearing that they will be in attendance to comment.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: Patrick Watts

Need for the Proposed Regulation: The proposed regulation is necessary to make clear the commissioner's authority to examine foreign insurers authorized to do business in Kentucky every five years, limit the acceptance of examinations conducted by other insurance supervisory officials to those conducted under conditions acceptable under the National Association of Insurance Commissioners Financial Regulation Accreditation Standards, and to require examiners to observe the procedures set forth in the National Association of Insurance Commissioners Financial Condition Examiners Handbook. All of these are items needed under the National Association of Insurance Commissioners Financial Regulation Accreditation Standards.

Type and Numbers of Entities Affected: The regulation will affect 1,300 insurers authorized to transact business in Kentucky.

a. Direct and indirect cost or savings to those affected:

1. First year: None

2. Continued cost or savings: Department examiners already follow the procedures set forth in the NAIC Financial Examiners Handbook. All states require their domestic insurers to be examined no less frequently than every five years. Therefore, these two aspects of the regulation do not impose additional costs. However, if an insurer is domiciled in a state which is not an accredited state, arrangements will have to be made for an examiner from an accredited state to participate.

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: None

Effects on the Promulgating Administrative Body:

a. Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: The proposed regulation will result in savings by clarifying the authority of the Commissioner of Insurance to require examinations of foreign insurers at least every five years and to specify when an examination by another insurance supervisory official is acceptable.

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: None

Assessment of Anticipated Effect on State and Local Revenues: None

Assessment of Alternative Methods; Reasons why Alternatives were Rejected: The Kentucky Department of Insurance desires to obtain accreditation under the NAIC's financial regulation accreditation standards. The proposed regulation is necessary to receive that accreditation.

Statutes, Regulations, or Governmental Policies which may Conflict, Overlap, or Duplicate the Proposed Regulation: None

TIERING: Was tiering applied? Tiering is recognized in allowing the requirement that a financial examination be conducted in accordance with the procedures of an accredited state in three different ways: The insurer's domiciliary state is an accredited state, the examination is performed under the supervision of an accredited state, or with the participation of an examiner employed by an accredited state who states under oath that the examination was consistent with the standards and procedures required by the accredited state.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

806 KAR 17:081. Minimum standards for long-term care insurance policies.

RELATES TO: KRS 304.12-020, 304.14-600 to 304.14-625, 304.18-110, 304.18-120, 304.18-127, 304.29-600, 304.32-290, 304.38-220

STATUTORY AUTHORITY: KRS 304.2-110, 304.14-620, 304.32-250, 304.38-150

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 304.14-620 requires the Commissioner of Insurance to make administrative regulations to establish minimum standards for marketing practices, agent compensation, agent testing, penalties, and reporting practices for long-term care insurance. KRS 304.32-250 provides that the Commissioner of Insurance may promulgate reasonable regulations which he deems necessary for the proper administration of KRS Chapter 304.32. KRS 304.38-150 provides that the Commissioner of Insurance may promulgate reasonable regulations which he deems necessary for the proper administration of KRS Chapter 304.38. This regulation establishes minimum standards for long-term care insurance.

Section 1. Definitions. As used in this regulation:

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

(2) "Insurer" means insurer, fraternal benefit society, nonprofit hospital, medical-surgical, dental, and health service corporation, and health maintenance organization; and

(3) "Compensation" as referred to in Section 22 of this regulation includes pecuniary or nonpecuniary remuneration of any kind relating to the sale or renewal of long-term care insurance policies or certificates, such as bonuses, gifts, prizes, awards, and finders' fees.

Section 2. Purpose; Scope. (1) The purpose of this regulation is to implement KRS 304.14-600 to 304.14-625, 304.29-600, 304.32-290, and 304.38-220 to promote the public interest, to promote the availability of long-term care insurance coverage, to protect applicants for long-term care insurance from unfair or deceptive sales or enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverages, and to facilitate flexibility and innovation in the development of long-term care insurance.

(2) This regulation applies to all long-term care insurance policies delivered or issued for delivery in Kentucky on or after the effective date of this regulation.

Section 3. Policy Definitions. Long-term care insurance policies delivered or issued for delivery in Kentucky shall not use the terms set forth below unless the terms are defined in the policy and the definitions satisfy the following requirements:

(1) "Adult day care" means a program for six (6) or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

(2) "Acute condition" means that the individual is medically unstable. The individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain his health status.

(3) "Home health care services" means medical and nonmedical services, provided to ill, disabled, or infirm persons in their residences. The services may include homemaker services, assistance with activities of daily living, and respite care services.

(4) "Medicare" shall be defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

(5) "Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

(6) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living (such as bathing, eating, dressing, transferring, and toileting).

(7) "Skilled nursing care," "intermediate care," "personal care," "home care," and other services shall be defined in relation to the level of skill required, the nature of the care, and the setting in which care must be delivered.

(8) All providers of services, such as "skilled nursing facility," "extended care facility," "intermediate care facility," "convalescent nursing home," "personal care facility," and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.

Section 4. Policy Practices and Provisions. (1) Renewability. The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Section 5 of this regulation.

(a) No long-term care insurance policy issued to an individual shall contain renewal provisions other than "guaranteed renewable" or "noncancellable."

(b) The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(c) The term "noncancellable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(2) Limitations and exclusions. A policy shall not be delivered or issued for delivery in Kentucky as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

(a) Preexisting conditions or diseases;

(b) Mental or nervous disorders, but this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's d-isease;

(c) Alcoholism and drug addiction;

(d) Illness, treatment, or medical condition arising out of:

1. War or act of war (whether declared or undeclared);

2. Participation in a felony, riot, or insurrection;

3. Service in the armed forces or units auxiliary thereto;

4. Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or

5. Aviation (this exclusion applies only to nonfare-paying passengers).

(e) Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability, or occupational disease law, services provided by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance.

(f) This subsection is not intended to prohibit exclusions and limitations by type of provider or territorial limitations.

(3) Extension of benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination. The extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits, and may be subject to any policy waiting period, and all other applicable provisions of the policy.

(4) Continuation or conversion. Group long-term care insurance policies shall provide for continuation and conversion as required by KRS 304.18-110 and 304.18-120.

(5) Discontinuance and replacement. If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination in accordance with KRS 304.18-127.

(6) The premiums charged to an insured for long-term care insurance shall not increase due to either:

(a) The increasing age of the insured at ages beyond sixty-five (65); or

(b) The duration the insured has been covered under the policy.

Section 5. Required Disclosure Provisions. (1) Renewability. Individual long-term care insurance policies shall contain a renewability provision. The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed. This provision shall not apply to policies which do not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder.

(2) Riders and endorsements. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider, or endorsement.

(3) Payment of benefits. A long-term care insurance policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import shall include a definition of these terms and an explanation of these terms in its accompanying outline of coverage.

(4) Limitations. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

(5) Other limitations or conditions on eligibility for benefits. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in KRS 304.14-615(4)(b) shall set forth a description of the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label the paragraph "Limitations or Conditions on Eligibility for Benefits."

(6) Disclosure of tax consequences. With regard to life insurance policies which provide an accelerated benefit for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents.

Section 6. Prohibition Against Postclaims Underwriting. (1) All applications for long-term care insurance policies or certificates except those which are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

(2)(a) If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it shall also ask the applicant to list the medication that has been prescribed.

(b) If the medications listed in the application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.

(3) Except for policies or certificates which are guaranteed issue:

(a) The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate: "Caution: If your answers on this application are incorrect or untrue, (insurer name) has the right to deny benefits or rescind your policy."

(b) The following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery: "Caution: The issuance of this long-term care insurance (policy or certificate) is based upon your responses to the questions on your application. A copy of your (application or enrollment form) (is enclosed or was retained by you when you applied). If your answers are incorrect or untrue, the insurer has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the insurer at this address: (insert address)."

(c) Prior to issuance of a long-term care policy or certificate to an applicant age eighty (80) or older, the insurer shall obtain one (1) of the following:

1. A report of a physical examination;

2. An assessment of functional capacity;

3. An attending physician's statement; or

4. Copies of medical records.

(4) A copy of the completed application or enrollment form (whichever is applicable) shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

(5) Every insurer issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both Kentucky and countrywide, except those which the insured voluntarily effectuated, and shall annually furnish this information to the commissioner in the format prescribed by the National Association of Insurance Commissioners in Appendix A.

Section 7. Minimum Standards for Home Health and Community

Care Benefits in Long-term Care Insurance Policies. (1) A long-term care insurance policy or certificate shall not, if it provides benefits for home health care or community care services, limit or exclude benefits:

(a) By requiring that the insured or claimant would need care in a skilled nursing facility if home health care services were not provided;

(b) By requiring that the insured or claimant first or simultaneously receive nursing or therapeutic services in a home, community, or institutional setting before home health care services are covered;

(c) By limiting eligible services to services provided by registered nurses or licensed practical nurses;

(d) By requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide or other licensed or certified home care worker acting within the scope of his licensure or certification;

(e) By excluding coverage for personal care services provided by a home health aide;

(f) By requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service;

(g) By requiring that the insured or claimant have an acute condition before home health care services are covered;

(h) By limiting benefits to services provided by Medicare-certified agencies or providers; or

(i) By excluding coverage for adult day care services.

(2) A long-term care insurance policy or certificate, if it provides for home health or community care services, shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half (1/2) of one (1) year's coverage available for nursing home benefits under the policy or certificate, at the time covered home health or community care services are being received. This requirement shall not apply to policies or certificates issued to residents of continuing care retirement communities.

(3) Home health care coverage may be applied to the nonhome health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

Section 8. Requirement to Offer Inflation Protection. (1) An insurer shall not offer a long-term care insurance policy unless the insurer also offers to the policyholder in addition to any other inflation protection the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. Insurers shall offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one (1) of the following:

(a) Increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than five (5) percent;

(b) Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The amount of the additional benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least five (5) percent for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or

(c) Covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(2) Where the policy is issued to a group, the required offer in subsection (1) of this section shall be made to the group policyholder, but if the policy is issued to a group defined in KRS 304.14-600(4)(d) other than to a continuing care retirement community, the offering shall be made to each proposed certificateholder.

(3) The offer in subsection (1) of this section shall not be required of life insurance policies or riders containing accelerated long-term care benefits.

(4) Insurers shall include the following information in or with the outline of coverage. An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

(a) A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a twenty (20) year period; and

(b) Any expected premium increases or additional premiums to pay for automatic or optional benefit increases.

(5) Inflation protection benefit increases under a policy which contains these benefits shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.

(6) An offer of inflation protection which provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(7)(a) Inflation protection as provided in subsection (1)(a) of this section shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this subsection.

(b) The rejection shall be considered a part of the application and shall state: "I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans _____, and I reject inflation protection."

Section 9. Requirements for Application Forms and Replacement Coverage. (1) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent, except where the coverage is sold without an agent, containing the questions may be used. With regard to a replacement policy issued to a group defined by KRS 304.14-600(4)(a), the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced if the certificateholder has been notified of the replacement.

(a) Do you have another long-term care insurance policy or certificate in force (including health care service contract or health maintenance organization contract)?

(b) Did you have another long-term care insurance policy or certificate in force during the last twelve (12) months?

1. If so, with which company?

2. If that policy lapsed, when did it lapse?

(c) Are you covered by Medicaid?

(d) Do you intend to replace any of your medical or health insurance coverage with this policy (certificate)?

(2) Agents shall list any other health insurance policies they have sold to the applicant.

(a) List policies sold which are still in force.

(b) List policies sold in the past five (5) years which are no longer in force.

(3) Solicitations other than direct response. Upon determining that a sale will involve replacement, an insurer (other than an insurer using direct response solicitation methods) or its agent shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One (1) of the notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the following manner:

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF INDIVIDUAL ACCIDENT AND SICKNESS OR
LONG-TERM CARE INSURANCE

(Insurer's name and address)

SAVE THIS NOTICE!
IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to (your application or information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by (insurer name). Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

STATEMENT TO APPLICANT BY AGENT:
(Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

(a) Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(b) State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

(c) If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(d) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

_____
(Signature of Agent)

(Typed Name and Address of Agent)

The above "Notice to Applicant" was delivered to me on:

_____
(Date)

_____
(Applicant's Signature)

(4) Direct response solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the following manner:

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF ACCIDENT AND SICKNESS OR
LONG-TERM CARE INSURANCE

(Insurer's name and address)

SAVE THIS NOTICE!
IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to (your application or information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by (insurer name). Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

(a) Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(b) State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. Your insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent the time was spent (depleted) under the original policy.

(c) If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(d) (To be included only if the application is attached to the policy). If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (insurer name and address) within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

_____
(Insurer Name)

(5) Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured, and policy number or address including zip code. The notice shall be made within five (5) working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

Section 10. Reporting Requirements. (1) Every insurer shall maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.

(2) Each insurer shall report annually by June 30 the ten (10) percent of its agents with the greatest percentages of lapses and replacements as measured by subsection (1) of this section.

(3) Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The

reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

(4) Every insurer shall report annually by June 30 the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year.

(5) Every insurer shall report annually by June 30 the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year.

(6) For purposes of this section, "policy" shall mean only long-term care insurance and "report" means on a statewide basis.

Section 11. Licensing. No agent is authorized to market, sell, solicit, or otherwise contact any person for the purpose of marketing long-term care insurance unless the agent has demonstrated his knowledge of long-term care insurance and the appropriateness of the insurance by passing a test required by this state and maintaining appropriate licenses.

Section 12. Discretionary Powers of Commissioner. The commissioner may upon written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provisions of this regulation with respect to a specific long-term care insurance policy or certificate upon a written finding that:

(1) The modification or suspension would be in the best interest of the insureds;

(2) The purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and

(3)(a) The modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care; or

(b) The policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of the community; or

(c) The modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

Section 13. Reserve Standards. (1) When long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to these policies, policy reserves for these benefits shall be determined in accordance with KRS 304.6-130 to 304.6-180. Claim reserves shall also be established in the case when the policy or rider is in claim status. Reserves for policies and riders subject to this subsection may be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits, but the reserves for the long-term care benefit and the life insurance benefit shall not be less than the reserves for the life insurance benefit assuming no long-term care benefit. In the development and calculation of reserves for policies and riders subject to this subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which have an impact on projected claim costs, including, but not limited to, the following:

(a) Definition of insured events;
(b) Covered long-term care facilities;
(c) Existence of home convalescence care coverage;
(d) Definition of facilities;
(e) Existence or absence of barriers to eligibility;
(f) Premium waiver provision;
(g) Renewability;
(h) Ability to raise premiums;
(i) Marketing method;
(j) Underwriting procedures;
(k) Claims adjustment procedures;
(l) Waiting period;
(m) Maximum benefit;
(n) Availability of eligible facilities;
(o) Margins in claim costs;
(p) Optional nature of benefit;
(q) Delay in eligibility for benefit;
(r) Inflation protection provisions; and
(s) Guaranteed insurability option.

Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

(2) When long-term care benefits are provided other than as in subsection (1) of this section, reserves shall be determined in accordance with KRS 304.6-070.

Section 14. Loss Ratio. Benefits under individual long-term care insurance policies shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least sixty (60) percent, calculated in a manner which provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

(1) Statistical credibility of incurred claims experience and earned premiums;
(2) The period for which rates are computed to provide coverage;
(3) Experienced and projected trends;
(4) Concentration of experience within early policy duration;
(5) Expected claim fluctuation;
(6) Experience refunds, adjustments, or dividends;
(7) Renewability features;
(8) All appropriate expense factors;
(9) Interest;
(10) Experimental nature of the coverage;
(11) Policy reserves;
(12) Mix of business by risk classification; and
(13) Product features such as long elimination periods, high deductibles, and high maximum limits.

Section 15. Filing Requirement. Prior to an insurer offering group long-term care insurance to a resident of Kentucky pursuant to KRS 304.14-610, it shall file with the commissioner evidence that the group policy or certificate thereunder has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those adopted in this state.

Section 16. Filing Requirements for Advertising. (1) Every insurer providing long-term care insurance or benefits in Kentucky shall provide a copy of any long-term care insurance advertisement intended for use in Kentucky whether through written, radio, or television medium to the commissioner for review or approval by the commissioner to the extent it may be required under state law. In addition, all advertisements shall be retained by the insurer for at least three (3) years from the date the advertisement was first used.

(2) The commissioner may exempt from these requirements any advertising form or material when, in the commissioner's opinion, this requirement may not be reasonably applied.

Section 17. Standards for Marketing. (1) Every insurer marketing long-term care insurance coverage in this state, directly or through its agents, shall:

(a) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.

(b) Establish marketing procedures to assure excessive insurance is not sold or issued.

(c) Display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy the following: "Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

(d) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of this insurance.

(e) Every insurer marketing long-term care insurance shall establish auditable procedures for verifying compliance with this subsection.

(f) If the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counselling program approved by the commissioner, the insurer shall, at solicitation, provide written notice to the prospective policyholder and certificate-holder that such a program is available and the name, address, and telephone number of the program.

(2) In addition to the practices prohibited in KRS Chapter 304.12, the following acts and practices are prohibited:

(a) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

Section 18. Appropriateness of Recommended Purchase. In recommending the purchase or replacement of any long-term care insurance policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

Section 19. Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates. If a long-term care insurance policy or certificate replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

Section 20. Standard Format Outline of Coverage. This section of the regulation implements, interprets, and makes specific the provisions of KRS 304.14-615(7) in prescribing a standard format and the content of an outline of coverage.

(1) The outline of coverage shall be a freestanding document, using no smaller than ten (10) point type.

(2) The outline of coverage shall contain no material of an advertising nature.

(3) Text which is emphasized in the standard format outline of coverage may be emphasized by any means which provide prominence to the text.

(4) Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

(5) Format for outline of coverage:

(INSURER NAME)
(ADDRESS-CITY & STATE)
(TELEPHONE NUMBER)
LONG-TERM CARE INSURANCE
OUTLINE OF COVERAGE
(Policy Number or Group Master Policy and Certificate Number)

(Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, must appear as follows in the outline of coverage):

Caution: The issuance of this long-term care insurance (policy or certificate) is based upon your responses to the questions on your application. A copy of your (application or enrollment form) (is enclosed or was retained by you when you applied). If your answers are incorrect or untrue, the insurer has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the insurer at this address: (insert address)

(a) This policy is (an individual policy of insurance or a group policy) which was issued in the (indicate jurisdiction in which group policy was issued).

(b) PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!

(c) TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

1. (Provide a brief description of the right to return - "free look" provision of the policy).

2. (Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains these provisions, include a description of them).

(d) THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurer.

1. (For agents) Neither (insert insurer name) nor its agents represent Medicare, the federal government, or any state government.

2. (For direct response) (insert insurer name) is not representing Medicare, the federal government, or any state government.

(e) LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one (1) or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community, or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy (limitations) (waiting periods) and (coinsurance) requirements. (Modify this paragraph if the policy is not an indemnity policy).

(f) BENEFITS PROVIDED BY THIS POLICY.

1. (Covered services, related deductible(s), waiting periods, elimination periods, and benefit maximums).

2. (Institutional benefits, by skill level).

3. (Noninstitutional benefits, by skill level).

(Any benefit screens shall be explained in this section. If these screens differ for different benefits, explanation of the screen shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this shall be specified. If activities of daily living (ADLs) are used to measure an insured's need for long-term care, then these qualifying criteria or screens shall be explained).

(g) LIMITATIONS AND EXCLUSIONS.

(Describe:

1. Preexisting conditions;

2. Noneligible facilities or providers;

3. Noneligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);

4. Exclusions and exceptions; and

5. Limitations).

This section shall provide a brief specific description of any policy

provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in paragraph (f) of this subsection).

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

(h) RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. (As applicable, indicate the following:

1. That the benefit level will not increase over time;

2. Any automatic benefit adjustment provisions;

3. Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;

4. If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations; and

5. Describe whether there will be any additional premium charge imposed, and how that is to be calculated).

(i) TERMS UNDER WHICH THE POLICY (OR CERTIFICATE) MAY BE CONTINUED IN FORCE OR DISCONTINUED.

1. Describe the policy renewability provisions;

2. For group coverage, specifically describe continuation and conversion provisions applicable to the certificate and group policy;

3. Describe waiver of premium provisions or state that there are no such provisions; and

4. State whether or not the company has a right to change premium, and if this right exists, describe clearly and concisely each circumstance under which premium may change).

(j) ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.

(State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for these insureds).

(k) PREMIUM.

(1. State the total annual premium for the policy; and

2. If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option).

(l) ADDITIONAL FEATURES.

(1. Indicate if medical underwriting is used; and

2. Describe other important features).

Policy Form #	Policy & Certificate #	Name of Insured	Date of Policy Issuance	Date/s Claim/s Submitted	Date of Rescission

Section 21. Requirement to Deliver Shopper's Guide. (1) A long-term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners, or a guide developed or approved by the Commissioner, shall be provided to all prospective applicants of a long-term care insurance policy or certificate.

(a) In the case of agent solicitations, an agent shall deliver the shopper's guide prior to the presentation of an application or enrollment form.

(b) In the case of direct response solicitations, the shopper's guide shall be presented in conjunction with any application or enrollment form.

(2 Life insurance policies or riders containing accelerated long-term care benefits are not required to furnish the shopper's guide, but shall furnish the policy summary required under KRS 304.14-615.

Section 22. Permitted Compensation Arrangements. (1) An insurer may provide commission or other compensation to an agent or other representative for the sale of a long-term care insurance policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

(2 The commission or other compensation provided in subsequent (renewal) years shall be the same as that provided in the second year or period and must be provided for a reasonable number of renewal years.

(3 An insurer shall not provide compensation to its agents or other producers and agents or producers shall not receive compensation greater than the renewal compensation payable by the replacing insurer on renewal policies.

Section 23. Repeal of 806 KAR 17:080. 806 KAR 17:080, Long-term care insurance, is repealed.

APPENDIX A

RESCISSION REPORTING FORM FOR
LONG-TERM CARE POLICIES
FOR THE STATE OF _____
FOR THE REPORTING YEAR 19(____)

Company Name: _____
Address: _____
Phone Number: _____

Due: March 1 annually

Instructions:
The purpose of this form is to report all rescissions of long-term care insurance policies or certificates. Those rescissions voluntarily effectuated by an insured are not required to be included in this report. Please furnish one (1) form per rescission.

Detailed reason for rescission: _____

_____

_____

_____

Signature

_____

Name and Title (please type)

_____

Date

RONNIE C. MOORE, Commissioner
EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: August 24, 1992

FILED WITH LRC: September 14, 1992 at 9 a.m.

PUBLIC HEARING: Persons with an interest in the subject matter of the proposed regulation may comment at a public hearing scheduled for October 21, 1992, at 1:30 p.m. (ET), in the offices of the Kentucky Department of Insurance, 229 West Main Street, Frankfort, Kentucky 40601. Written comments may be submitted to Ronnie C. Moore, Commissioner, Kentucky Department of Insurance, Post Office Box 517, Frankfort, Kentucky 40602. Written comments must be received prior to 1:30 p.m. (ET), on October 21, 1992, in order to receive consideration. The public hearing scheduled above may be cancelled if no one notifies the Commissioner of Insurance at least five (5) days prior to the hearing that they will be in attendance to comment.

REGULATORY IMPACT ANALYSIS

AGENCY CONTACT: Patrick Watts

Need for the Proposed Regulation: The 1992 General Assembly adopted Senate Bill 217 (1992 Ky. Acts c. 423) to establish minimum standards for long-term care insurance policies. KRS 304.14-615 requires the Commissioner of Insurance to promulgate administrative regulations that include standards for full and fair disclosure setting forth the manner, content, and the required disclosure for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation and conversion, probationary rights, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms. This regulation is substantially identical to the National Association of Insurance Commissioners' Long-term Care Insurance Model Regulation.

Type and Numbers of Entities Affected: The regulation will affect fifty (50) insurers which transact long-term care insurance in Kentucky.

a. Direct and indirect costs or savings to those affected:

1. First year: There will be minimal cost involved since the proposed regulation is substantially identical to a regulation which is in effect in about forty (40) states. Insurers will realize savings by having clear guidelines for the sale and issuance of long-term care insurance policies.

2. Continued cost Or savings: There will be continuing savings to the insurance industry and the public because there will be clear guidelines for the sale and issuance of long-term care insurance policies.

3. Additional factors increasing or deceasing costs: None

b. Reporting and paperwork requirements: Insurers must report rescinded long-term care insurance policies.

Effects of the Promulgating Administrative Body:

a. Direct and indirect costs or savings:

1. First year: The regulation will provide clear guidelines for the department in reviewing long-term care insurance policies for approval. There will be minimal expense in establishing systems to review policies in accordance with the regulation.

2. Continuing costs or savings: Once systems are established, the existence of clear guidelines for the review of long-term care insurance policies will result in savings.

3. Additional factors increasing or decreasing costs: None

b. Reporting and paperwork requirements: The dpartment will maintain the reports on rescinded long-term care insurance policies.

Assessment of Anticipated Effect on State and Local Revenues: None

Assessment of Alternative Methods; Reasons why Alternatives were Rejected: There is no alternative to promulgation of the proposed regulation because it is required by KRS 304.14-615.

Statutes, Regulations, or Governmental Policies which may Conflict, Overlap, or Duplicate the Proposed Regulation: None

TIERING: Was tiering applied? Tiering is recognized through provisions relating to different types of renewal clauses, the requirement to offer inflation protection, requirements relating to accelerated benefits under life insurance policies, provisions for home health care, and provisions for community care benefits. Also, the proposed regulation recognizes the distinction between policies marketed through agents and policies marketed through direct response techniques.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the September 3 and 4, 1992 Meeting

The September meeting of the Administrative Regulation Review Subcommittee was held on Thursday, September 3, 1992 at 1 p.m. and Friday, September 4, 1992 at 10 a.m. in Room 131 of the Capitol Annex. Chairman Tom Kerr called the meeting to order, and the secretary called the roll. The minutes of the August 6 and 7, 1992 meeting were approved.

Present were:

Members: September 3, 1992: Representative Tom Kerr, Chairman; Senators Gene Huff and Bill Quinlan; Pat McCuiston; Representatives Woody Allen, Jim Bruce and James Yates. September 4, 1992: Representative Tom Kerr, Chairman; Senators Pat McCuiston, Gene Huff and Bill Quinlan; Representatives Jim Bruce, Woody Allen and James Yates.

Guests: Paul P. Borden, Teresa A. Rutledge, Janice Ernst, Richard F. Casey, Kentucky Higher Education Assistance Authority; Hanson Williams, Personnel Board; Mary Lassiter, Finance; Julio Polio, Richard L. Ross, Jeffrey L. Osman, Board of Pharmacy; Nancy Brinly, Board of Physical Therapy; Ted Crowell, Thomas A. Young, Pete Pfeiffer, Lauren Schaaf, Grant Winston, Ronald Pritchert, Department of Fish and Wildlife Services; Secretary Phillip Shepherd, Linda Stacy, Randall G. McDowell, K. M. Hargraves, Robert W. Logan, Pat Haight, Mark Brenneman, Natural Resources and Environmental Protection Cabinet; Dave Nicholas, Board of Speech-Language Pathology; Jack Damron, Tom Campbell, Corrections; Sandra G. Pullen, Transportation Cabinet; Kevin Noland, Perry Watson, Mike Roscoe, Akeel Zaheer, Agnes Hampton, Bernie Carr, Angela Wilkins, Trudy Day Sullivan, Debbie Schumacher, Barbara A. Singleton, Department of Education; Kembra Taylor, Amanda Stormeat Hunt, Carol Palmore, Erin Foley, Gina Diane Marraccini, Bill Ralston, Steven A. Forbes, Labor Cabinet; Don Zeller, Carl Harmon, Alcoholic Beverage Control; Ked Fitzpatrick, Reginald Finger, Barbara Coleman, Tony DeName, Larry Taylor, Cookie Whitehouse, Cathy Mobley, Cabinet for Human Resources; Nancy Galvagni, Sara S. Nicholson, Kentucky Hospital Association; Debra Miller Kentucky Youth Advocates; Jim Byrum, KEA; Sonya Vittitoe, Good Samaritan Hospital; David Fahringer, Karen Early, Sharon Berry, UK Medical Center; Raymond B. Atero, Smith, Kline, Beechum; Kathy Hall, Pattie A. Clay Hospital; Emily Mills, King's Daughters Memorial Hospital; Dandridge F. Walton, KAHCF; John Nichols, AIK/Chemical Industry Council; Henry Willenbrink, Ohio Valley Fishermen's Association.

LRC Staff: Greg Karambellas, Joe Hood, Patrice Carroll, Tom Troth, Susan Wunderlich, Peggy Jones, Susan Eastman, Don Hines, OEA.

The Subcommittee determined that the following administrative regulations do not comply with KRS Chapter 13A:

Labor Cabinet: Occupational Safety and Health

803 KAR 2:320. Adoption of 29 CFR Part 1910.1000 - 1910.1500.

Subcommittee staff explained that some of the material before the Subcommittee related to changes made to the statement of consideration. The original statement of consideration did not contain an adequate agency response required by KRS 13A.280.

Chairman Kerr asked whether the Cabinet used interpretive guidelines or manuals that had not been incorporated in this administrative regulation. Cabinet personnel stated that they referred to federal guidelines at the public hearing in response to questions raised. Chairman Kerr asked whether that material would be used to determine whether waste met the requirements established in this administrative regulation. Cabinet personnel stated that they would be used. Chairman Kerr stated that, unless they appeared in the body of the administrative regulation or were incorporated by reference, they could not be used. Cabinet personnel stated that the federal standards changed so frequently that constant amendment of the administrative regulation would be required. Subcommittee staff stated that KRS Chapter 13A required an administrative body to amend such administrative regulations whenever the federal requirements were changed, even if that resulted in constant amendment of state administrative regulations. Subcommittee staff added that cabinet use of interpretive guidelines violated the prohibition in KRS Chapter 13A against the use of documents that had not been incorporated by reference. Subcommittee staff stated that a review of the directives and guidelines needed to be conducted in order to determine which had to be incorporated because they contained substantive requirements.

Raymond B. Atero, of Smith, Kline, Beechum Clinical Laboratories, spoke with regard to the definition of infectious waste. Nancy Galvagni, Kentucky Hospital Association, stated that the Association was not opposed to the administrative regulation but had questions relating to the Cabinet definition of regulated waste and the role of infection control nurses in post-evaluation and follow-up after a health incident, such as a needle stick involving contaminated blood. She stated that the Cabinet's initial response provided that only a physician or an advanced registered nurse practitioner would be authorized to perform such procedures. This would create a problem in hospitals and nursing homes because infection control nurses working under a doctor's protocol would appear to be prohibited from performing such procedures. With regard to the definition of regulated waste, the question was what standards would apply: whether, like the Cabinets for Human Resources and Natural Resources and Environmental Protection, the Center for Disease Control (CDC) Standards would be followed or whether the Labor Cabinet would establish a different standard. Ms. Galvagni stated that she had received a letter from the Cabinet that she believes provides that infection control nurses could perform the follow-up procedures under physician protocol and that the OSHA definition of regulated waste was compatible with CDC standards.

In response to a question by Chairman Kerr, Subcommittee staff stated: (1) if this administrative regulation was not clear, and use of federal guidelines or other material were required, the administrative regulation would have to be amended or the material would have to be incorporated by reference; and (2) the requirement that the health professional legally be able to independently perform the follow-up procedures required at least a cross-reference to standards established by the Board of Nursing.

Cabinet personnel stated that this administrative regulation did not specifically incorporate CDC standards; rather, it compared standards. They added that infection control nurses could perform the procedures under a protocol if such action were approved by Board of Nursing standards.

Representative Bruce asked whether this administrative regulation should be deferred. Subcommittee staff explained that the Cabinet was under a federal deadline and suggested that the Cabinet meet with Subcommittee staff to prepare a proposal for the Subcommittee which, after Subcommittee approval, would result in the Cabinet filing additional amended administrative regulations.

The Subcommittee approved an amendment to comply with definitions established in KRS 13A.010.

Chairman Kerr asked whether this administrative regulation sufficiently defined regulated waste so that hospitals knew exactly what was required of what waste. Cabinet personnel stated that the burden was on the employer to define regulated waste. Chairman Kerr stated that if the administrative regulation gave the hospital the discretion to define regulated waste, hospitals could not be found in default of the administrative regulation. Ms. Galvagni stated that the Association's initial objections concerned the lack of clarity in the definition of regulated waste and confusion over whether the Cabinet would follow CDC standards. Subcommittee staff stated that if the CDC standard differed from the standard established in this administrative regulation, the Cabinet would be limited to enforcing the standard in this administrative regulation. All parties agreed to meet on the issues raised.

Dan Walton, KAHCF, stated that the administrative regulation still was not clear in the standard established for regulated waste and that placing the burden on the employer to define regulated waste would subject an employer to a determination of noncompliance. Cabinet personnel stated, again, that they felt this administrative regulation established standards compatible with CDC. Subcommittee staff stated that regulated entities could be required to meet only the standard specifically established by this administrative regulation and, if it differed from CDC, it would apply. Mr. Atero stated that questions relating to specific types of regulated waste often could not be answered without recourse to CDC standards and that this raised a question as to what standard was actually required.

The Subcommittee approved a motion finding this administrative regulation, as amended, deficient; that all parties meet with Subcommittee staff on the issues raised; report to the Subcommittee; and, that the Cabinet would file an amended administrative regulation to incorporate any agreement reached.

Chairman Kerr pointed out that the statement of consideration did not comply with KRS 13A.280 because it did not sufficiently respond to comments made. Cabinet personnel stated that the statement of consideration had been amended. Chairman Kerr pointed out that such an amendment was not permitted by KRS Chapter 13A, and that many of those who had commented at the public hearing may not have received the amended statement of consideration. Subcommittee staff pointed out that the Cabinet was required to submit a complete statement of consideration within 15 days following the public hearing. The Regulations Compiler stated that failure to meet the 15-day deadline would require the Cabinet to begin the regulatory procedure from the start.

Cabinet for Human Resources: Department for Health Services: Communicable Diseases

902 KAR 2:170. Medical conditions which may pose a threat in the school environment. Chairman Kerr stated that AIDS was not listed as a medical condition that might pose a threat in the school environment, and asked why AIDS was excluded. Cabinet personnel stated that: (1) scientific evidence showed that the probability of transmission in schools was negligible; and, (2) legal opinions state that disclosure that a student is HIV positive is a violation of the 1990 Omnibus AIDS Act and federal law confidentiality requirements.

Chairman Kerr asked whether, under state laws, the parents were required to notify the school of a medical condition that might pose a threat in the school environment. He pointed out that the statute provides for notification if a medical condition may pose a threat, not if it does pose a threat. Chairman Kerr added that notification of a student being HIV positive was not intended to harm or discriminate against the student, but was intended to protect other students. He gave, as an example, an HIV positive child with a cut coming in contact with another child with an open cut during school activities. Cabinet personnel stated that this would not pose a threat.

Chairman Kerr asked why, then, there was so much concern in the administrative regulation dealing with regulated waste over contaminated blood on cotton balls or other materials. Cabinet personnel stated that appeared to have more to do with hepatitis transmission rather than AIDS transmission; that blood on an item was not infectious; that hepatitis transmission was more likely than AIDS transmission in these cases; and, that experts supported this view.

Chairman Kerr stated that AIDS was a deadly disease and that expert opinion on transmission appears to be divided. He compared, as an example, booklets that stated that AIDS could not be contracted through kissing, with interviews with medical professionals that stated that AIDS could be contracted through deep kissing if there were cuts or open sores or gum conditions. He stated that medical professionals actually seem to be saying not that AIDS could not be so transmitted, but that it was not likely to be so transmitted. It was pointed out that procedures required in surgery are required on the assumption that precautions have to be taken against the transmission of AIDS, regardless of whether or not transmission was considered possible but not probable.

In response to a question by Senator Huff, Cabinet personnel stated that hepatitis was included on the list because the intent of the statute was to list diseases or conditions with a high enough probability of transmission that a teacher should be informed in order to take necessary precautions, or to require exclusion if it were deemed necessary.

In response to questions, Cabinet personnel stated that preschool was not included. Chairman Kerr pointed out that, since many districts had preschool programs in the public schools, this administrative regulation was incomplete if it did not include preschool. He reiterated that the statute referred to conditions that may pose a threat, and was not limited to conditions that do pose a threat. He added that other administrative regulations, for example, those related to sexually transmitted diseases, contain an extensive list of conditions. Cabinet personnel stated that the legislature had objected to an extensive list of conditions that had been included in some legislation requiring notification of undertakers of diseases requiring blood and bodily fluid precautions. Chairman Kerr stated that the objection was to the phrase "and all other diseases" because it did not specify the diseases. Cabinet personnel stated that this administrative regulation does not include all possibilities, and is limited to diseases with reasonable possibilities of transmission in the school environment. Chairman Kerr stated that parents want to be informed of diseases which possibly could be a threat to their children.

The Subcommittee approved a motion that this administrative regulation did not conform to statutory authority or legislative intent.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Kentucky Higher Education Assistance Authority

The following four administrative regulations were amended to correct: (1) statutory citations in the STATUTORY AUTHORITY lines; and (2) numbering and format errors as required by KRS 13A.222.

11 KAR 4:060. Distribution of Publications.

Kentucky Educational Savings Plan Trust

11 KAR 12:050. Substitution of a beneficiary.

11 KAR 12:060. Cancellation and payment of refund.

11 KAR 12:090. Transfer of ownership of Kentucky educational savings plan trust program fund.

Personnel Board

101 KAR 1:365. Appeal and hearing procedures. An objection had been raised to the amendment of Section 3(9) establishing a preliminary hearing, and permitting dismissal of an appeal for failure to state a cause of action and lack of jurisdiction. KRS 18A.095(18)(b) provides that an appeal shall be decided only after a hearing, and grants authority only to the Board to determine an appeal. In addition, the appeal and subpoena forms had not been incorporated by reference, and language of KRS Chapter 18A had been repeated or summarized in Sections 1(2) and 5(5).

Sections 1(2) and 5(5) were amended to delete the repetition of KRS Chapter 18A language. Section 1(3) was amended to provide the name of the appeal form. Section 3(9) was amended to: (1) delete the language establishing a preliminary hearing; and (2) add language providing that a hearing officer shall not rule on a motion to dismiss for lack of jurisdiction. A new section, Section 7, was inserted to incorporate the appeal and subpoena forms.

101 KAR 1:375. Employee grievances and complaints. An objection had been raised to Section 4(5), (6), permitting an administrative body to alter the grievance procedure established by this administrative regulation. Also, an objection had been raised to the failure of the Board to incorporate the grievance form. KRS 18A.0751 (1)(i),(2)(c) grant sole authority over grievance procedures to the Board. This authority cannot be delegated.

This administrative regulation was amended to: (1) incorporate the grievance form; (2) delete Section 4(6) delegating authority to administrative bodies; and (3) insert a "fourth" level supervisor to accommodate the personnel structure of some administrative bodies.

Board of Physical Therapy

201 KAR 22:070. Requirements for foreign-trained physical therapists. This administrative regulation was amended to: (1) correct format errors; and (2) in Section 1(5)(d), delete language that appeared to grant the Board the authority to exempt an applicant from the requirements of this administrative regulation without establishing the conditions or standards for the exercise of the Board's discretion.

201 KAR 22:135. Fees. Sections 1 through 3 were amended to comply with format requirements, and to rearrange language and sections for clarity. Sections 4 and 5 were deleted, since they were not needed after the amendments to Sections 1 through 3 were made.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Waste Management

401 KAR 35:020. General facilities standards (IS). Section 4(2)(g)3.b. was amended by replacing the period after the word "established" with a colon.

Waste Management - Land Disposal Restrictions

401 KAR 37:040. Treatment standards. Section 2(1) was amended by changing the title of the table from "Table 1 (Constituent Concentrations in Waste Extract)" to "Table CCWE".

Corrections Cabinet: Office of the Secretary

The following four administrative regulations were amended to: (1) insert the word "administrative" before the word regulation pursuant to KRS 13A.010(2); and (2) provide a more detailed explanation of why tiering was not applied, as required by KRS 13A.210(1).

501 KAR 6:030. Kentucky State Reformatory.

501 KAR 6:040. Kentucky State Penitentiary. Various policies in this administrative regulation were amended as follows pursuant to KRS 13A.120(2)(i): KSP 13-10-01: Cite the appropriate state and federal law in the reference section of this administrative regulation. KSP 13-02-01: Amend the agency designation to read "Cabinet for Human Resources". KSP 13-02-04: (1) Delete "register nurse" and insert "registered nurse" in lieu thereof; (2) Delete the reference to "multimedia first aid"; (3) Add references to tragic procedures, an incident command center and coordination of necessary services and functions.

501 KAR 6:060. Northpoint Training Center. Various policies in this administrative regulation were amended as follows pursuant to KRS 13A.120(2)(i): NTC-CPP 14-03-02: (1) Cite "KRS 44.070 et. seq." in the reference section; and (2) Amend the existing language to make the action of the Board of Claims discretionary rather than mandatory. NTC 15-02-01: Delete "Attachment II".

501 KAR 6:070. Kentucky Correctional Institution for Women. Questions were raised in the initial staff review concerning Cabinet policy that: (1) appeared to allow inmates to drive state vehicles even if they were prohibited from obtaining a driver's license; and (2) related to the insurability of inmates. Cabinet personnel stated that: (1) inmates were not permitted to drive a state vehicle unless they had a valid drivers license; (2) Inmates were only permitted to drive on Correctional Institution property; (3) Inmates only drive a maintenance vehicle or a garbage truck; (4) The state is its own insurer of the vehicle and the state would be responsible for any liability or injury.

Representative Allen asked whether or not an inmate needed a drivers license if she only drove on the correctional institution property. Cabinet personnel stated that a license was probably not required, but the Cabinet felt the license requirement was good policy.

Chairman Kerr stated that since the inmates were driving on public property they would be required to comply with the traffic laws.

Transportation Cabinet: Administration

600 KAR 1:070. Motor pool procedure. This administrative regulation was amended to: (1) Properly cite the provisions of the Kentucky Revised Statutes in the RELATES TOand STATUTORY AUTHORITY Sections pursuant to KRS 13A.220 (3)(e); (2) Conform the NECESSITY AND FUNCTION Section to the requirements of KRS 13A.220(3)(f); (3) Delete the PURSUANT TO reference and insert STATUTORY AUTHORITY pursuant KRS 13A.220(3)(e); and, (4) Conform the material incorporated by reference material to proper format pursuant to KRS 13A.220(4).

Representative Yates asked if the state has insurance on employees who drive state vehicles. Cabinet personnel stated that the Transportation Cabinet recommends that employees have their own personal liability insurance and that the state has no insurance on its employees. The state will reimburse its employees for the additional liability insurance that individual employees acquire on their personal automotive policies. State employees are not required to carry this additional insurance on their personal policies. The state is self insured on any damage to its vehicles.

Chairman Kerr pointed out that the state has sovereign immunity but a person injured by negligence of the state may file a claim with the Board of Claims. However, the employee is personally liable if he does not have insurance on his own. Cabinet personnel pointed out that the state simply does not have the money to insure all the state vehicles.

A motion was made by Representative Yates and approved by the Subcommittee to refer the matter of liability insurance for state employees to LRC for study by the appropriate jurisdictional committee.

Property Acquisition and Uniform Relocation

600 KAR 3:010. Relocation assistance payments of the Transportation Cabinet. This administrative regulation was amended to: (1) Properly format various sections pursuant to KRS 13A.220(4); and (2) Change "handicap" to "disabled" in conformance with the Americans with Disabilities Act.

Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:005. Safety regulations. This administrative regulation was amended to: (1) Insert appropriate numbers and letters in parentheses pursuant to KRS 13A.220(4); and (2) Clarify the NECESSITY AND FUNCTION and sections relating to incorporated material as required by KRS 13A.222(4)(a).

Representative Bruce asked if this administrative regulation would have any effect on farm equipment or machinery. Cabinet personnel stated this administrative had no additional effect on either farm equipment or farm machinery, and that this administrative regulation continues the exemption of farmers from certain safety regulations. New administrative regulations were promulgated because the federal government added more safety regulations, but these changes did not effect the farm exemption.

601 KAR 1:015. Special overweight or overdimensional permits issued at highway district offices and the Transportation Cabinet in Frankfort. This administrative regulation was amended to: (1) Insert appropriate numbers and letters in parentheses pursuant to KRS 13A.220(4); (2) Add a definition of "Overweight"; (3) Add a definition of "Overdimensional"; (4) Provide that the permit application form may be completed on forms provided by the Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Carriers, 501 High Street, Frankfort, KY 40622; and (5) Provide that the permittee may carry the original or facsimile copy of the permit.

Representative Bruce asked what the agency was referring to when it defined the term "Overdimensional" in the administrative regulation. Cabinet personnel stated that overdimensional could refer either to width, height or length, and that this administrative regulation relates only to the special permit authorized by KRS 189.274. A permit is required to be issued for certain types of equipment up to twelve feet wide at the district offices. Equipment over twelve feet wide must get a permit from Frankfort rather than the district office.

601 KAR 1:016. Special annual overweight of overdimensional permits issued for the transportation of specialized equipment. This administrative regulation was amended to: (1) Insert appropriate numbers and letters in parentheses pursuant to KRS 13A.220(4); (2) Add a definition of "Overweight"; (3) Add a definition of "Overdimensional"; (4) Provide that application forms are available from the Division of Motor Carriers, 501 High Street, Frankfort, Kentucky 40622; and (5) Provide that an authenticated, embossed copy of a permit may be carried by the permittee in lieu of the original.

Chairman Kerr pointed out that embossing meant that the copy must be sealed with a notary type seal that makes indentions in the

permit.

In response to a question by Senator McCuiston, Cabinet personnel stated that this administrative regulation does not apply to farm equipment. It applies to permits authorized by KRS 189.273, which include soil conservation equipment and other specialized equipment generally relating to highway construction. Highway construction equipment of this type can exceed certain dimensional limits by obtaining a permit pursuant to this administrative regulation.

Representative Bruce stated he was concerned about overdimensional fertilizer trucks rather than farm equipment. Cabinet personnel stated that this administrative regulation did apply to the exemption of escort vehicles for fertilizer equipment. Representative Bruce stated that this exemption was passed by the 1992 General Assembly and he wanted to be sure that this administrative regulation did nothing to lessen the intended exemption. Cabinet personnel stated that this administrative regulation upheld the exemption and that all the administrative regulations that dealt with escort vehicles were amended to be consistent with the 1992 legislation.

Section 10(3)(a) of the administrative regulation provides for the exemption of escort vehicles for fertilizer trucks found in KRS 189.273(8). Representative Bruce stated he believed there was some confusion about the exemption among DOT inspectors. Cabinet personnel stated that the training officer and Department head would be advised about the exemption and clarification would be given to the DOT inspectors.

Representative Allen asked who set the rate of $50.00 an hour for escort vehicles. Cabinet personnel stated that they called an escort vehicle business and asked what it charged to escort overdimensional vehicles. The transportation cabinet was quoted the $50.00 an hour rate. The rate included the vehicle and the driver's time.

Department of Highways: Traffic

603 KAR 5:070. Motor vehicle dimension limits. This administrative regulation was amended to correct format pursuant to KRS 13A.220(4).

603 KAR 5:075. Overweight and overdimensional permits. This administrative regulation was amended to: (1) Insert appropriate numbers and letters in parentheses pursuant to KRS 13A.220(4); (2) Add a definition of "Overweight"; (3) Add a definition of "Overdimensional"; (4) Add the word "administrative" before regulation pursuant to KRS 13A.010(2) ; and (5) Provide that an authenticated, embossed copy of a permit may be carried by the permittee in lieu of the original. In response to a question from Representative Bruce Cabinet personnel stated that this administrative regulation would have no effect on fertilizer trucks and escort vehicles or any other issues discussed previously. This administrative regulation applies to permits issued under KRS 189.270 and not KRS 189.273.

603 KAR 5:105. Annual permits for moving wood trusses. This administrative regulation was amended to: (1) Insert appropriate numbers and letters in parentheses pursuant to KRS 13A.220(4); (2) Add a definition of "Overweight"; (3) Add a definition of "Overdimensional"; (4) Add the word "administrative" before regulation pursuant to KRS 13A.010(2); and (5) Provide that an authenticated, embossed copy of a permit may be carried by the permittee in lieu of the original.

603 KAR 5:112. Annual permits for moving utility equipment, poles or pipes. This administrative regulation was amended to: (1) Insert appropriate numbers and letters in parentheses pursuant to KRS 13A.220(4); (2) Add a definition of "Overdimensional"; (3) Provide that application forms are available from the Division of Motor Carriers, 501 High Street, Frankfort, Kentucky 40622; and (4) Provide that an authenticated, embossed copy of a permit may be carried by the permittee in lieu of the original.

603 KAR 5:260. Annual permits for moving farm equipment. This administrative regulation was amended to: (1) Insert appropriate numbers and letters in parentheses pursuant to KRS 13A.220(4); (2) Add a definition of "Overdimensional"; (3) Provide that application forms are available from the Division of Motor Carriers, 501 High Street, Frankfort, Kentucky 40622; and (4) Provide that an authenticated, embossed copy of a permit may be carried by the permittee in lieu of the original.

Senator McCuiston questioned the need for so many administrative regulations on farm equipment. Cabinet personnel responded that this administrative regulation was necessary because of the legislation passed by the General Assembly in 1992 which dealt exclusively with vehicles being moved by farm equipment dealers. Annual permits are authorized for farm equipment dealers moving vehicles up to 16 feet wide. No one else in the farming industry is given an annual permit for up to 16 feet wide vehicles. Farmers themselves are exempt when they are transporting their own equipment unless they want to move on the interstate.

Representative Bruce asked if this administrative regulation prohibited farm equipment dealers from moving equipment on certain roads. Cabinet personnel stated that the equipment could be moved with the permit authorized by this administrative regulation. Dealers would be permitted to move equipment on the interstate if the equipment is being towed.

603 KAR 5:270. Annual overweight permits for the movement of steel products or materials. This administrative regulation was amended to: (1) Insert appropriate numbers and letters in parentheses pursuant to KRS 13A.220(4); (2) Add a definition of "Overweight"; (3) Provide that application forms are available from the Division of Motor Carriers, 501 High Street, Frankfort, Kentucky 40622; and (4) Provide that an authenticated, embossed copy of a permit may be carried by the permittee in lieu of the original.

Education and Humanities Cabinet: Department of Education: Office of Chief State School Officer

The following five administrative regulations were amended to: (1) comply with format requirements; and (2) rearrange language and sections for clarity.

701 KAR 5:035. Procedures for records requests.

701 KAR 5:085. Hearing process for school-based decision making complaints.

Office of District Support Services: School District Finance

702 KAR 3:190. Maximum class size.

Pupil Transportation

702 KAR 5:120. Blind and deaf pupils, reimbursement for.

School Terms, Attendance and Operation

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

Labor Cabinet: Occupational Safety and Health

Chairman Kerr stated that the Cabinet needed to meet with Subcommittee staff for a detailed review of KRS Chapter 13A requirements relating to incorporation or adoption of federal regulations. The Subcommittee approved motions to amend these administrative regulations to comply with format requirements, and to rearrange language and sections for clarity.

803 KAR 2:015. General industry standards.

803 KAR 2:306. Adoption of 29 CFR Part 1910.94 - 1910.100.

803 KAR 2:310. Adoption of 29 CFR Part 1910.151-.153.

803 KAR 2:313. Adoption of 29 CFR Part 1910.176 - 1910.190.

803 KAR 2:317. Adoption of 29 CFR Part 1910.261-.275.

Public Protection and Regulation Cabinet: Department of Alcoholic Beverage Control: Advertising Distilled Spirits and Wine

804 KAR 1:130. Containers. The NECESSITY AND FUNCTION section was amended to comply with definitions established in KRS 13A.010.

Quotas

804 KAR 9:040. Retail package liquor license quota. This administrative regulation was amended to clarify the NECESSITY AND FUNCTION section. Section 1 was deleted because it repeated statutory language and contained material that appeared in the administrative regulation. Sections 2 and 3 were amended to rearrange language for clarity.

Cabinet for Human Resources: Department for Employment Services: Unemployment Insurance

903 KAR 5:270. Maximum weekly benefit rates. The NECESSITY AND FUNCTION section was amended to comply with definitions

established in KRS 13A.010.

Department for Social Insurance: Public Assistance

904 KAR 2:006. Technical requirements; AFDC. This administrative regulation was amended to: (1) comply with format requirements; and (2) rearrange language and sections for clarity. In addition, Sections 3(3)(c)4. and 9(8)(a)9. were amended to delete "handicapped" and "handicap", and to insert "disabled" and "disability" in lieu thereof in order to comply with federal statutes and regulations.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Kentucky Higher Education Assistance Authority: Kentucky Educational Savings Plan Trust

11 KAR 12:010. Kentucky education savings plan trust definitions.

11 KAR 12:020. General rules for investments and fund transfers.

11 KAR 12:030. Eligibility of beneficiary and participant.

11 KAR 12:040. Residency classification for Kentucky educational savings plan trust vested participation agreements.

11 KAR 12:070. Benefits payable from the Kentucky educational savings plan trust program fund.

11 KAR 12:081. Repeal of 11 KAR 12:080.

Board of Pharmacy

201 KAR 2:010. Schools approved by the board.

201 KAR 2:020. Examinations.

201 KAR 2:105. Licensing and drug distribution requirements for drug manufacturers and wholesalers.

Board of Speech-language Pathology and Audiology

201 KAR 17:090. Continuing education requirements.

201 KAR 17:091. Continuing education requirements for licensees on inactive status; waiver.

Tourism Cabinet: Department of Fish and Wildlife Resources: Fish

In the following administrative regulations, the word "administrative" was inserted before the word "regulation" and the tiering statement was expanded to fully explain why tiering was not used. In 301 KAR 1:085 and 301 KAR 1:160 the tiering statement was corrected to reflect that tiering was not applied.

301 KAR 1:015. Boats and outboard motors; restrictions.

301 KAR 1:020. Snagging.

301 KAR 1:060. Sport and rough fish.

301 KAR 1:075. Gigging, grabbing or snagging, tickling and noodling.

301 KAR 1:085. Mussel shell harvesting. At its April 1, 1992, meeting, objections had been raised to the provision in Section 2 restricting musseling licenses in 1992 to those who held valid licenses in 1990-1991, and, in 1993, to the same category of licenses who purchased licenses in 1991 or 1992. Subcommittee staff explained the basis for the objections: lack of statutory authority to restrict licenses in this manner; constitutional restrictions against preference for a particular class of licensees and the restriction of trade. Representative Allen and Chairman Kerr questioned the authority of the Department to restrict licenses in such a manner. Representative Allen stated that he believed it was inappropriate to grant such a preference and not to provide equal opportunity to all who wished to obtain a license. Chairman Kerr stated that the restriction raised constitutional questions. Department personnel referred to laws in other states permitting such restrictions. It was pointed out that the existence of such laws did not, in themselves, establish the constitutionality of such restrictions; that there was no definitive U.S. Supreme Court ruling on the issues; that there was no similar Kentucky statute. Chairman Kerr asked whether other methods had been considered such as a lottery or the award of licenses on a first-come first-served basis.

At its September 3, 1992, meeting, Chairman Kerr referred members of the Subcommittee and the public to the LRC Report of April 1, 1992, and its discussion of objections raised to this administrative regulation.

Department personnel provided further rationale for prohibiting any new licenses from being issued to previously unlicensed musselers.

The Department stated that there is a conflict between the sport fishermen, commercial fishermen and the mussel shell harvesters over the use of areas in Kentucky's lakes and rivers. A committee was appointed by the Commissioner to look at this issue of musseling. The Department did not feel the musseling industry should be allowed to proliferate while there was controversy between various segments of the industry. The Department therefore capped the number of musseling licenses that could be issued. There were also biological issues associated with the removal of the habitat of the mussels. The Department stated that it is looking at a new system for the issuance of mussel shell licenses.

Senator McCuiston asked how the agency was limiting licenses. The Department stated that a musseler was required to have obtained a license within the last two years to get a license in the current year. The Department stated there is no limit on the amount of mussels that can be harvested.

The musseling committee found that 90% of the problem with musseling relates to the conflict between the various segments of the industry. Commercial fishermen, sport fishermen and musselers all want to occupy the same space in the lake.

Representative Allen asked whether diving would be more effective and less hazardous to the environment. Department personnel stated that diving is 100% effective but it depletes the resource. Representative Allen asked why the divers could not just leave endangered species. Department personnel stated that divers simply do not leave any mussels when they are harvesting. Brailing is only 1 1/2% effective method of harvesting but illegal diving is very effective. Brailing is causing the controversy because it fouls habitat.

In response to a question from Senator McCuiston, Department personnel stated that mussels mature very slowly and therefore it is important to preserve the resource.

Chairman Kerr asked why we are capping the licenses if there has not been overharvesting. Department personnel stated that the reason the licenses were capped was because of the conflict within the various segments of the industry and not the biological concerns.

Chairman Kerr asked if the Department had looked at the constitutionality of the cap on licenses and further asked how the cap was chosen. The Department responded that it had initially felt the cap was justified due to the biological impact but it appeared that the conflict was basically social in nature. The Department then responded that part of the reason is biological.

301 KAR 1:160. Stocking procedures for private waters.

301 KAR 1:200. Seasons and limits for angling.

Hunting and Fishing

301 KAR 3:090. Waterfowl painting contract.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Waste Management

General comments on Waste Management package: Subcommittee staff pointed out that the Statement of Consideration needs to specify the identify of each commentator. Although the Cabinet listed those from whom they had received written comments, it was pointed out that it would be helpful to know the identify of who made each comment.

Subcommittee staff also pointed out that the definition section in 401 KAR 37:010 was not in compliance with KRS 13A.222(4)(e), regarding the format for setting out definitions in an administrative regulation or in a chapter of administrative regulations. KRS 13A.222 (4)(e) provides that definitions shall be placed in the first section of an administrative regulation, or in a separate administrative regulation that would govern a specific KAR chapter. Various administrative regulations contained more than definitions and cross-referenced definitions in other KAR chapters, violating KRS 13A.222(4)(e). Chairman Kerr advised the agency to meet with Subcommittee staff to address this problem. Phillip Shepherd, Secretary of the Cabinet, stated that the waste management regulations were very complicated and interrelated; and that compliance with the provisions of KRS 13A.222(4)(e) would produce voluminous amounts of regulatory

definitions and frequent amendments of administrative regulations. He agreed, however, to work with Subcommittee staff to reconcile this problem. It was pointed out that an administrative body was required to amend an administrative regulation, regardless of the number of times it was necessary for amendment in order to comply with federal and state requirements.

On a question by Subcommittee staff concerning the "backdating" of regulatory requirements, Pat Haight explained to the Subcommittee that EPA sets rules and administers those rules until at some point later the state implements its own regulatory program. The federal requirements always precede the state requirements. When the state implements any portion of the program, the state administrative regulations must be identical to the federal requirements for that time period. She stated that there has been an ongoing attempt by the Cabinet to come up with "correct wording" that will satisfy both EPA and KRS Chapter 13A requirements. The Cabinet was instructed to meet with Subcommittee staff on this issue.

Identification and Listing of Hazardous Waste

401 KAR 31:010. General provisions for hazardous wastes.
401 KAR 31:040. Lists of hazardous wastes.
401 KAR 31:060. Rule-making petitions for hazardous waste.
401 KAR 31:170. Appendix on hazardous waste constituents.

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

401 KAR 34:020. General facility standards.
401 KAR 34:050. Manifest system, recordkeeping and reporting.
401 KAR 34:060. Groundwater protection.
401 KAR 34:070. Closure and postclosure.
401 KAR 34:190. Tanks.

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

401 KAR 35:050. Manifest system, recordkeeping and reporting (IS).
401 KAR 35:070. Closure and postclosure (IS).
401 KAR 35:190. Tanks (IS).

Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

401 KAR 36:030. Recyclable materials used in a manner constituting disposal.

Waste Management - Land Disposal Restrictions

401 KAR 37:010. General provisions for land disposal restrictions.
401 KAR 37:030. Prohibitions on land disposal.
401 KAR 37:050. Prohibitions on storage.

Hazardous Waste Permitting Process

401 KAR 38:010. General provisions for permitting.
401 KAR 38:020. Interim status provisions.
401 KAR 38:040. Changes to permits; expiration of permits.
401 KAR 38:050. Public information procedures.
401 KAR 38:060. Special types of permits.
401 KAR 38:070. Application procedures.

Solid Waste Planning

401 KAR 49:011. General provisions relating to area solid waste management plans.
401 KAR 49:040. Solid waste planning assistance program.

Transportation Cabinet: Department of Vehicle Regulation: Motor Vehicle Tax

601 KAR 9:130. Motor vehicle registration.

Department of Education: Office of District Support Services: School District Finance

702 KAR 3:250. Preschool grant allocations. In response to questions by the subcommittee concerning cooperation with existing providers of preschool services the Department responded that the Department of Education expects the school districts to cooperate with private providers consistent with the actions of the General Assembly in the 1992 session. To determine if there is a duplication of service the Department looks at the duplication of services for particular children. If the child is already served elsewhere at no cost to the parent the Department will not provide the service. There is no attempt to move that child from one publicly funded service to another. In terms of looking at duplication of public versus private services the Department looks to see if the child is being served. If the children are unserved then the Department may expand into that area. The Department does not consider expansions to be duplications. The Department encourages contracting with existing services. There are procedures in place to provide for contracting with existing services.

Office of Learning Program Development: Education Professional Standards Board

704 KAR 20:660. Approval for teaching in the primary school program.

Cabinet for Human Resources: Department for Medicaid Services

907 KAR 1:370. Incorporation by reference of the Community Mental Health Services Manual.
907 KAR 1:418. Incorporation by reference of the Rural Health Clinic Services Manual.
907 KAR 1:422. Incorporation by reference of the Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT) Manual.
907 KAR 1:425. Incorporation by reference of the revised alternative intermediate services/mental retardation services manual.

The Subcommittee approved the following emergency administrative regulation, which was not accompanied by an ordinary administrative regulation:

Solid Waste Planning

401 KAR 49:009E. Solid waste grant program. Chairman Kerr questioned Secretary Shepherd as to why this was filed only as an emergency regulation. Chairman Kerr stated that the emergency administrative regulation itself requires continual monitoring, and that it was his opinion that KRS Chapter 13A required a public hearing by the administrative body to be conducted for emergency, as well as, ordinary administrative regulations. Secretary Shepherd responded that only an emergency administrative regulation was filed because immediate action was required to meet the land waste management crisis of landfills closing by June 30, 1992, and that an administrative regulation would not be required after that crisis passed.

Cabinet personnel pointed out that loan monies are also involved, and that regulations will be filed to address that situation.

Chairman Kerr raised the question of the absence of a scheduled public hearing. He stated that the spirit of the law and the intent of the law requires that a public hearing be held for public comment on every proposed administrative regulation, including emergency regulations. He added that the Subcommittee has the right to request any information it needs in reviewing administrative regulations, and that if this problem arises again, the Subcommittee will request the Cabinet to provide all the information that would have been provided at a public hearing, and that it will hold its own public hearing asking the public to comment. Chairman Kerr pointed out that it is the position of this Subcommittee that a regulatory impact analysis is to be filed with all administrative regulations, including emergency administrative regulations.

The following regulations were deferred to the September meeting, unless otherwise noted, upon agreement by the promulgating agency and the Subcommittee:

Department of Law: Division of Consumer Protection

40 KAR 2:001. Definitions.
40 KAR 2:030. Application for permit to use automated calling equipment in the Commonwealth of Kentucky.
40 KAR 2:040. Issuance of permit to use automated calling equipment.
40 KAR 2:050. Procedures for a hearing.
40 KAR 2:060. Business opportunities.

Finance and Administration Cabinet: State Investment Commission

200 KAR 14:011. General rules.
200 KAR 14:081. Repurchase agreement.

200 KAR 14:091. Guidelines for money market instruments.

Board of Examiners and Registration of Landscape Architects

201 KAR 10:050. Fees.

201 KAR 10:060. Renewals.

Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:040. Fees.

201 KAR 18:075. Examination credit for qualified experience.

Commerce Cabinet: Department of Agriculture: Livestock sanitation

302 KAR 20:058. Brucellosis eradication.

Department of Education: Office of Learning Program Development: Student Services

704 KAR 7:056. Conditions for administering corporal punishment.

Representative Bruce asked whether legislation relating to corporal punishment failed to be enacted at the last regular session. Chairman Kerr stated that a previous administrative regulation, that was found deficient by the Subcommittee, attempted to outlaw corporal punishment; and, that legislation relating to corporal punishment was not enacted.

Representative Bruce asked whether this administrative regulation violated KRS 13A.333(6) by being identical to or substantially the same as the administrative regulation found deficient by the Subcommittee. Chairman Kerr stated that this administrative regulation differed from the one found deficient because it did not prohibit corporal punishment since it established conditions for administering corporal punishment. Representative Bruce asked whether this administrative regulation was so strict that, in effect, it prohibited corporal punishment and, on that ground, should be found deficient.

Representative Bruce asked whether this administrative regulation should be deferred for study. Chairman Kerr stated that deferral required the consent of the administrative body. Subcommittee personnel stated that some of the amendments related to format requirements, and that an additional amendment had been proposed to restrict the administration of corporal punishment to the buttocks of a student. Chairman Kerr stated that the restriction to the buttocks was proposed by LRC and Subcommittee staff and that it was reasonable. The Subcommittee approved these amendments.

Senator Huff moved that this administrative regulation be found deficient. He stated that the Department and State Board violated legislative intent by so restricting the administration of corporal punishment as to make it virtually impossible. Chairman Kerr stated that legislative intent was to permit corporal punishment, and that he believed some restrictions were necessary.

Senator Huff asked why two certified witnesses were required. Cabinet personnel stated that certified personnel would be aware of circumstances surrounding the student and the reasons for corporal punishment. Senator Huff asked if the witnesses were restricted to those who had particular knowledge concerning the disciplined student. Cabinet personnel stated that it was not so limited; that the certified personnel would be better informed of the school's policy on corporal punishment. Senator Huff stated that the requirement for certified personnel appeared to make corporal punishment more difficult to administer, since they would have to take time from their normal duties. Chairman Kerr asked whether the administrative body would delete the requirement for certified personnel and provide for any personnel to witness corporal punishment. Cabinet personnel stated that they were not prepared to address this issue.

Representative Bruce asked whether it would not be better to defer this administrative regulation so that administrative body and Subcommittee staff could attempt to reach an agreement on amendments that would satisfy the Subcommittee members' objections.

Senator Huff stated that he had additional objections. He questioned the improvement record (the disciplined student's progress or improvement) that was required. Cabinet personnel explained that, after the second spanking, the child's conduct was reviewed in order to determine whether corporal punishment had an effect, and whether another approach, such as counseling, was required. Senator Huff stated that the recordkeeping requirement appeared to be onerous and that many teachers had complained about the ever-increasing requirement to keep records. Cabinet personnel stated that, for some time, records relating to corporal punishment had been required by federal law and regulation.

Senator McCuiston seconded the motion to find this administrative regulation deficient. Chairman Kerr recommended deferral. Cabinet personnel stated that the State Board would not meet until November; that they could not meet with the State Board for its approval prior to November; and, that they were uncertain that they had authority to agree. Chairman Kerr stated that if no one from the Cabinet with authority to amend attended a Subcommittee meeting, KRS Chapter 13A required the administrative regulation to be deferred. The Regulations Compiler pointed out that it was the administrative regulation, as amended at this meeting, that would be deferred.

The Subcommittee approved a motion by Representative Bruce that the State Board be informed that it was required to have personnel with authority to amend or agree to deferral at a Subcommittee meeting.

Senator Huff stated that he did not want public schools to be faced with the same problem private schools encountered when they were subjected to burdensome requirements by the Cabinet for Human Resources.

Department of Insurance: Trade Practices and Frauds

806 KAR 12:095. Unfair claims settlement practices for property and casualty insurance.

The following administrative regulations were withdrawn by the promulgating agency on September 4, 1992:

Justice Cabinet: Kentucky Community Corrections Grant Program

500 KAR 10:001. Definitions.

500 KAR 10:010. Authority, purpose, name of grant program.

500 KAR 10:020. Administration.

500 KAR 10:030. Community corrections board.

500 KAR 10:040. Annual review for compliance.

The Subcommittee had no objections to emergency regulations which had been filed.

The Subcommittee adjourned at 12:15 p.m. until October 5, 1992 at 2 p.m. in Room 131 of the Capitol Annex.

AMENDMENTS & OTHER RELEVANT MATERIAL PERTAINING TO REGULATIONS REVIEWED AT THIS MEETING ARE ATTACHED TO THE APPROPRIATE REGULATIONS. REGULATIONS AND ATTACHMENTS THERETO ARE SUBMITTED WITH THIS REPORT TO BE REFERRED TO THE APPROPRIATE JURISDICTIONAL COMMITTEE.

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 BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of September 1, 1992

The Interim Joint Committee on Business Organizations and Professions met on September 1, 1992, 1 p.m. in Room 149, Capitol Annex, to consider administrative regulations referred by the Legislative Research Commission on August 11, 1992. The following actions were taken:

811 KAR 1:215 - Approved as referred.
804 KAR 5:070 - Found deficient.

The finding of deficiency for 804 KAR 5:070 was based on nonconformity with several statutes in KRS Chapter 244, in particular KRS 244.085. Other factors included an Attorney General's opinion (copy attached) interpreting KRS 244.085, and the fact that SB 29, the content of which was substantially the same as the proposed regulation, was not passed by the 1992 General Assembly.

The meeting adjourned at 1:40 p.m.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of August 20, 1992

The Interim Joint Committee on Education met on August 20, 1992, and approved the following administrative regulations:

11 KAR 3:100 - Administrative wage garnishment.
780 KAR 9:130 - Qualifications for progressing satisfactorily through a GED program.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
Meeting of August 27, 1992

The Interim Joint Committee on Agriculture and Natural Resources met Thursday, August 27, 1992, at the Kentucky Fair and Exposition Center and submits this report:

The committee determined that Natural Resources and Environmental Protection Cabinet administrative regulations 401 KAR 5:010 and 401 KAR 8:030 comply with KRS Chapter 13A.

The committee determined that Department of Agriculture administration regulation 302 KAR 16:080 & E, relating to bungee jumping, complies with KRS Chapter 13A.

The meeting adjourned August 27, 1992, at 11:45 a.m.

INTERIM JOINT COMMITTEE ON HEALTH & WELFARE
Meeting of August 18, 1992

The Interim Joint Committee on Health and Welfare met on Friday, August 28, 1992, and submits this report.

The Committee voted to approve the following administrative regulations: 901 KAR 5:050 & E, 902 KAR 10:021 & E, 902 KAR 10:060 & E, 902 KAR 10:121 & E, 902 KAR 10:130 & E, 902 KAR 45:110 & E, 902 KAR 45:120 & E, 902 KAR 100:012 & E, 902 KAR 105:020 & E, 904 KAR 3:010, 904 KAR 3:020, 904 KAR 3:025, 904 KAR 3:035, 906 KAR 1:110 & E, 907 KAR 1:045, 907 KAR 1:376, 907 KAR 1:382, 907 KAR 1:408, 907 KAR 1:412, 907 KAR 1:416, 907 KAR 1:432, 907 KAR 1:550, and 907 KAR 1:555.

INTERIM JOINT COMMITTEE ON HEALTH & WELFARE
Meeting of August 18, 1992

The Interim Joint Committee on Health and Welfare met on Friday, August 28, 1992, and submits this report.

The Committee voted to approve the following administrative regulations: 901 KAR 5:050 & E, 902 KAR 10:021 & E, 902 KAR 10:060 & E, 902 KAR 10:121 & E, 902 KAR 10:130 & E, 902 KAR 45:110 & E, 902 KAR 45:120 & E, 902 KAR 100:012 & E, 902 KAR 105:020 & E, 904 KAR 3:010, 904 KAR 3:020, 904 KAR 3:025, 904 KAR 3:035, 906 KAR 1:110 & E, 907 KAR 1:045, 907 KAR 1:376, 907 KAR 1:382, 907 KAR 1:408, 907 KAR 1:412, 907 KAR 1:416, 907 KAR 1:432, 907 KAR 1:550, and 907 KAR 1:555.

INTERIM JOINT COMMITTEE ON BUSINESS ORGANIZATIONS AND PROFESSIONS
Meeting of September 14, 1992

The following administrative regulations were considered and approved as referred by the Interim Joint Committee on Business Organizations and Professions at its meeting on September 14, 1992:

804 KAR 1:130
804 KAR 9:040

The meeting adjourned at 3:15 p.m.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates D2

The Locator Index lists all regulations published in VOLUME 19 of the Administrative Register from July, 1992 through June, 1993. It also lists the page number on which each regulation is published, the effective date of the regulation after it has completed the review process, and other action which may affect the regulation. NOTE: The regulations listed under VOLUME 18 are those regulations that were originally published in last year's issues of the Administrative Register but had not yet gone into effect when the last issue of Volume 18 was published.

KRS Index D8

The KRS Index is a cross-reference of statutes to which regulations relate. These statute numbers are derived from the RELATES TO line of each regulation submitted for publication in VOLUME 19 of the Administrative Register.

Subject Index D14

The Subject Index is a general index of regulations published in VOLUME 19 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

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VOLUME 18

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal.

201 KAR 18:040E	3310	4-27-92
302 KAR 16:080E	3130	4-7-92
Replaced		8-27-92
804 KAR 9:040E	3313	4-24-92

ORDINARY REGULATIONS:

201 KAR 10:050		
Amended	3497	
201 KAR 10:060		
Amended	3209	
201 KAR 18:040		
Amended	3210	
201 KAR 18:075	3271	
803 KAR 2:320		
Amended	3529	
804 KAR 9:040		
Amended	3536	(See VOLUME 19)

VOLUME 19

EMERGENCY REGULATIONS: (Note: Emergency regulations expire 120 days from publication or upon replacement or repeal.

11 KAR 4:020E	677	7-9-92
32 KAR 1:010E	859	8-19-92
101 KAR 1:325E	860	8-18-92
200 KAR 14:011E	362	7-14-92
200 KAR 14:081E	363	7-14-92
200 KAR 14:091E	364	7-14-92
201 KAR 2:105E	862	8-18-92
201 KAR 10:050E	4	5-18-92
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401 KAR 49:009E	4	6-8-92
401 KAR 50:037E	681	7-31-92
405 KAR 7:001E	682	7-24-92
405 KAR 7:091E	686	7-24-92
405 KAR 7:092E	689	7-24-92
405 KAR 12:020E	697	7-24-92
501 KAR 6:020E	5	5-22-92
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Resubmitted	701	7-23-92
501 KAR 6:060E	365	6-24-92
601 KAR 40:020E	366	7-13-92
603 KAR 3:060E	368	7-8-92
603 KAR 5:110E	369	7-15-92
603 KAR 5:300E	372	7-13-92
Died*		9-10-92
704 KAR 3:303E	7	6-12-92
Replaced		8-1-92
704 KAR 3:440E	7	5-22-92
Replaced	397	8-1-92
780 KAR 3:020E	9	6-11-92
Replaced		8-1-92
901 KAR 5:050E	372	7-2-92
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902 KAR 10:021E	372	7-2-92
Replaced	298	8-28-92
902 KAR 10:035E	702	7-24-92
902 KAR 10:060E	372	6-30-92
Replaced	299	8-28-92
902 KAR 10:121E	373	6-30-92
Replaced	300	8-28-92
902 KAR 10:130E	373	6-30-92
Replaced	301	8-28-92
902 KAR 20:004E	374	7-10-92
902 KAR 45:110E	378	6-30-92
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